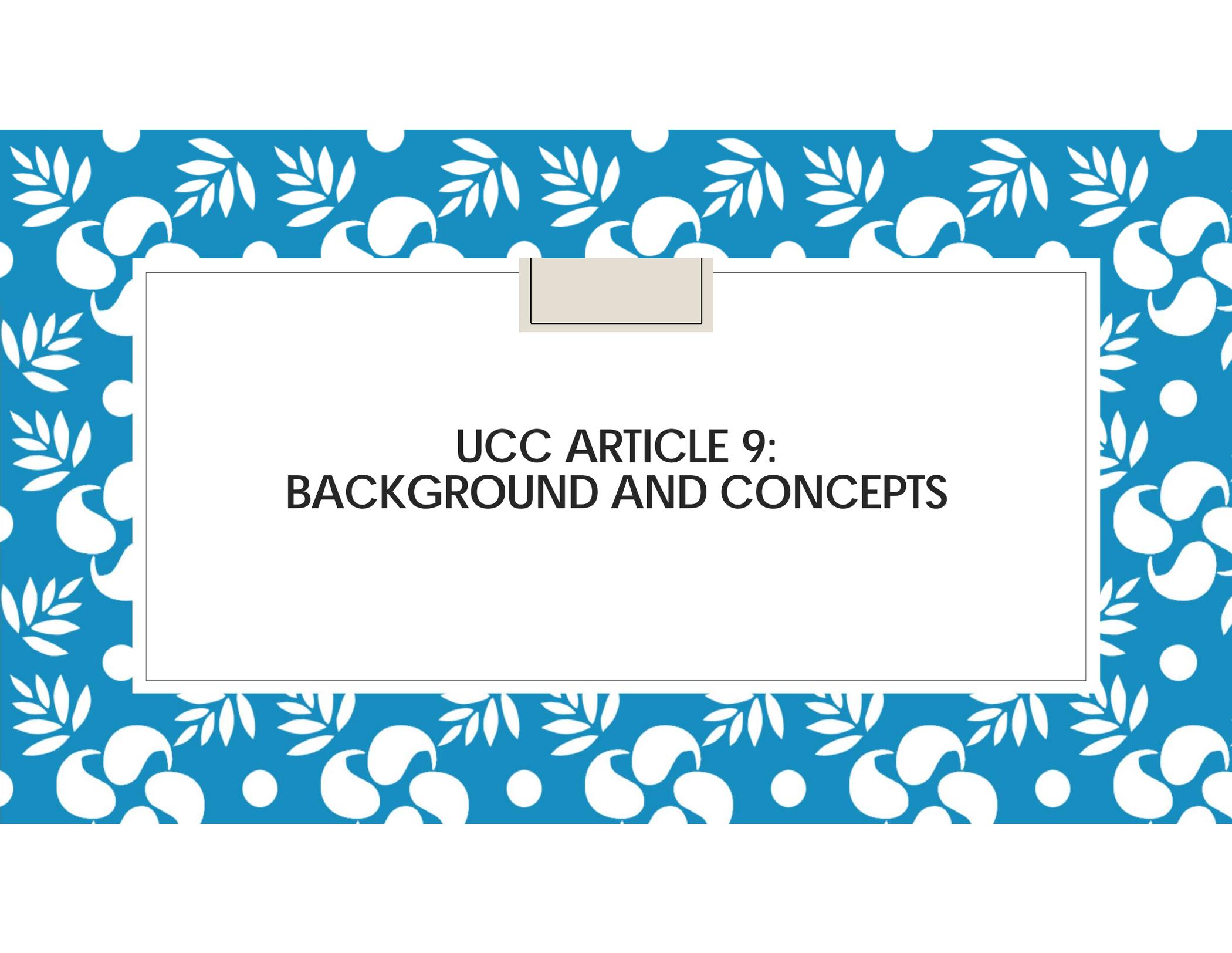


# ***UCC ARTICLE 9 FOR FILING OFFICERS***

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**UCC ARTICLE 9:  
BACKGROUND AND CONCEPTS**

## UCC ARTICLE 9 BACKGROUND

- **Uniform Commercial Code Article 9**
  - *Law governing security interests in personal property.*
- **Security Interest**
  - *Security interest is a consensual lien that arises by contract.*
- This allows secured party to repossess and foreclose on collateral after default by a debtor
- Secured party gets priority over debtor's other creditors to collateral and proceeds
- **The Security Agreement**
  - *Contract that creates the security interest.*
  - *Enforceable like most contracts between the debtor and secured party.*

## UCC ARTICLE 9 BACKGROUND

- **Role of the Filing System**

- *Because Article 9 allows parties to adjust other creditors' rights by private agreement, fairness requires public notice*

