STRUCTURED FINANCE SPECTRUM

ALSTON & BIRD

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In this issue

Editor's Note

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As we settle into 2026, the forces shaping the market remain highly dynamic. Regulatory momentum is accelerating, capital continues to search for yield in unconventional corners, and innovation across asset classes is redefining the boundaries of what structured finance can achieve. Despite ongoing questions about monetary policy and the broader economy, the industry continues to adapt and move forward.

This issue of the *Structured Finance Spectrum* reflects the conversations we are having daily with clients and market participants navigating these shifts. We open with "What to Expect in 2026: Four Structured Finance Industry Experts Identify the Top 10 Regulatory Priorities," a look at the policies that will influence everything from capital treatment to consumer protection in 2026.

Our team then examines the mechanics and opportunities of the increasingly common loan-on-loan financing, a structure gaining prominence as balance-sheet lenders seek alternative paths to efficient credit and liquidity.

Innovation, of course, extends beyond lending structures. In "Music, Money, and the Prescience of David Bowie," we trace the legal and market evolution of music royalty securitizations and explore how intellectual property securitization has developed into a durable alternative asset class. The piece highlights the relationship between artistic foresight and the financial engineering techniques that now underpin a multibillion-dollar market.

The housing markets remain equally dynamic. "Single-Family Rental Housing and Corporate Ownership: Policy Developments and Market Implications" provides a timely assessment of policy developments addressing institutional participation in the single-family rental (SFR) space. As federal and state actors reevaluate the role of large-scale institutional owners, the implications for operators, investors, and financings are significant—affecting acquisition strategy, portfolio valuation, and securitization execution.

As the search for alternative paths to capital yield continues, demand for alternative mortgage products and mortgage servicing rights (MSRs) is reshaping liquidity channels and changing how market participants assess risk, yield, and execution. Our MSR team unpacks how novel structures, shifting credit profiles, and evolving valuation trends are creating both opportunity and complexity.

Behind it all is the perfection of unconventional assets that defy tradition. In "Liens Gone Wild: Navigating the World of Nuisance UCC Filings," our Uniform Commercial Code (UCC) team tackles a growing operational challenge: fraudulent or unauthorized UCC statements, often driven by the sovereign citizen movement. These nuisance filings can complicate transactions, hinder asset transfers, and impact diligence timelines. The authors offer practical frameworks for identifying, mitigating, and resolving these issues before they disrupt deals.

In response to the market's ever-growing appetite for creative financings and esoteric assets, we have expanded our team. In London, special counsel Diane Roberts bolsters our cross-border finance and capital markets practice. In the United States, partner Andi Mandell adds extensive tax experience to support complex structured transactions across an array of asset classes.

As we gear up for SFVegas 2026 (February 22–25), we look forward to continuing the conversation surrounding alternative assets, innovation, and market pivots. And, on behalf of our entire team, we look forward to connecting with colleagues, clients, and friends across the industry as we discuss the future of structured finance, share perspectives from the past year, and exchange ideas on where innovation will take us next.

SPOTLIGHT ON GROWTH: Welcome to Alston & Bird

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What to Expect in 2026: Four Structured Finance Industry Experts Identify the Top 10 Regulatory Priorities

From a possible reset of the public residential mortgage-backed securities (RMBS) market to renewed state activism and capital recalibration for banks, policy choices will shape issuance windows, credit boxes, pricing, and investor demand in 2026. For market participants, the practical question is not whether the industry should brace for impactful regulatory changes, but where to focus time and resources.

To separate signal from noise, we asked four seasoned industry leaders to pinpoint the developments that matter most now: Nanci Weissgold and Steve Ornstein, partners in Alston & Bird's Financial Services Group, and Dallin Merrill, head of policy, and David Dwyer, general counsel, policy and regulatory affairs, at the Structured Finance Association (SFA). We have distilled their insights into 10 short briefs to help you understand what may change, why it matters, and how to prepare.

