



Lien Solutions

Beyond perfection: Mitigating risk with ongoing lien monitoring

Smart lenders know that protecting and perfecting their interests in assets is essential to sound lending. They spend considerable effort conducting due diligence on their borrowers through Uniform Commercial Code (UCC) searches and other mechanisms. Once the loan is approved, they also file UCCs in the relevant jurisdictions to establish their position versus other creditors. But, filing UCC statements is just the beginning — an important milestone but not the end of the journey. The process of maintaining protection continues. Because so many factors can potentially put a lender's interest in assets at risk, it's essential to stay aware of changes that can impact one's position. All of the effort that goes into an initial UCC filing can be for naught if those filings are not continuously tracked to keep them current.

Maintaining ongoing visibility is critical to mitigating risk and effectively managing the ongoing health of your lien portfolio. There are a number of tools and best practices that companies can use to monitor their portfolios and take the required steps to protect their status. This paper will discuss some of the common risks to lenders, options for mitigating them, and the value of having an experienced lien services provider for portfolio management.



With change comes risk

A UCC can expire without being continued before the underlying debt is paid off. A debtor can change its name. A debtor could experience a loss of good standing. A UCC filing might be terminated by a third party without your knowledge. These and many other external events constantly pose a financial risk to your business by compromising the perfection of assets you've financed.

The fact is that lien filings are not a one-and-done matter, but a fluid and ongoing practice. Different types of filings accomplish different goals, and as circumstances change, the need for additional filings evolves as well. Filings fall into two basic categories. UCC-1s are the initial filings that put perfection in place. They are normally filed at the beginning of the life of a loan to secure a lender's position for repayment. But UCC-1s aren't permanent. Lasting only 5 years, a UCC-1 could expire before the underlying loan is paid off. What's more, external changes can occur at any time — such as a debtor changing its legal name or the re-sale of the perfected asset — which can compromise the protection put in place by a UCC-1.

- **Continuations:** UCC-1 filings are good for 5 years, but many loans have longer terms than that. UCC Continuations are used to extend a UCC-1 beyond the original 5-year span.
- **Termination:** A UCC-3 termination is filed to provide notice that a borrower has paid off a loan or other obligation.
- **Assignments:** An assignment filing is used to provide notice of who bears the rights and responsibilities under a UCC-1 filing.

Amendments comprise three primary types:

- **Debtor Amendment:** Sometimes the party responsible for a debt will change — for example when an asset is sold. A debtor amendment provides notice of who the current debtor is.
- **Secured Party Amendment:** Sometimes the secured party under a UCC-1 filing will change, for example, if a loan is sold. A secured party amendment provides notice of this change.
- **Collateral Amendment:** A collateral amendment is used to provide notice of changes to the collateral used to secure a financial obligation.

To obtain perfection — and just as importantly, to maintain it — requires an understanding of which filings are needed and when. A comprehensive strategy of active portfolio management can ensure that a lender enjoys the full benefits of perfection and avoids financial risks.



The risks are real — and measurable

The risks associated with maintaining perfection are real, no matter the size of a financial organization, or the breadth of its portfolio. To demonstrate the magnitude of changes that can impact filing status, Lien Solutions reviewed our entire client portfolio during the second half of 2016. We tracked the number of alerts generated by our portfolio monitoring solution, and found a total of 386,334 alerts for the six-month period alone. Each of those signified an event or condition with bearing on the perfected status of a lien. These included name changes by a debtor, status changes such as dissolutions or mergers by debtors, as well as UCC-1 and UCC-3 related filings.

The number of issues per client ranged from just a few for smaller companies to thousands for bigger players. But portfolio size was not necessarily the sole indicator of alert volume; for example, a portfolio for a mid-sized regional lender generated more than 4,000 alerts.



Number of alerts generated by
our portfolio monitoring solution **386,334** for the six-month
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including



Name changes
by a debtor



Status changes — dissolutions
or mergers by debtors



UCC-1 and UCC-3
related filings

Because Lien Solutions supports one of the largest client portfolios in the country, including many of the largest lenders, this study shows just how common the issues are that can compromise perfection. It's something we see every day and with nearly every client. The numbers reinforce just how important it is for clients to monitor their portfolios to stay aware of and act on these issues.

Verifying a debtor's name can be an important part of initial due diligence, as well as on an ongoing basis. A perfected UCC filing should have the exact legal name from Corporate Charter at the Secretary of State (SOS). Small variations can have big impacts. For example, in one recent case, the debtor name on a UCC in Nebraska was recorded as Alvo Grain & Feed, Inc. whereas the legal name was Alvo Grain and Feed, Inc. When the company filed for Chapter 7, the lender's lien on equipment was declared invalid. The seemingly simple substitution of an ampersand for the word "and" had significant consequences. In another case, in Virginia, Tyringham Holdings, Inc. was listed as Tyringham Holdings, and a court ruled that a lender's security interest was invalid.

In another example we found that approximately 6% of large client portfolio (more than 50,000 filings) are on debtors that are either Inactive, Dissolved, Merged, Withdrawn, or Not-Compliant entities as per SOS offices.

6% of filings of just one large client portfolio were on debtors which are either Inactive, Dissolved, Merged, Withdrawn, or Not-Compliant entities as per Secretary of State offices.

“Sometimes the issue is a simple name change. While customers are required to inform us if they change their company name, some just forget. A name change requires us to adjust the paperwork so we keep our lien. That is important.”