- *To achieve priority, a security interest must be "perfected"*

- Filing a "financing statement" is by far the most common method to perfect

- **Repository for UCC Financing Statements**

- *As a neutral third party, government is in the best position to provide a stable repository for notices filed under the UCC.*

- *UCC records are maintained by the designated government unit for commercial use, not for the benefit of government.*

## ESSENTIAL UCC FILING SYSTEM CONCEPTS

- **UCC is a just a Notice Filing System**
  - *UCC records do not establish ownership or rights.*
  - *Financing statements are not signed and are not enforceable documents*
  - *Financing statement merely notice that a security interest may exist.*
- **So, Searchers Must Conduct Further Inquiry**
  - *Article 9, case law and commentary all indicate that searchers must contact the parties involved to learn the full state of affairs.*
- **UCC Places the Burden on Filer to Get it Right**
  - *Must satisfy all the content requirements.*
  - *Filing office is not responsible for legal sufficiency.*

## ROLE OF THE FILING OFFICE

- **The Filing Office is a Trusted Repository**
- *Relied upon by searchers to identify or confirm the absence of security interests perfected by filing*
- *Key responsibilities are:*
  - Maintaining a stable database
  - Proper indexing
  - Maintain search logic that yields consistent results
- **Responsibilities are Purely Ministerial**
  - *Article 9 policy is to remove judgment and discretion from the filing office's duties.*
  - *Filers and searchers are responsible to protect themselves while the filing office remains neutral*
  - *Filing office concern is with the maintenance, not the effectiveness of records.*

## ROLE OF THE FILING OFFICE

- **Article 9 Has a Bias in Favor of Filing**

- Filing office may **only** refuse to accept a record for a reason specified in statute.
- “Perfect tender” of filing and fee constitutes filing, so rejection for improper reason results in a perfected security interest hidden from searchers and potential tort liability for filing office.

- **Searching: UCC Article 9 Open Drawer Policy**

- Filing office must provide the entire record history to searchers.
- Searchers are responsible for interpretation.

- **“Do No Harm”**

- Because filing office cannot know in fact what is going on, filing office maintains debtor names and secured parties of record even if amendments indicate changes.

## UCC FORMS

- **National Safe Harbor Forms: UCC 84-9-521**

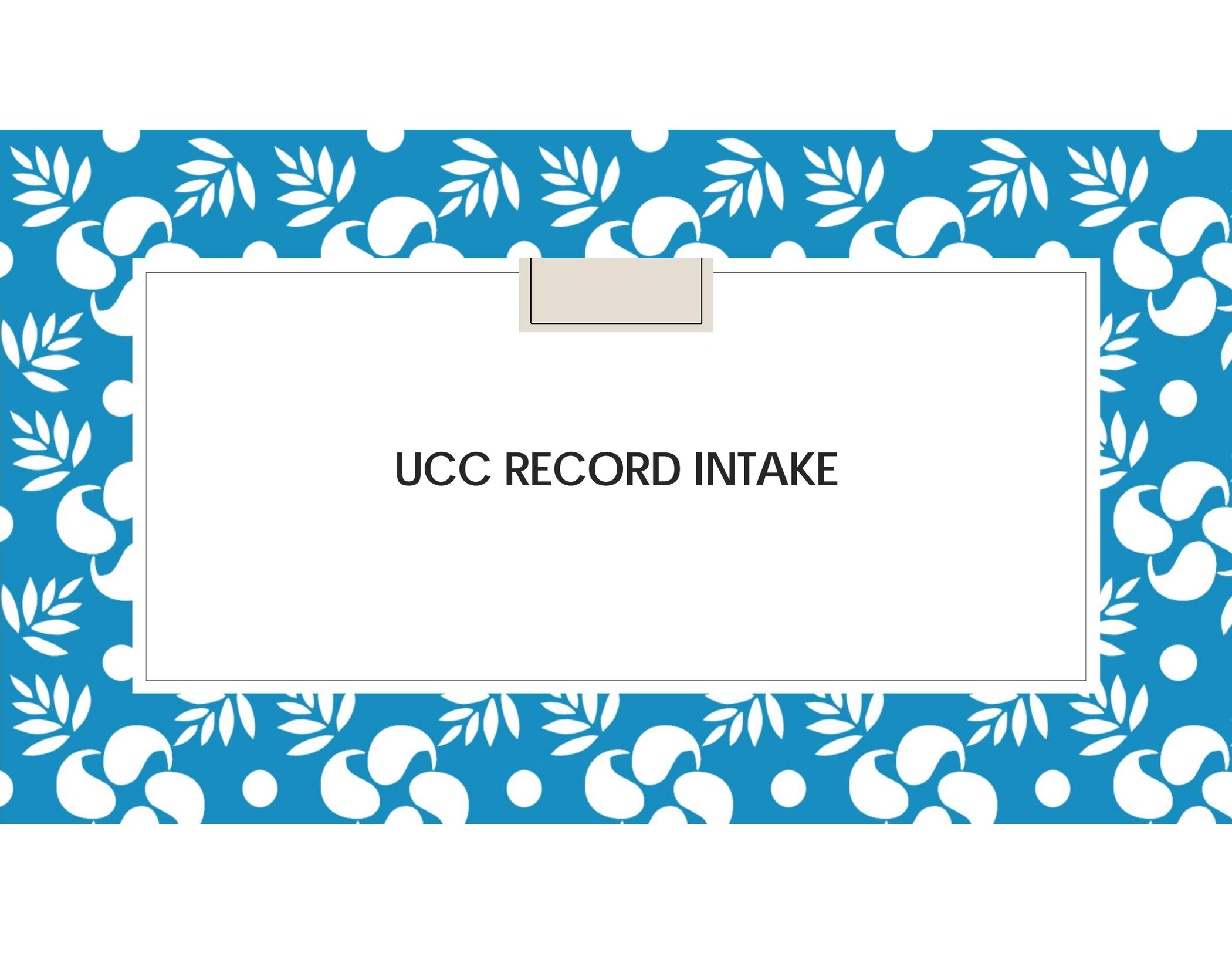
- *Must be accepted by filing offices in all states.*
- *Current form revision date is 04/20/11.*