1. SEC Public RMBS and Reg AB II Move from Concept to Proposal

More than a decade has passed since the last public nonagency RMBS deal. In response, the Securities and Exchange Commission (SEC) last year issued a concept release in which it asked the extent to which its rules, under Regulation AB II, are responsible. SFA leaders underscored the moment:

Dallin Merrill calls it "the best hope in 12 years" for a public RMBS pathway, noting that successfully securitizing mortgages is tougher than autos or credit cards because servicing complexity makes asset-level disclosure exponentially harder.

David Dwyer emphasizes the timing, suggesting a proposed rule later this year is a very real possibility, making it perhaps the most important issue of 2026 for the securitization industry.

Most of the issues being discussed internally at the SFA and elsewhere relate to the asset-level disclosure contents of Schedule AL. The hope across the industry is that a template can be agreed upon that will allow issuers to return to public RMBS, which will have liquidity and transparency benefits to the RMBS market overall.

2. Bank Capital and the Basel III "Endgame" Reshape Participation and Pricing

The federal bank regulatory agencies are expected to finalize their proposal to revise bank capital soon, and it is likely to include adjustments to risk weights. The industry can expect a near-term capital proposal that could lower certain requirements, a shift that David Dwyer believes would likely bring regulated banks back into selected securitization markets and increase activity across the capital stack.

Dallin Merrill highlights the securitization "P-factor," noting that the earlier idea of doubling it from 0.5 to 1 lacked empirical grounding, so where policymakers land will be pivotal for issuance appetite and structuring choices.

3. States Step In as CFPB Comes to a Halt: Licensing and UDAP/UDAAP Coordination

While the Consumer Finance Protection Bureau (CFPB) remains in place, its enforcement, supervision, and rulemaking activities have nearly ceased. Steve Ornstein points out that, in some instances, the CFPB is either not actively enforcing existing rules or is reforming rulemakings that were intended to be promulgated in the near term.

Other federal agencies, such as the Federal Trade Commission and the Department of Housing and Urban Development, are also far less active in pursing enforcement actions and the promulgation of consumer protection laws. In contrast, certain state regulators, especially in "blue states" are becoming significantly more active. States are enacting new laws across a broad range of areas, including expanded privacy requirements, state-level fair lending and community reinvestment obligations, and strengthened unfair, deceptive, abusive, acts and practices (UDAAP) protections.

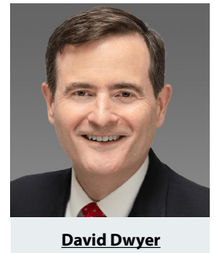
These regulators, Ornstein observes, are scrutinizing marketplace lending arrangements, "buy now, pay later" programs, and innovative products such as home equity investments. What is likely to evolve is a patchwork of inconsistent enforcement actions and new state consumer protections laws—with no unifying baseline from the federal government.

Dallin Merrill cautions that states increasingly view licensing as a powerful lever, which makes education and industry advocacy essential to avoid unintended consequences in multistate programs.

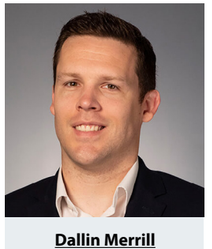
Nanci Weissgold notes that licensing missteps can be severe, including voided loans, and encouraged operators to stay fully buttoned up in all 50 states.

David Dwyer points to the CFPB's January 14, 2025 report that effectively provides states with a roadmap for strengthening consumer protections, including the incorporation of "abusive" standards into state law, as evidenced by Maryland's recent attempt to license passive securitization trusts. The market can expect more state rulemaking and supervision that drives program design, licensing, and disclosures, and industry participants must continue to monitor state initiatives closely.

Weissgold adds that the market can expect the CFPB to become more active in the near future and rulemakings such as mortgage servicing and loan originator compensation may be revisited.



David Dwyer



Dallin Merrill

4. New State Rules on Privacy, Fair Lending, Community Reinvestment, and AI

Divergent state frameworks are increasing operational demand in both origination and servicing, while early artificial intelligence (AI) expectations for licensed financial services firms are spreading.

