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Business Law

'Sovereign' Immunity

By Michelle Nijm

Self-styled "sovereign citizens" are filing frivolous UCC filings against lawyers, judges, and others litigating against them. A new law makes that harder.

You represent a bank in a routine foreclosure. Over the course of the proceedings, you receive several strange pieces of correspondence from the defendant, John Smith, declaring his "common law rights" to the property and demanding you cease to pursue the action. Smith, however, never files an appearance, and you obtain a default judgment on behalf of your client.

Several months later, you are in the midst of refinancing your home when you receive a call about a substantial lien on your credit report. It seems Smith has filed a UCC financing statement naming you as his debtor.

Smith's filing is bizarre. It cites the Declaration of Independence, refers to maritime law, and declares that Smith is a "flesh and blood sovereign." The supposed debt arises from your "dishonor" in representing your client in the foreclosure action.

While in some respects laughable, filings of this nature can create quite the headache for attorneys and their clients. Over the last decade, self-styled "sovereign citizens" have increasingly filed frivolous liens against those they believe have wronged them. Members of the sovereign movement generally reject governmental authority and the applicability of most laws.¹ However, for reasons unknown, most sovereigns at least provisionally accept the Uniform Commercial Code (810 ILCS 5) and believe that particular language within UCC filings will achieve their ends. Those ends can range from financial gain to the avoidance of debt to simple retaliation.

As one might expect, sovereigns frequently target filings at judges, attorneys, and governmental officials when things do not go their way. They also use UCC financing statements to direct their ire at bankers, credit card executives, and real estate agents. Often, the purported debtors have no notion they have been named until they attempt to secure financing for legitimate transactions.

In the past, a wrongly named individual's only options for dealing with fraudulent UCC filings required direct engagement with the filer, whether by means of a demand or through litigation. The prospect is not appealing, especially considering the tendency of sovereigns to respond with a flurry of nonsensical documents.

New law addresses fraudulent UCC filings

Public Act 97-0836, effective July 20, 2012, presents an attractive alternative. Rather than expend time and resources on other remedies, an aggrieved party may simply file an affidavit with the Secretary of State affirming under penalties of perjury his or her reasonable belief that the record violates UCC Section 9-501.1(a).² Section 9-501.1(a) prohibits the communication of a record to the filing office that a person knows or reasonably should know is not authorized, is filed with intent to harass or defraud, and is not related to a legitimate transaction, an existing lien or a judgment of a court of competent jurisdiction.

Upon filing of the affidavit, the burden shifts to the secured party to substantiate the disputed record. The Secretary of State will notify the secured party that he or she has 30 days in which to provide supporting documentation.

At the close of that period, the Secretary will render an administrative decision. If the Secretary of State reasonably believes the record violates Section 9-501.1(a), the Secretary will terminate it. If the filer believes the Secretary of State has done so in error, he or she may appeal the decision pursuant to the Administrative Procedure Act (5 ILCS 100).

Lest there be concern that legitimate UCC filings could be removed, note that a frivolous filing is usually clearly evident on its face. Furthermore, Section 501.1(k) specifically exempts records communicated to the filing office by regulated financial institutions or their representatives. And should a court determine a record should be reinstated, Section 9-501.1(i) gives the record effect from the initial filing date, except as against bona fide purchasers.

While the issues surrounding sovereign ideology will likely persist, Public Act 97-0836 should help ease the burden on innocent parties who find themselves the subjects of frivolous UCC filings. By providing an expedient remedy, Public Act 97-0836 helps maintain the integrity of the UCC database, a resource that serves a vital function in the business community.

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1. For more information on sovereign citizens, see recent publications by the FBI (<http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/september-2011/sovereign-citizens>) and the Southern Poverty Law Center (<http://www.splcenter.org/get-informed/intelligence-files/ideology/sovereign-citizens-movement>).
 2. Litigation, of course, remains an option. Section 9-501.1(c) of the UCC provides for up to \$10,000 in lieu of actual damages, reasonable attorneys' fees, court costs and other related expenses, and exemplary damages. Additionally, Section 501.1(b) contains criminal sanctions for fraudulent UCC filings.