- **Types**

- *UCC1 Financing Statement*
- *UCC1AD Financing Statement Addendum*
- *UCC1AP Financing Statement Additional Party*
- *UCC3 Amendment*
- *UCC3AD Amendment Addendum*
- *UCC3AP Amendment Additional Party*
- *UCC5 UCC Information Statement*

- **Signatures**

- *UCC forms do not require signatures of any party. The absence of a signature is not a reason for rejection.*



# UCC RECORD INTAKE

## REJECTION & ACCEPTANCE OF UCC RECORDS

- **Article 9 Policy:**

- *Legal sufficiency is the filer's problem.*
- *Records that provide required content must be accepted regardless of accuracy.*
- *Review process is counter-intuitive and very different from review of real estate instruments.*

- **Reasons for Rejection**

- *The **only** reasons for which a filing office may refuse to accept a record are set forth in 84-9-516(b).*
- *A filing office may only reject for a reason set forth in § 9-516(b). See 84-9-520(a).*
- *General rule is that a filing office may only reject a record if it is unable to index it.*

## UCC 84-9-516(B) REASONS TO REFUSE FILING

- **Record is communicated by method or medium not authorized by filing office**
  - *This is not a “catch-all.”*
- **Proper fee is not tendered**
- **Filing office cannot index because:**
  - *no debtor name provided on initial financing statement;*
  - *no file number for initial financing statement provided on amendment, or number provided relates to a lapsed FS;*
  - *record does not identify an individual debtor’s surname; or*
- **No name and address for secured party on initial FS or amendment that adds the secured party**

## UCC 84-9-516(B) REASONS TO REFUSE FILING

- No address for debtor on initial FS or amendment that adds the debtor, or failure to indicate whether debtor is individual or organization
  - *Separate boxes/fields for names indicate debtor status.*
- No name or mailing address for indicated assignee
- Continuation statement not filed within 6-month window prior to lapse date
- Filing office is unable to read or decipher required information
  - *This is also not a catch-all.*

## REJECTION & ACCEPTANCE OF UCC RECORDS

- **Common Rejection Errors:**

- *Imposing requirements not found in statute.*
- *Prior filing of termination or continuation statement.*
- *Lack of signatures.*
- *Collateral not of a type filed at the county or state.*

- **Notice of Rejection**

- *After rejecting a UCC record, the filing office must provide the submitter with a reason for the rejection.*
- *Notice must include the time and date when the record would have been accepted if not rejected.*
- *General rule is that the filing office must perform this duty within 2 business days.*
- *If filer convinces filing office that rejection was improper, filing office must indicate filing was effective at original filing time.*