Nanci Weissgold cites recent Michigan guidance and reiterated that California and New York are leading on AI, a sign that model governance and documentation will be scrutinized by state supervisors.

Dallin Merrill expects these themes to feed multistate supervisory coordination and attorneys-general settlements that inform disclosures and servicing standards.

5. Litigation Risk and Multistate AG Enforcement Rise in Parallel

Class actions and coordinated attorney general (AG) activity are intensifying, with novel uses of federal statutes that can ripple through representations and warranties, reserves, and, in extreme cases, collateral enforceability.

Dallin Merrill anticipates expanded coordinated efforts among state AGs, especially for large multistate lenders, following a UDAAP-based playbook.

David Dwyer points to recent examples, including a Minnesota action against solar installers under the Truth in Lending Act (TILA) for fee treatment, warning that if collateral is effectively nullified, securitizations might feel knock-on effects.

Nanci Weissgold notes that many matters originate with state banking regulators and escalate, since violations of federal consumer law can themselves violate state licensing statutes.

6. Election-Year Policy and Macro Uncertainty Is Keeping Markets Cautious

The near-term policy environment carries headline risk for issuance timing, credit boxes, and spreads; however, the task is to separate proposals with a real path from those that are policy signaling only.

David Dwyer offers three early examples to watch, including talk of a 10% credit card rate cap, limits on institutional purchases of single-family homes, and direction to buy up to $200 billion in mortgage-backed securities (MBS) to lower rates, each framed as affordability-driven ideas.

Dallin Merrill underscores the importance of identifying actionable proposals and assessing legislative or executive vehicles.

Nanci Weissgold urges vigilance on concepts like portable mortgages, mortgage defeasance and prepayment penalties, and reintroduced housing packages, noting the recent presence of appraisal-related TILA amendments that could have carried significant liability.

7. UK Reforms and EU Securitization Changes Could Support Cross-Border Flow

EU revisions are expected on due diligence, transparency, and bank capital in the second half of 2026, changes that David Dwyer believes could revitalize the European market and, by extension, improve global liquidity and comparability for investors.

Revising the EU framework will almost certainly result in market-friendly changes to due diligence requirements and transparency requirements. In parallel, the UK's new framework under Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) rules introduces flexibility on disclosure, risk retention, and private securitizations, creating a more agile regime that complements EU simplifications by easing non-UK deal access for UK investors.

Together, reduced reporting burdens, risk-sensitive capital recalibrations, and principles-based due diligence should stimulate issuance, deepen secondary liquidity, and make European securitizations more comparable to global products, though UK–EU divergence will likely increase and will require dual compliance for pan-European deals.

8. Tokenized Securities and Digital Asset Statements: Regulatory Signals on Tokenization Could Open or Constrain Pilot Structures and Custody Models

Distributed ledger tools (DLTs) are emerging, and Dallin Merrill argues that rising concerns about fraud and double pledging may finally be the spark that encourages originators and servicers to explore tokenization of collateral data and events.

David Dwyer expects additional regulatory signals from the SEC and the Commodity Futures Trading Commission (CFTC) and notes that, in markets outside the asset-based securities (ABS) sectors, deals have already employed DLT, including exploration of settlement alternatives, which could migrate into securitization workflows.

9. Usury and Federal–State Authority Debates Remain a Latent Swing Factor

Any renewed federal activity could trigger preemption fights and program redesigns across states. Although President Trump's proposed 10% cap on credit card interest rates may be on hold, it highlights a broader question about the balance of federal and state authority.

Efforts to establish a national usury standard have historically failed, leaving usury squarely within state control. Any renewed federal activity in this area could amplify existing debates over state versus federal power and could lead to more preemption disputes—similar to those already seen over state limits on interest earned on escrow accounts and marketplace lending.

Dallin Merrill observes that the 10% cap drew unified industry opposition and appears unlikely to advance, yet it revealed the boundaries of national appetite.

