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FILE # ML-41290-00
I.D. # 41290
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OPINION COMM...

The Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Re: Documents That the County Clerk Must Accept for Filing and Recording

Dear Attorney General Cornyn:

I request that you consider and provide this Office with an opinion on whether the Ellis County Clerk is required to accept for filing a UCC financing statement where the secured party is the same named person as the debtor. Not only is this a request for an opinion, but it is to advise you that irregular requests are still being made by what appear to be "common-law/constitutional court groups" in this State.

Our short answer to the above issue is that while the County Clerk is authorized to accept a UCC financing statement, such statements where the secured party is the same as the debtor does not appear regular on their face because there is no listed debtor. As the secured creditor appears to be one in the same as the name debtor and a person cannot hold a debt unto himself, a debtor is not listed. A financing statement may not be accepted without the name of a debtor.

This request for an Attorney General's opinion is based on these facts:

The Ellis County Clerk has received documents for filing and recording that are unusual and that are not necessarily regular on their faces. In particular, the County Clerk has received UCC financing statements, one from Fredrick Marshal Van Horn and one from Bruce Adrian Norman, where on each the same person is named at the "debtor" and as the "secured party." These documents are shown in **Exhibit A** and **Exhibit B**. In both of these documents the "debtor" claims to be a transmitting utility. The Ellis County Clerk has not filed these documents.

The Ellis County Clerk also received an "Affidavit of Criminal Activity" from Wynn Gary Lammers, shown in **Exhibit C**; who has requested that such document be filed. Such "Affidavit of Criminal Activity" is clearly irregular on its face and is not a document that is authorized, required or permitted to be recorded in the Clerk's office. The County Clerk has been advised not to file such document. However, I am submitting it because it may lend some additional incite into the situation especially since Mr. Lammers states in his affidavit that he is a "Secured Party (filing #99-229707), Debtor names: WYNN GARY LAMMERS and JULIE MARIE LAMERS." #99-229707 is not a filing number of the Ellis County Clerk's office, but may be filed elsewhere at the state level.

Other documents that may add incite to the situation and which filing has not been requested include:

1. An "Affidavit of Criminal Activity" sent to this office by Fredrick Marshal Van Horn, **Exhibit D**;
2. A handwritten letter from Bruce A. Norman requesting the UCC laws, rules or regulations that govern why his document may not be filed, **Exhibit E**; and
3. A letter written to Ellis County Clerk from Fredrick Marshal Van Horn regarding "Notice of Accepted for Value and Exempt From Levy" with warranty deed attachments, **Exhibit F**.

We do not know the purpose of the requested filings of the UCC financing statement. We can only suspect that it is a product of a common law court group who may be attempting to prioritize liens in avoiding taxes.

The following laws and opinions would apply to the situation at hand:

- TEX. BUS. & COM. CODE ANN §9.401 (Vernon 2000) [*Place of Filing; Erroneous Filing; Removal of Certificate*]
- TEX. BUS. & COM. CODE ANN §9.105(a)(4) (Vernon 2000) [*Definitions and Index of Definitions*]
- TEX. BUS. & COM. CODE ANN §9.412 (Vernon 2000) [*Fraudulent Filings*]
- TEX. PENAL CODE ANN §37.101 (Vernon 2000) [*Fraudulent Filing of Financing Statement*]
- Office of the Secretary of State, 1 TEX. ADMIN. CODE §95.302 [*Grounds for Refusal of UCC Document*]
- Tex. Att'y Gen. LO-98-016 (1998) [*RE: Instruments that the county clerk must accept for filing and recording*]

Is the Ellis County Clerk required to file a UCC financing statement where the secured party is the same named person as the debtor?

Attorney General Letter Opinion LO-98-016 considers a County Clerk's duties regarding being required to accept certain documents for recording. LO-98-016 summarizes that the "County Clerk has a ministerial duty to accept a document for filing and recording if a statute authorizes, requires, or permits it to be filed in the clerk's office, and if it is regular on its face. If no statute authorizes, requires, or permits a document to be filed in the clerk's office, he may not accept it for filing." This request for an opinion is in effect a request for an expansion of this opinion regarding a specific situation concerning UCC financing statements.