## UCC RECORD CONTENT REQUIREMENTS

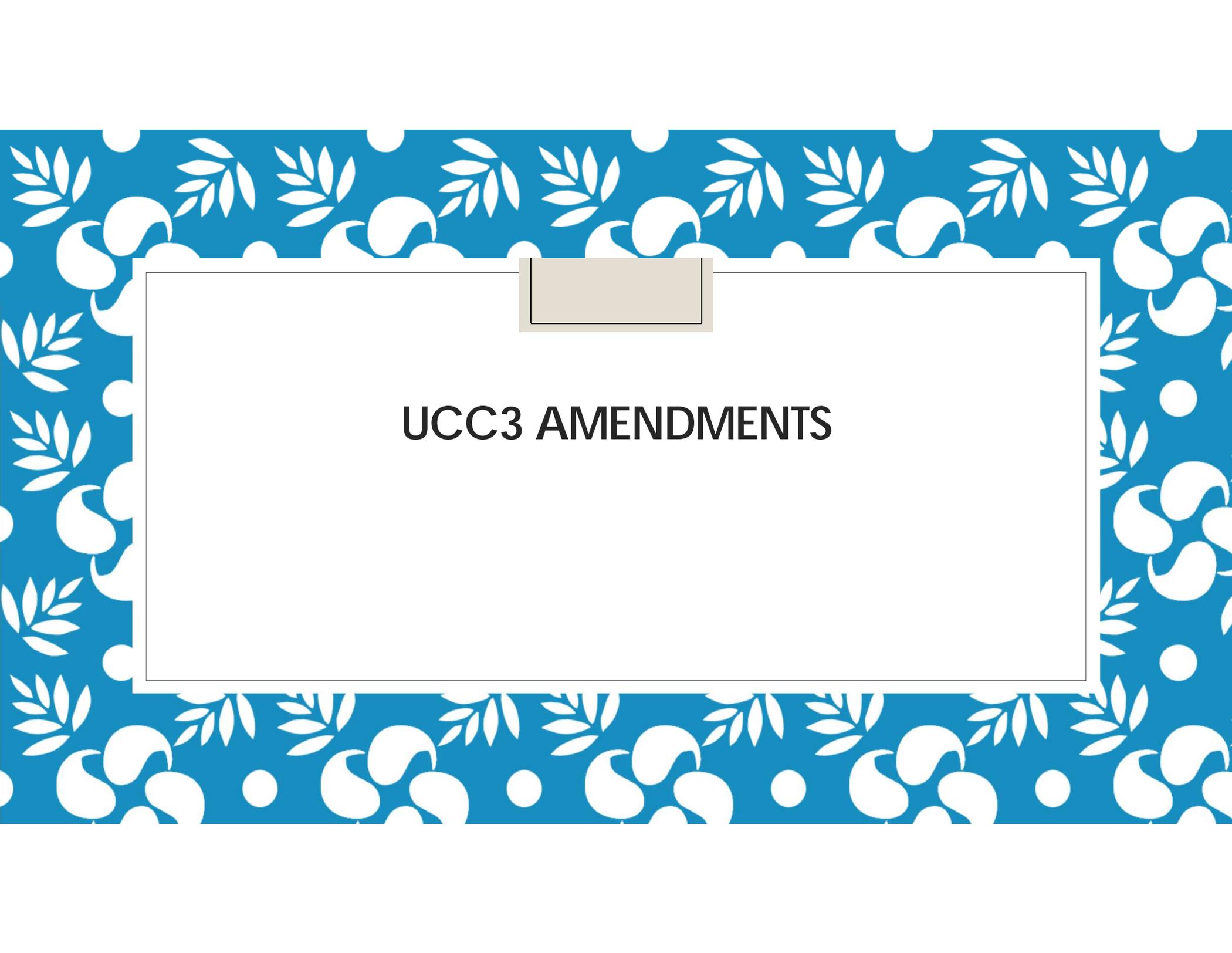
- **Debtor and Secured Party Name**
  - *Correctness of the debtor or secured party name does not affect filing office duties.*
  - *Typos are filer's problem.*
- **Debtor and Secured Party Address**
  - *A mailing address is required for each party. However, no particular format is specified by statute.*
- Address is to assist searchers and is not required for legal sufficiency.
- **Indication of the Collateral**
  - *Contents of the collateral field do not affect filing office duties and must be ignored.*
  - *Omission of the collateral is not grounds for rejection!*

## INFORMATION NOT OF CONCERN FOR FILING OFFICE

- **Alternative Designations**
  - *Have no effect on filing office duties with respect to the record.*
- **Debtor and Transaction Indications**
  - *These are relevant only for setting lapse dates, if applicable.*
- **Descriptive or Explanatory Information**
  - *The contents of the collateral field or any attached schedules, exhibits or other documents have no effect on the filing office duties.*
- **Content of Attachments**

## DURATION AND EFFECTIVENESS OF UCC RECORDS

- **General Rule:**
  - *Financing statement is effective for 5 years from the date of filing.*
- March 1 substitutes for February 29
- **Manufactured Home or Public-Finance Indication**
  - *Financing statement is effective for 30 years.*
- **Transmitting Utility Indication**
  - *Financing statement is effective until terminated with respect to all secured parties of record.*
  - *Filing office cannot determine effectiveness of termination statements so record should never be purged.*



