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## Instruments Affecting Interests in Personal Property

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Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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## Instruments Affecting Interests in Personal Property

**Reference Number:** CTAS-774

Instruments evidencing ownership interests in personal property, such as bills of sale or simple contracts of sale of personal property, usually are not registered, but may be registered. (See T.C.A. § 66-24-101 for a listing of most instruments eligible for registration.) All agreements for the conveyance of real or personal property are eligible for registration. T.C.A. § 66-24-101(a)(1) & (5).

## Uniform Commercial Code Records

**Reference Number:** CTAS-775

When personal property, including personal property affixed to real estate, is used as security for debt, the Uniform Commercial Code (UCC) usually governs the transaction. The UCC is a body of statutory law based on a model code which has been adopted by almost all of the states of the Union, with minor variations from state to state, so that the law governing commercial transactions such as the law of sales, commercial paper, bank deposits and collection, letters of credit, bulk transfers, and secured transactions will be as similar as possible across the nation in order to facilitate commerce. The register's office is impacted by the requirements of Article 9 of the UCC dealing with secured transactions, and more particularly, Part 5 dealing with filing. The Tennessee version of Article 9 is found in Chapter 9 of Title 47, Tennessee Code Annotated. Basically, the Chapter (Article) 9 framework involves the filing of documents to provide notice of liens on personal property and fixtures. Not all UCC Article 9 records are filed with the Register. Most are filed with the Secretary of State. Initial financing statements that are filed in Tennessee should be filed with the Secretary of State except the following which should be filed with the Register of Deeds:

1. Initial financing statements with "as extracted" collateral; "as extracted" collateral means oil, gas, or other minerals that are subject to a security interest that is created by a debtor having an interest in the minerals before extraction and attaches to the minerals as extracted, or accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.
2. Initial financing statements with timber to be cut as collateral;
3. Fixture filings--initial financing statements where the collateral is goods that are or are to become fixtures (goods that have become so related to particular real property that an interest in them arises under real property law), except where the filing's collateral, including fixtures, is of a transmitting utility -- these should be filed with the Secretary of State. A "transmitting utility" includes railways, pipelines, sewers, transmitting communications (whether electrically, electromagnetically or by light). T.C.A. §§ 47-9-501, 47-9-102.

Some financing statements formerly filed in Tennessee should be filed in another state under the new law.

***The Register should not advise the customer regarding the proper place to file a UCC record, but may suggest that the customer should consult with his attorney to determine the proper place to file to perfect the security interest.***

## Identification and Purpose of UCC Instruments (Records)

**Reference Number:** CTAS-776

**Amendment.** A record which modifies a filed financing statement; includes the formerly separate assignment, continuation statement, release (now referred to as a collateral change), and termination statement as well as the former amendment function. An amendment must contain the file number of the initial financing statement that is being amended.

**Assignment.** An amendment to the initial financing statement or a component of an initial financing statement that transfers a security interest to a new secured party. A separate amendment with an assignment must contain the file number of the initial financing statement.

*Continuation Statement.* An amendment to the initial financing statement which identifies, by its file number, the initial financing statement to which it relates and indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement. T.C.A. § 47-9-102(27).

*Financing Statement.* This record is a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

*Information Statement.* A record which identifies the record to which it relates by file number assigned to the initial financing statement, indicates that it is an information statement and provides the basis for the person's belief that the earlier filed record is inaccurate and indicates the manner in which the person believes the record should be amended to cure any inaccuracy or the basis for the person's belief that the earlier record should not have been filed. T.C.A. § 47-9-518.

*Initial Financing Statement.* A summary or abstract of a security agreement that contains information designed to place the public on notice concerning the basic facts of the security interest that has been created. At a minimum, it identifies the debtor and secured party and the collateral subject to the security agreement. An initial financing statement may also include an assignment of the security interest to a new secured party. The initial financing statement may state that the document is to be recorded in the real estate records.

*Release.* An amendment whereby a secured party ceases to have a lien on certain "released" collateral. This was a separate instrument under the former UCC. The current UCC provides for the deletion of collateral on the amendment form. The term "release" is not a part of the vocabulary of the current UCC law. Instead, the partial release of collateral is referred to as a collateral change. The amendment deleting collateral from that given in the initial financing statement must contain the file number of the initial financing statement.

*Security Agreement.* The security agreement is the basic instrument which creates or provides for a security interest and establishes the terms of the secured transaction. T.C.A. § 47-9-102(74). This is often a long and detailed legal instrument and usually is not filed with either the register or the Secretary of State.

*Termination Statements.* A termination statement is an amendment of a financing statement which identifies, by its file number, the initial financing statement to which it relates, and indicates either that it is a termination statement or that the identified financing statement is no longer effective. T.C.A. § 47-9-102(80).

## Other Documents

**Reference Number:** CTAS-777

The register's office receives for registration documents which have legal significance other than the ones already mentioned affecting real or personal property. The following is a short description of some of the other instruments that the Register is likely to encounter.

*Depositions.* Under the Rules of Civil Procedure (Rule 27.04), a deposition to perpetuate testimony is filed with the clerk of the court in which the action is pending or in which the petition was filed. A copy of the deposition may also be sent to the register in the county where the petition was filed, and the register records such copies.

*Officials' Bonds.* The various county officials are required to obtain bonds payable to the state or county which protect the state or county against loss of funds handled by these officials. These bonds are recorded in the register's office. T.C.A. § 8-19-103.

*Powers Of Attorney.* Powers of attorney are instruments whereby the maker grants to another party or parties the authority to act for the maker with regard to some or all of the maker's property and to exercise some or all of the maker's legal rights. Also, durable powers of attorney for health care allow the maker to grant to another party the power to make certain decisions regarding health care for the maker. Powers of attorney may be revoked by the maker in a later document.

*Revenue Reports.* The clerks of the various courts operating in the county are required by statute (T.C.A. § 9-2-109) to file with the register reports on the revenue collected by the clerk.

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