UCC financing statements may be filed with a local County Clerk when the collateral is consumer goods, or fixtures which become permanently attached to real estate. TEX. BUS. & COM. ANN §9.401 (Vernon 2000). Here, the collateral in the Exhibits appears to include vehicles and deeds. Since a vehicle is a consumer good, the County Clerk appears to generally be authorized, required or permitted to file standard UCC financing statements.

Nevertheless, the County Clerk must also look to see if the documents to be filed are regular

on their face. Exhibit A and Exhibit B are not regular on their face and may not be accepted by the County Clerk. The financing statements are not regular their face because there is no real "debtor" stated on the face of the document. Or, looking at it another way, there is no real "secured party," since the same person is named as both the "secured party" and the "debtor." It is basic that one cannot hold a secured debt unto oneself, particularly to establish a "Strawman" prior lien to exclude creditors.

The defined term "debtor" means "the person who owes payment or other performance of the obligation secured . . ." TEX. BUS. & COM. ANN §9.105(a)(4) (Vernon 2000). Here Mr. Van Horn and Mr. Norman cannot owe a payment or performance to themselves individually. Therefore, neither person may be a "debtor."

The County Clerk could not appropriately index such financing statements because there is no real debtor. To file a financing statement knowing that it is a nihility is deceptive on the unsuspecting public who may not inquire as to who is the secured party and who is the debtor in each instance.

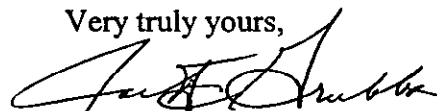
LO98-016 states that a clerk may not refuse to file a document based on extraneous facts if the document is regular on its face. Here, there is no extraneous fact to consider; one can simply tell that the debtor and secured party are the same. The extraneous fact, if there is one, would simply be to realize that a debtor and secured party cannot be the same person, conceding, however, that I have not found any case law to that effect. The concept of holding a debt unto yourself is infeasible.

Note also that the proponents of Exhibit A and Exhibit B claim to have filed these documents with the Secretary of State. The Secretary of State's rules allows refusal of these UCC documents if there is no debtor name or no secured party name. Office of the Sec. of State, 1 TEX. ADMIN. CODE §95.302. The same arguments as previously mentioned above would apply on the State level too.

Also note that if this financing statement is allowed to be filed, this Office would also have to consider whether Exhibit A and Exhibit B would violate Section 37.101 of the Texas Penal Code which states: "A person commits an offense if the person knowingly presents for filing or causes to be presented for filing a financing statement that the person knows: . . . (3) is groundless. . ."

In conclusion, the financing statements submitted to the Ellis County Clerk's Office are not regular on their face because the debtor and secured party cannot be the same person. Therefore, we do not believe that they can be filed in the Ellis County Clerk Office, but we would appreciate your review of this matter.

Very truly yours,



Joe F. Grubbs
County & District Attorney
Ellis County

- Attachments: Exhibit A: UCC Financing Statement from Fredrick Marshal Van Horn
Exhibit B: UCC Financing Statement from Bruce Adrian Norman
Exhibit C: "Affidavit of Criminal Activity" from Wynn Gary Lammers
Exhibit D: "Affidavit of Criminal Activity" by Fredrick Marshal Van Horn
Exhibit E: A hand-written letter from Bruce A. Norman requesting the UCC laws, rules or regulations that govern why his document may not be filed
Exhibit F: A letter written to Ellis County Clerk from Fredrick Marshal Van Horn regarding "Notice of Accepted for Value and Exempt From Levy" with warranty deed
- Enclosures: TEX. BUS. & COM. CODE ANN §9.401 (Vernon 2000) [*Place of Filing; Erroneous Filing; Removal of Certificate*]
TEX. BUS. & COM. CODE ANN §9.105(a)(4) (Vernon 2000) [*Definitions and Index to Definitions*]
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Office of the Secretary of State, 1 TEX. ADMIN. CODE §95.302 [*Grounds for Refusal of UCC Document*]
Tex. Att'y Gen. LO-98-016 (1998) [*RE: Instruments that the county clerk must accept for filing and recording*]

cc: Cindy Polley, Ellis County Clerk

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Uniform Commercial Code
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