# **UCC3 AMENDMENTS**

## TERMINATION STATEMENT

- **Effect of Filing by Authorized Person**
  - *Financing statement ceases to be effective. See § 9-513(d).*
  - *Effectiveness is outside filing office responsibility, as filing office cannot establish the filer's authority.*
- **Filing Office Indexing**
  - *Termination statements should be indexed as other amendments.*
  - *Termination statements have no effect on the lapse date.*
  - *Filing office must accept multiple termination statements.*
- **Amendments are effective only with respect to the authorizing secured party(ies).**  
UCC 84-9-510.
- **Amendment After Termination Statement Filed**
  - *Filing office has no grounds to reject an amendment, including a continuation statement, after a termination statement has been filed under the **Do No Harm** rule.*

## UCC-3 ASSIGNMENT

- **Assigns Right to Amend the Financing Statement**
  - *A UCC-3 assignment **does not** assign the security interest!*
- **Effect of UCC3 Assignment:**
  - *Adds the assignee as secured party of record.*
  - *Assignor remains a secured party of record. See § 9-511(c).*
  - *If desired, assignor may file an amendment to delete itself as a secured party.*
- **But assignor remains a secured party of record as far as filing office is concerned under the Do No Harm rule.**

## CONTINUATION STATEMENT

- **Time for Continuation Statement Filing:**
  - *Filing office must reject a continuation statement submitted more than 6 months prior to, or at any time after the lapse date.*
  - *A continuation statement accepted outside the 6-month window is ineffective, even if the filing office resets the lapse date.*
- **Effect of Timely Filing of Continuation Statement**
  - *Effectiveness of the financing statement is extended for an additional 5-year period beginning on the date when the record would have ceased to be effective if no continuation had been filed.*
- **Multiple Continuations:**
  - *Filing office must accept all continuation statements submitted for the record within 6 months prior to the lapse date.*
  - *Only the first continuation resets the lapse date.*

## PARTY AMENDMENT

- **Party Add**

- Adds the party information set forth in Item 7 to the financing statement.
- Filer must indicate whether the party is a debtor or secured party.

- **Party Change**

- If new party name is provided in Item 7, filing office must add that name as a debtor or secured party, based on the filer's indication in Item 5.

- **Party Delete**

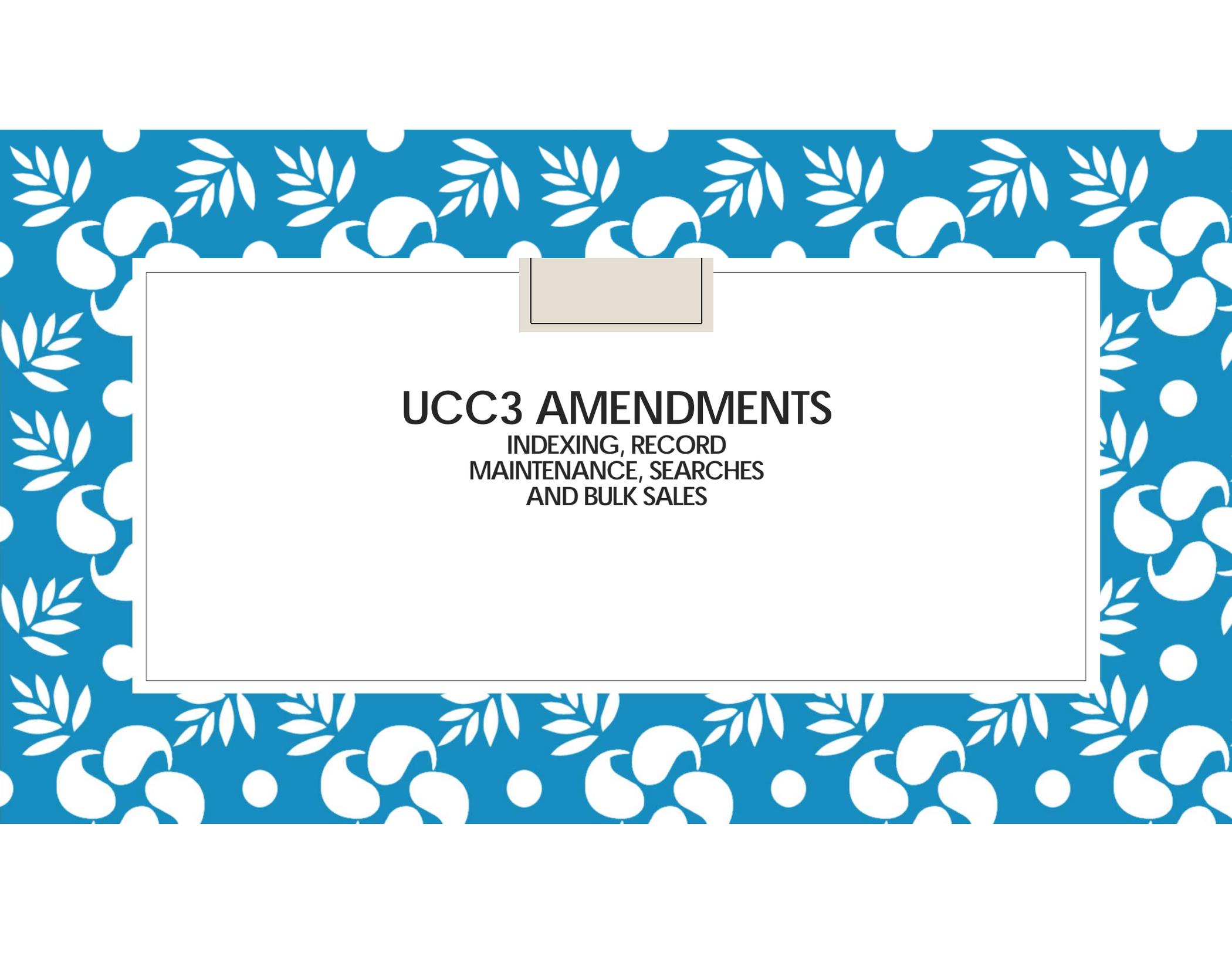
- Removes the party described in Item 6 from the scope of the financing statement.
- Filing office may not delete name from index until 1 year after the financing statement has lapsed.