Steve Ornstein notes a likely impact of such a cap would be the contraction of credit availability to vulnerable consumers who might not have access to other sources of credit.

10. Private Credit's Growing Footprint Touches Securitization Technology

As a parting thought, our industry experts encourage industry participants to continue to keep an eye on private credit, which often employs securitization technology. They highlight the sector's rapid growth and the attention from the Financial Stability Oversight Counsel.

It remains to be seen what impact the growing private credit market will continue to have on the structured finance markets in 2026. ■

The Resurgence of Loan-on-Loan Financing

As the commercial real estate (CRE) mortgage finance market evolves, banks, debt funds, and private credit companies continue to adapt to the new conditions. At times, the landscape looks familiar; at others, it looks entirely different. In today's back-leverage market, however, the environment may seem recognizable. In many ways, the industry is returning to a familiar approach: loan-on-loan financing.

Loan-on-loan financing is nothing new to the commercial mortgage finance market, but its renewed prominence reflects a meaningful shift in how lenders are approaching back-leverage. As banks, debt funds, and private credit platforms adapt to shifting liquidity conditions and an increasingly bespoke mix of CRE loan products, the current regulatory capital regime is encouraging banks to return to loan-on-loan back-leverage opportunities to boost their performance and maximize their returns.

For quite some time now, loan-on-loan (or note-on-note) financing has afforded parties on both sides of the deal with excellent opportunities. A loan-on-loan is a secured credit facility in which a lender extends credit against a borrower's loan (or portfolio of loans) as the primary collateral. Instead of a direct pledge of real estate or corporate assets, the borrower pledges the underlying loans (and related rights).

Benefits for Lenders and Borrowers

For lenders—often banks—the appeal begins with a natural credit cushion. On the bank side, the lender enjoys a lower effective loan-to-value (LTV) through its advance rate on the original loan and a clear pathway to enforcement. Additionally, the bank or lender will be able to attract a bigger pool of borrowers because terms can be closely matched to the underlying CRE loan. Loan-on-loan financing also offers protection for lenders through eligibility screens, performance criteria, cash sweeps, and account control mechanisms tailored to the underlying collateral. Once the structure is established, lenders can execute subsequent transactions more efficiently, developing a programmatic relationship with borrowers.

For borrowers, the advantages of loan-on-loan financing are equally clear. It provides for committed capacity with fewer mark-to-market shocks than traditional repo arrangements or warehouse facilities, which will often require daily margining. The terms can be customized to fit transitional, construction, or otherwise bespoke collateral rather than conforming to a standardized repo grid. Many lenders also permit conversion of the underlying loan to real estate owned (REO), allowing the borrower to maintain financing even if the underlying property becomes nonperforming. While conversion may come with tighter covenants, it offers a valuable path forward during a potential workout.

Borrowers have several commercial considerations when navigating these facilities. Advance rate often drives negotiation, but it must be balanced against pricing, covenant structure, and replacement loan terms if conversion is permitted. A higher advance rate may come with a higher cost of capital or tighter triggers.

Borrowers should understand how eligibility, substitution mechanics, and concentration limits may impact their flexibility across the life of the facility. Borrowers should also factor in the cost of execution for repeat transactions. A repo will likely cost less per onboarding given the revolving mechanics that are already factored into the documents. Although the initial set-up cost of a loan-on-loan may be a bit lower than a repo, the documentation needed to set up a single-asset facility can be significant.

Borrowers should understand how eligibility, substitution mechanics, and concentration limits may impact their flexibility across the life of the facility.

Why Not Repos?

A common question in the CRE market is why lenders do not simply document these arrangements as repos, especially since repo structures offer bankruptcy safe-harbor protections and, in some cases, more favorable regulatory capital treatment. The answer ultimately comes down to fit.

Repo structures work well when the collateral is homogeneous, easily margined, and conducive to daily margining. But today's CRE loans—particularly large transitional loans—rarely fit that mold. Construction components, draw schedules, bespoke underwriting, and complex business plans require a level of structuring and ongoing credit engagement that repo mechanics are not designed to support. Loan-on-loan documentation, by contrast, accommodates that complexity by affording the lender an increased opportunity for reporting and diligence at the property level.

