

WWI RECOMMENDED PROCEDURE FOR FINALIZING A PURCHASE MONEY SECURITY INTEREST (PMSI)

Our recommended procedure is as follows:

- Obtain blank Financing Statement forms (UCC-1) and Information Search forms (UCC-11). (Available on the Internet and Microsoft Word interactive versions at Williams & Williams Forms & Tools web page.)
- If you already have a signed Credit Account Application with a “security interest provision” and you decide not to require the Conditional Personal Guaranty, then skip the next step that follows. This is because the above-described Credit Account Application is being substituted as the Security Agreement and thus debtor signatures are not necessary to record a secured position (see Credit Account Application accessed through our “CLICK TO” Directory at our Home web page or at the “FORMS & TOOLS” web page).
- Send the debtor the Purchase Money Security Interest “Agreement” and Conditional Continuing Personal Guaranty (samples are provided) for signature and return to you.
- Fill out and send the Information Search form (UCC-11) together with a check to cover the small processing fee (call ahead for a fee quote) to: (1) the Secretary of State’s office in the state where the debtor has its “Principal Office.” Send another processing fee check and Information Search form (UCC-11) to: (2) the County Clerk’s office in each county where the debtor has a location. This County Clerk step will not be necessary after July 1, 2006. The UCC-11 serves as the means for compiling a comprehensive “List” of the debtor’s secured parties.
- Wait for the respective “Lists” from the Secretary of State and County Clerk offices, which will be mailed to you in response to the Information Search (UCC-11) request. These “Lists” will include the names and addresses of the current secured parties that are maintained and on file with both the Secretary of State and County Clerk offices.
- Send a Certified Return Receipt Requested “Notice” (sample provided) to all secured parties on the “Lists.”
- Fill out the Financing Statement (UCC-1). Do not send this form to the debtor.
- Send the Financing Statement (UCC-1), the debtor signed Purchase Money Security Interest “Agreement” or the signed “Credit Account Application” with security interest provisions and the debtor signed “Conditional Continuing Personal Guaranty” (optional) in one envelope to the Secretary of State’s office for recording (call ahead for the small recording fee quote and be sure to attach a check.) Send duplicate copies with the originals requesting a time-stamped copy to be returned to you in the provided self-addressed postage paid envelope. Also request that all documents be recorded under one control number.
- Ship merchandise when the “time-stamped copies” are returned to you.

All new secured filings are recorded at the Secretary of State’s office in the state where the debtor has its principal office. Old filings that are still maintained at the County Clerk’s office will be transferred to the Secretary of State by July 1, 2006. After this date, it will no longer be necessary to direct a Search Request (UCC-11) to the County Clerk’s office. A recorded Financing Statement (UCC-1) is valid for five years. There is a strict 6-month window to file a Continuation Statement. After four years and six months but before five

years after the initial PMSI is filed, to keep the existing PMSI valid, you must file a "Continuation Statement." This form is available upon request from the Secretary of State's office. If you attempt to file a "Continuation Statement" one day before four years and six months or one day after five years of the initial filing date, then you lose the protection of a PMSI and you must start the process all over again.

We prefer that the PMSI procedure include the enclosed Security Agreement; however, a credit application with a provision could be used as a substitute Security Agreement. The credit application needs to reference that the applicant agrees to pay invoices in accordance with stated invoice terms and also include that past due charges are subject to interest of 1 ½% per month, collection costs and attorney fees.

When substituting a credit application instead of a Security Agreement, the language in the credit app should be similar to what follows:

- "A copy of this credit application may be used as a Security Agreement for granting a secured interest in creditor's inventory and sales proceeds thereof."

As long as the credit application bears an original signature and date, the creditor can decide at their discretion when to start the Purchase Money Security Interest arrangement. Revised Article 9 of the Uniform Commercial Code stipulates that a debtor's signature is no longer required on a UCC-1 Financing Statement; however, there needs to be some debtor acknowledgment that the creditor is allowed a security interest. Containing a Security Agreement provision in a credit application is a more discreet way of becoming secured through a PMSI arrangement, provided all of the other steps are followed.

NOTICE TO ALL DEBTORS' SECURED PARTIES OF RECORD

Date

ABC COMPANY (Secured Creditor)
101 JOHN DOE AVE
UTOPIA KY 99999

RE: DEBTOR COMPANY, INC./DBA SAMPLE COMPANY
Perfection of Purchase Money Security Interest

Gentlemen:

The purpose of this Certified Letter is to notify you that (Creditor-Your Company Name), (Your Address-Including Street Address), (Your City-State-Zip Code), is about to obtain a Purchase Money Security Interest in the following inventory:

All inventory of DEBTOR COMPANY, INC./DBA SAMPLE COMPANY, acquired from (Creditor-Your Company Name), as well as accounts receivable, chattel paper, and proceeds from the sale of such inventory.

Yours truly,

Joseph H. Williams
Chairman

lpb

VIA CERTIFIED MAIL
P 123 456 789

SECURITY AGREEMENT

This **PURCHASE MONEY SECURITY INTEREST AGREEMENT**, made and entered into this _____ day of _____, by and between **(DEBTOR)** _____, dba _____, and **(SECURED PARTY)** _____.