## COLLATERAL AMENDMENT

- **Collateral Change: Added**
  - *The described collateral is covered by the UCC1.*
- **Collateral Change: Deleted**
  - *The described collateral is no longer covered by the UCC1*
- **Collateral Change: Restated**
  - *Replaces all prior collateral descriptions.*
- **Collateral Change: Assigned**
  - *This is not a collateral amendment. It relates to an assignment. The assignment box in Item 3 should also be checked.*
- **Effect**
  - *All collateral amendments should be indexed in the same way. It is up to those who search the records to interpret the record.*

## SECURED PARTY AUTHORIZING THE AMENDMENT

- **Contents of Item 9 is NOT a Reason for Rejection!**
  - *The correctness or omission of a secured party name in Item 9 is NOT a permitted reason for rejection under § 9-516(b).*
  - *Authorizing party name may be different from secured party name(s) of record in many circumstances.*
- **Item 9 Does NOT Actually Indicate Authorization**
  - *A filer can put any name they want in Item 9 regardless of whether the party authorized the amendment.*
  - *Filing office cannot possibly determine whether the party named in Item 9 authorized the amendment.*
- **Item 9 is Required for an Assignment**
  - *Record must provide the name of the Assignor.*
  - *For other actions, Item 9 technically does not need to be completed.*



# **UCC3 AMENDMENTS**

**INDEXING, RECORD  
MAINTENANCE, SEARCHES  
AND BULK SALES**

## INDEXING – GENERAL REQUIREMENTS

- **Initial Financing Statements**
  - *Must be indexed by debtor name.*
  - *Debtor name must be entered into the index exactly as it appears in the record.*
  - *Record must be assigned a file number, book & page or equivalent.*
- **Amendments**
  - *Record must be assigned a unique file number, book & page or equivalent.*
  - *Must be linked to the initial financing statement by file number.*
  - *Amendment to add new debtor name or change existing debtor to name not of record must be indexed in the same manner as an initial financing statement.*

## INDEXING – CHALLENGES

- **Time of Filing**
  - *The time the filing is accepted for filing*
- **Long Debtor Names**
  - *Must be truncated if too large for the debtor name field.*
- **Special Characters**
  - *Assign wild card or other process?*
- **The filer must use only acceptable characters, but this poses a problem for filers and searchers who cannot provide the debtor name as it really is to the filing office**
  - 84-9-503 standard for debtor name cannot be met, and
  - 84-9-506 standard cannot be tested because it requires filing office to search under debtor's correct name.

## MAINTENANCE & DESTRUCTION OF RECORDS

- **Retention Period** –Filing office must retain the record in the UCC index until at least 1 year after the record has lapsed with respect to all secured parties of record.

- The filing of a termination statement has no effect on the filing office data retention duties.

- **Destruction of Records**

- Filing office may immediately destroy written UCC records if it maintains an electronic image of the record.

- After retention period, filing office may remove items from UCC index.

- Archival records are maintained at filing office's discretion.