Loan-on-Loans on the Rise

In recent years, loan-on-loan financing has gained renewed popularity for several reasons. Private credit platforms and nonbank originators are originating a wider range of transitional and specialized CRE loans, many of which simply do not fit within a repo framework. Banks originating large loans and selling them are increasingly providing the buyer's financing through loan-on-loan facilities, which align more naturally with the bank's underwriting and credit controls than a repo facility would. Additionally, in a market where warehouse lenders have tightened capacity, loan-on-loans provide a bespoke, asset-specific alternative that can be executed at scale.

Ultimately, loan-on-loan financing has resurged not because repo has fallen out of favor, but because the underlying assets and counterparties have changed. Repo remains essential for standardized, homogenous collateral. But as CRE loans become more complex and transitional, loan-on-loan financing has become the structure best suited to provide the flexibility, credit protection, and operational alignment lenders and borrowers require. Its growing use for large-loan back leverage reflects this shift. A structure that has existed for decades now fits the moment more than ever—and appears poised to remain a central tool in CRE finance for the foreseeable future. ■

Music, Money, and the Prescience of David Bowie

Every song recording creates two copyrights, one that applies to the musical composition and one that applies to the sound recording. Composition copyrights cover both music and lyrics. Sound recording copyrights cover "works that result from the fixation of a series of musical, spoken, or other sounds … regardless of the nature of the material objects … in which they are embodied." (17 U.S.C. §101).

Copyrights provide certain exclusive rights to the holder, including rights to reproduction, distribution (i.e., the right to sell), adaptation, and public performance/display. Use of copyrighted material in a manner that is protected by copyright requires permission from the applicable copyright holder and, often, payment of a license fee or royalties. In 1976, when the Copyright Act was enacted, for each vinyl record or eight-track cassette tape purchased, each copyright holder for each title on the album was entitled to a royalty.

The Birth of the Music Royalty Securitization

In 1997, David Bowie, always a groundbreaker, was at the center of a new financial product: music royalty securitization. That year, Bowie sold his rights to certain royalty payments for a period of 10 years to a bankruptcy-remote special purpose vehicle for $55 million. In turn, the special purpose vehicle issued 10-year bonds backed by the payments on Bowie's royalty rights, known as "Bowie bonds."

For Bowie, Bowie bonds transformed a future income stream into a lump-sum payment without alienating him from his copyrights. For the world of securitization, long dominated by mortgage-backed securities, Bowie bonds were an early expansion into intellectual property rights and "highlighted a key flexibility within copyright law: the ability to unbundle

ownership rights into discrete economic interests" Given Bowie's long-lived success—as evidenced by annual album sales over decades—his intellectual property represented a stable, long-term investment. Moody's Investors Service gave the bonds an investment grade rating of A3. (For a discussion of Bowie Bonds, see Trent Andersen's article, "Securitizing Stardust: The Legal Life of Bowie Bonds," *University of Miami Law Review*, volume 80.)

Of course, the 1990s were marked by other innovations, most notably in technology—personal computers became more affordable for everyday consumers, access to the internet expanded rapidly, and your humble author got her first email address. In short, digital quickly began to replace analog. Microsoft happened. Apple happened. For the music industry, Napster happened.

The Rise and Fall of Napster

Napster and other peer-to-peer file-sharing platforms allowed users to share digital music files with each other for free, resulting in plunging music sales. Napster popularized the concept of downloading music and the use of the now ubiquitous MP3 format. (For background, see Michael Gowan's article, "Requiem for Napster," *PCworld.com*, May 18, 2002.)

Musicians and record companies alike appealed to the courts, alleging copyright infringement. Napster responded that its platform facilitated "fair use" of copyrighted material. Ultimately, in *A&M Records, Inc. v. Napster, Inc.* (239 F.3d 1004 (9th Cir., 2001), the courts held that Napster's users were engaging in copyright infringement and Napster could be held both contributorily liable and vicariously liable for their infringement.