WITNESSETH

WHEREAS, the Debtor has purchased inventory and other goods from Secured Party on account and may continue to do so from time to time;

NOW, THEREFORE, in consideration of the present and future extension of credit to Debtor by Secured Party, it is agreed as follows:

1. **Creation of Security Interest.** Debtor hereby grants to Secured Party a security interest in and mortgages to Secured Party, to secure performance and payment of all present and future debts, obligations or evidences of indebtedness of Debtor to Secured Party, the following described collateral:

All inventory of the Debtor acquired from the Secured Party as well as accounts receivable, chattel paper, and proceeds from the sale of such inventory.

Nothing contained herein shall be deemed consent of Secured Party to the sale of any collateral by Debtor, except to customers in the ordinary course of business.

2. **Default.** Debtor shall be in default under this agreement if:

(a) all indebtedness secured by this agreement is not paid promptly when due;

(b) any other obligation created by this agreement or any note or agreement secured hereby is not complied with strictly according to the terms thereof;

(c) any warranty or representation made by Debtor to Secured Party in this agreement or in any note or other agreement secured hereby is false in any material respect when made or furnished;

(d) the collateral hereinabove described is transferred to any location not specifically approved in advance by the Secured party, lost, stolen, substantially damaged or seized by any third party pursuant to legal proceedings; or,

(e) any insolvency or bankruptcy proceeding is commenced by or against Debtor.

3. **Remedies Upon Default.** Upon default, at the option of the Secured Party, all debts secured hereby shall become immediately due and payable without demand or notice and Secured Party shall have at any time thereafter all of the rights and remedies by any note or agreement secured hereby, and may apply the proceeds from any sale of the collateral pursuant to such remedies to the following:

(a) the expenses of taking, removing, holding for sale and repairing for sale, specifically including Secured Party's reasonable attorney's fee;

(b) the expense of liquidating any lien, security interest or other encumbrance superior to the security interest created hereby; and,

(c) the unpaid balance with all accumulated interest due on any obligations of Debtor to Secured Party secured by this agreement. Any surplus after the satisfaction of the foregoing items shall be paid to the Debtor, and Debtor shall remain liable for any deficiency if the proceeds realized from the disposition of said collateral pursuant hereto shall fail to satisfy in full the obligations of Debtor to Secured Party.

4. **Warranties.** Debtor warrants, covenants and agrees as follows:

(a) Debtor will keep the collateral in good order and repair and will not misuse, waste or destroy it, normal wear and tear excepted;

(b) Debtor will insure the collateral against any such risks by policies of insurance in such form, with such amounts and with such companies satisfactory to Secured Party and will name

SECURITY AGREEMENT

Secured Party as loss payee under these policies for the amount of the collateral to which Debtor is indebted to Secured Party;

(c) Debtor will pay promptly, without offset, when due all prior liens and obligations secured by collateral and all taxes owed thereon;

(d) the collateral will not be sold, transferred, changed or otherwise disposed of unless Secured Party consents in advance in writing, except sales of inventory to customers in the ordinary course of business;

(e) the security interest granted to Secured Party under this agreement, when properly perfected by filing, will constitute at all times a valid and perfected first security interest in the collateral, vested in Security Party, and will not become junior to the security interest, liens or claims of any other creditor.

5. Secured Party's Right to Pay Prior Liens. Secured Party may, at the option of Secured Party, discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the collateral, may pay for insurance on the collateral, and may pay for the maintenance and preservation of the collateral, and Debtor agrees to reimburse Secured Party on demand for any payment so made, or any expense so incurred by Secured Party pursuant hereto.

6. Miscellaneous Provisions.

(a) this agreement shall be binding upon the heirs, successors, administrators and assigns of the parties;

(b) the obligations of all persons signing as Debtor under this agreement shall be joint and several;

(c) no waiver by Secured Party of default of any provision of this agreement shall operate as a subsequent waiver of any default under the same or any other provision of this agreement.

(d) acknowledgment of acceptance of this agreement by the Secured Party is waived by the Debtor;

(e) the Debtor, upon default, will be responsible for all costs of collection, accrued interest and attorney fees; and,

(f) a Credit Account Application or Conditional Personal Guaranty, if recorded, is considered as the same as or a part of a Security Agreement.

IN WITNESS WHEREOF, this agreement is executed by Debtor by its authorized officers (who by signing warrant their authority to do so) this _____ day of _____,

_____.

Debtor Name _____

d/b/a _____

By: _____

(Name and Title)

NOTARY PUBLIC

Signed and sealed before me on this

_____ day of _____.

_____.

My Commission Expires: _____

CONDITIONAL CONTINUING PERSONAL GUARANTY

In the event the Credit Account Application or Purchase Money Security Interest Agreement (PMSI) terms are breached between _____ and _____, each and every signatory listed below, without offset, regardless of title or position held, is hereby individually, jointly, personally and severally liable for any and all out-of-trust deficiencies, proceeds, restocking fees, collection costs, interest of 1 ½% per month, and attorney fees.

This instrument shall remain in force and in effect until cancelled in writing, by Certified Mail, Return Receipt Requested, to the attention of _____ Credit Department. All signatories are liable for all obligations incurred prior to receipt of cancellation notice.

Legal Name (Business) _____

Business dba's _____

Officer/Title/Date

Officer/Title/Date

Officer/Title/Date