## INFORMATION FROM FILING OFFICE

- **Filing Acknowledgment**

- Written Forms: If requested, the filing office must provide the submitter with an image of the record that shows the file number, and date and time of filing, or return a copy of the filed record provided by filer with the filing information.

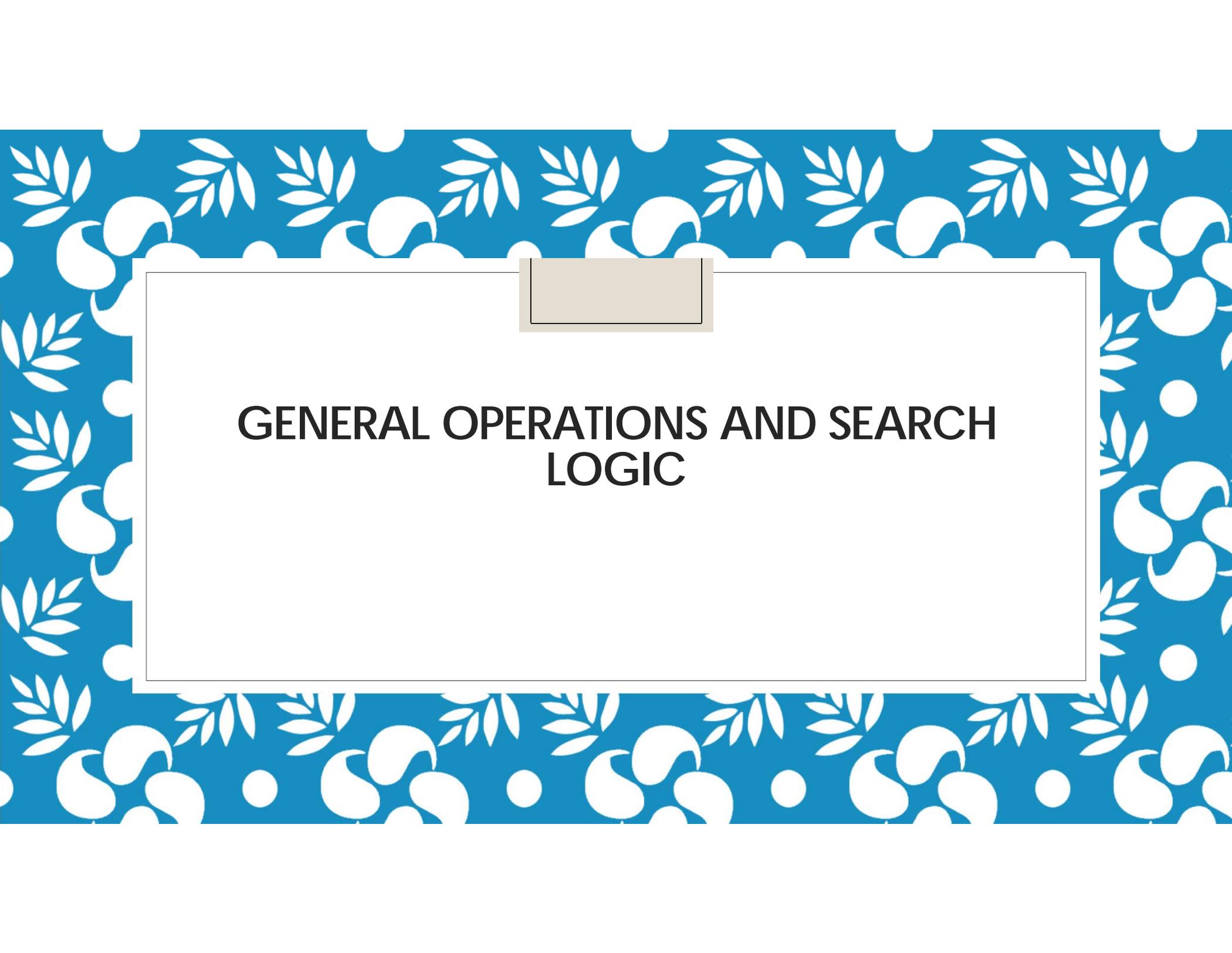
- Electronic Records: Filing office must provide a communication that includes the information in the record, file number, file date and time.

- **Searches**

- Filing office must make available to any person that requests it a search of a particular debtor name that includes the information in each record plus the file date and time for each record.

- **Bulk Data/Copies**

- Filing office must make copies and/or data available at least weekly.



