UCC Filings & Consignment

NCS UCC Services Group

Protect Your Consignment Sales

If you allow customers to possess goods under a "consignment" agreement prior to the actual sale, you are at risk of losing your rights in the goods.

To protect your interest, you must perfect a security interest in those goods under Article 9 of the Uniform Commercial Code (UCC) prior to delivery.

What is Consignment?

A consignment is when the owner (the consignor) retains title to goods delivered to the consignee.

The consignee will then hold the goods for sale or use.

When the goods are sold, the consignor's rights attach to the proceeds.

If the consignee is not able to sell the goods, they can be returned to the consignor without any obligation.

The advantage of a consignment sale is that it minimizes the risk of non-payment and can be an option when doing business with a poor credit risk.

Does Consignment Carry Risk?

Yes, there is a credit risk to be managed in a consignment sale.

If the consignor does not take the necessary steps to protect ownership of its goods, the consignor can lose interest in the goods and proceeds.

Why Would I File a UCC if I'm Selling on Consignment?

Because the law allows you to secure your goods! A simple consignment agreement is often viewed by the courts as a "secret lien" and may not be enough to protect you if your debtor defaults or files for bankruptcy protection, as there is no legal/recorded document identifying your title to the goods provided to the debtor.

If the debtor files for bankruptcy protection, the inventory the debtor has on hand is gathered up and sold off to pay creditors (secured creditors first and then the unsecured creditors). Without the UCC filing identifying you as a secured creditor and specifically identifying your goods, the inventory you supplied automatically becomes property of the estate.

Steps to Secure the Consigned Goods

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Possess a Consignment Agreement signed by both the consignor and consignee stating the terms and conditions of the consignment, grant a security interest and describe the goods being consigned.	Before delivery, make public the "existence" of the Consignment Agreement by filing a UCC Financing Statement [UCC-1] in the consignee's state of organization.	Conduct a UCC search & send authenticated notification to all previously secured creditors. The notification advises that the consignor has, or expects to acquire, a PMSI in the described goods of the consignee.

The description of the goods must make them easily identifiable. Generic descriptions, such as "all goods," are unacceptable.

Is a UCC Filing Required?

Short answer: No.

Creditors are not required to file a UCC.

In default or bankruptcy situations, when a creditor is selling on consignment, there is a slight chance the creditor could argue it's common knowledge that the debtor engages in consignment sales.

But making that argument seems shaky at best, not to mention inefficient.

How much time would it take to successfully make that argument vs. filing the UCC and granting a security interest at the beginning of the relationship?

Best Practice

If selling on consignment, execute a security agreement.

Ensure the agreement includes clear identification of inventory.

Search for existing secured creditors & notify those creditors of your security interest.

File the UCC-1 in the appropriate jurisdiction.

And file the UCC prior to the debtor taking possession of the inventory.

Remember that any consigned goods delivered prior to the perfection steps are not secure from prior secured parties.

Questions about Consignment Filings?

Securing Your Tomorrow®

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