– Banking Industry Professional

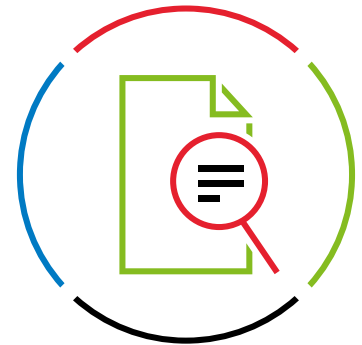
The answer is ongoing monitoring and active portfolio management

The only way you can truly be sure about maintaining perfection is through ongoing monitoring and active portfolio management. A comprehensive lien solution combines a proactive monitoring and alert capability with a robust set of management tools for taking the steps necessary to preserve perfection. In other words, you need to know what must be done and when — and be ready to act on that knowledge. A sophisticated provider can equip you with the capabilities — many of them based on automation — to act quickly and efficiently.

Monitoring

The fact is that what you don't know can hurt you. A robust monitoring solution can help eliminate surprises by constantly checking the status of debtor and business entity names, and alerting you to changes that could compromise your position. In addition to natural loan life-cycle events — such as the need to renew a filing after five years — alerts can be triggered by debtor name changes, mergers, dissolutions, loss of good standing, administrative cancellations, and more. By learning sooner about changes that affect your debtors, you can act faster to take action to protect your investments.

A complete lien solution can also provide confirmation of filing acknowledgements or when your orders are completed. You get the peace of mind from knowing that filings are complete without having to keep checking on the filing status of new filings. You can also opt for alerts when filings are rejected or need more information, so you can take action quickly.



Other tools

In addition to monitoring and alerts, a number of other related tools and features are essential to maintaining the health of a portfolio:

Automated continuation

An automated continuation tool is an easy way to reduce or eliminate the likelihood that a UCC filing will lapse unexpectedly. Such a tool can be set to automatically monitor dates, prepare forms and file continuation statements based on predetermined criteria. This dramatically reduces the time a company spends managing its continuations. It also provides fundamental reassurance that key dates and required actions won't be missed. Key benefits from an auto continuation tool include: Reduce risks due to missed filings; maintenance of position versus other creditors; reduced need for manual intervention; and, increased productivity.

Ongoing searches

To be absolutely sure that your interest in collateral is perfected, you need to verify that a UCC filing has been executed fully and appropriately. The way to do this is with a "search-to-reflect" — essentially, searching your own filing through a public UCC debtor search of the office where you have filed a UCC document. Such a search can validate that your filing has been properly indexed by the office, and it can also make you aware if another creditor has filed a UCC or other lien after you performed your own pre-lending due diligence. In addition, you may want to do periodic, automated, recurring searches to always be in-the-know.

Data/image repository

As a company adds searches and filings to its portfolio over time, the amount of data that must be stored, archived and managed can become enormous. The best lien solutions provide a data and image repository that provides an organized and easy way to store and retrieve search and filing related documents and images.

Reporting and analytics

While managing large portfolios, the ability to stay on top of myriad details is key. That means being able to track searches and filings, and knowing what has been completed and what hasn't. That's why it's important to have access to flexible and customizable reporting functionality. With a flexible and configurable way to generate reports, you can maintain visibility into your portfolio and clarity on what needs to happen next. The reports can also provide you with good insight about the costs, efficiency and quality of your lien operation. Finally, a centralized repository also enables you to run analytics on your lien portfolio to gain additional insights about risk and other factors.

The larger and more established your lien solution provider is, the more likely it is to offer comprehensive monitoring and portfolio management solutions — and the more prepared you will be to act on the alerts they provide. By learning sooner about changes that affect your debtors, you can act faster to take action to protect your investments.

"We have had monitoring for some time. It not only reduced our risk, it saved us a tremendous amount of time. We were running quarterly checks on all of our customers to make sure they were still in good standing. With monitoring, we no longer need to do that and we can focus our time on immediate concerns."

— Banking Industry Professional

Key benefits from an auto continuation tool include:



Reduce risks due to missed filings



Maintenance of position versus other creditors



Reduced need for manual intervention



Increased productivity



Having an expert partner is key

It is difficult to overstate the importance of ongoing monitoring for protecting the perfection of interests in financed or leased assets. By extension, the importance of a proven provider of comprehensive lien solutions is abundantly clear. Companies who wish to be proactive about gaining and maintaining perfection are best served when they have access to deep expertise and robust tools for monitoring their portfolios and acting on the issues that they discover as a result. Because errors and oversights can be costly, an effective risk mitigation strategy demands the kind of monitoring that only a market leader can provide.

Over decades in the industry, Lien Solutions has proven the value of comprehensive lien management, debtor due diligence and monitoring and risk management solutions. As our research has shown, it is vital to assess the current state of one's portfolio, to uncover errors and oversights in existing filings — unknown but avoidable risks. And- with every new UCC filing, the journey of perfection continues as you maintain the ongoing visibility so critical to mitigating future risk and effectively managing the ongoing health of your portfolio.

About the authors

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About Wolters Kluwer Financial & Corporate Compliance

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Wolters Kluwer reported 2024 annual revenues of €5.9 billion. The group serves customers in over 180 countries, maintains operations in over 40 countries, and employs approximately 21,600 people worldwide. The company is headquartered in Alphen aan den Rijn, the Netherlands.

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