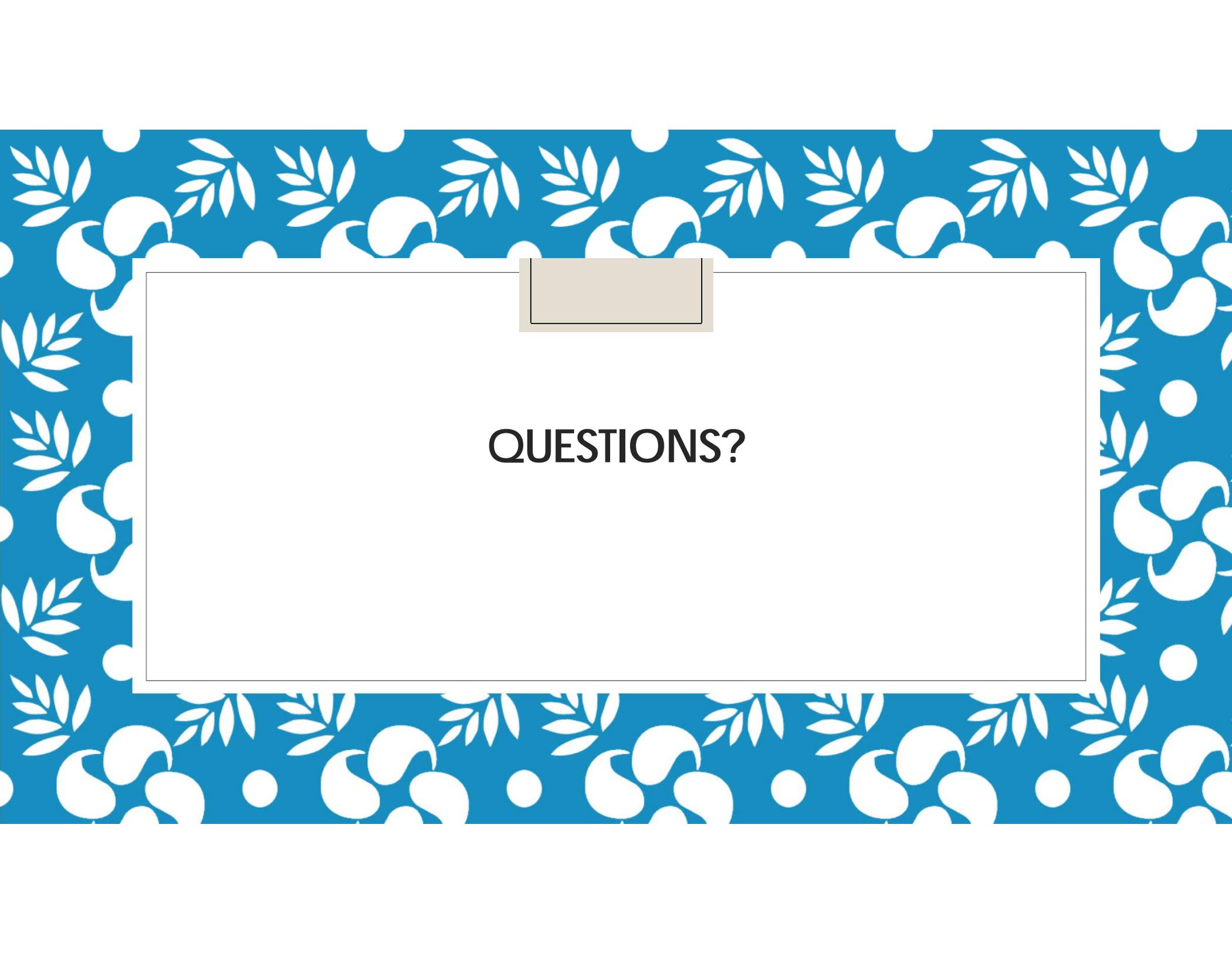
# **GENERAL OPERATIONS AND SEARCH LOGIC**

## STATUTORY REQUIREMENTS

- **Filing Acknowledgment**
- **Filing Offices Must Adopt Administrative Rules**
- **UCC 84-9-526** requires rules to be adopted and published.
- **Harmonization generally and statutory requirement to consult with other filing officers and IACA's Model Administrative Rules.**
- **Other Items:**
  - Time for Performance: Filing office must perform its intake and notice duties within 2 business days. UCC 84-9-523(e).
  - Delay is excused for "force majeure" events. UCC 84-9-524.
  - Duty to Report. UCC 84-9-527.

## SEARCH LOGIC

- **Search logic should be disclosed in filing offices rules**
  - Regulations require a strict, limited search logic that forces filers to be accurate but lowers transaction costs for searchers
- **Ideally, searches produce discrete results**
- **In any event, standard search logic needs to produce consistent results**
  - Under 84-9-506, a debtor name that is not perfect is nevertheless legally effective if the relevant financing statement is found in a search under the correct debtor name using the filing office's standard search logic
- **Non-standard search logic may be offered too, but should be distinguished from the standard logic**



**QUESTIONS?**