Shortly thereafter, unable to operate in compliance with the decision, Napster filed for bankruptcy—but the free sharing of digital music files continued. The music industry's attempts to stop it even included bringing lawsuits against individual college students who ran filesharing sites from their dorm rooms. Nevertheless, in 2004, Moody's downgraded Bowie bonds to Baa3, citing weak sales of recorded music.

Music royalty securitizations laid dormant for the next 20 years, even while the securitization market continued to expand and intellectual property became a more commonly securitized asset. As of the end of the third quarter of 2025, however, music royalty-backed securitizations totaled $2.6 billion in issuance for the year and "there is a very robust pipeline of music-royalty deals building" for 2026. (See "Music-Royalty Pipeline Building," *Asset-Backed Alert*, October 13, 2025.)

The Emergence of Streaming

Streaming introduced a new framework for music consumption, and royalty payments. Streaming refers to the technology of transmitting media files from one device while being simultaneously played by another. The consumer never owns the music and, since some services allow the listener to stream on demand, is arguably disincentivized from purchasing. Thus, the traditional means of earning royalties from album sales is inapplicable to streaming; instead (without going into specifics), royalties are earned per stream.

Streaming added two things to the securitization market: detailed analytics and expanded monetization routes. Streaming revenues are generated per title, rather than per album, so information is available on a more granular level than with physical media.

On a more macro level, streaming shed brighter light on consumption trends—for example, country music revenues drop significantly after an initial surge, while pop revenues remain relatively steady. These analytics result in more accurate and nuanced valuation of the copyrights and give investors comfort that streaming revenue across a portfolio is sufficiently stable and predictable.

Additionally, because streaming does not require physical media, artists who are not represented by a music label (and thus have less access to traditional distribution) are nonetheless able to release music digitally and generate revenue solely from digital sources, such as social media and YouTube. These smaller artists add to the increasing number of artists choosing to sell their copyrights.

Back to Bowie

In a 2002 *New York Times* interview, David Bowie said: "I don't think it's going to work by labels and by distribution systems in the same way … The absolute transformation of everything that we ever thought about music will take place within 10 years, and nothing is going to be able to stop it." (See Jon Pareles "David Bowie, 21st Century Entrepreneur," *The New York Times*, June 9, 2002.)

Bowie wasn't wrong. While securitized copyright portfolios skew toward seasoned works by established artists, recent activity includes securitizations backed by the work of independent artists and increased focus on and acquisitions of works that generate revenue primarily from streaming. Technology has changed music consumption, enhanced our understanding of music consumption, and given us more things to consume in more ways. Well played, David Bowie. ■

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Single-Family Rental Housing and Corporate Ownership: Policy Developments and Market Implications

A Mature Asset Class Under Renewed Scrutiny

Over the past decade, the single-family rental (SFR) market has evolved from a niche, post-crisis strategy into a core institutional asset class. Large-scale SFR platforms now rely on well-established warehouse financing structures and repeat private-label securitization (PLS) execution, supported by professional servicing, geographic diversification, and increasingly standardized underwriting practices. Despite broader macroeconomic volatility, investor demand for SFR exposure has remained resilient, driven by demographic trends, constrained housing supply, and sustained renter demand.

At the same time, housing affordability has become a central policy concern. Elevated home prices, limited inventory, and higher interest rates have intensified public debate on the role of institutional capital in residential housing markets. Against this backdrop, the SFR asset class, particularly corporate ownership of single-family homes, has reemerged as a focal point of federal policy discussion. Public discourse surrounding these efforts has at times suggested sweeping restrictions on corporate ownership, prompting questions among sponsors, lenders, and investors about the durability of existing SFR financing and securitization structures.

Executive Action Targeting Institutional SFR Ownership

While federal policymakers have several tools available to influence housing markets, their ability to directly restrict ownership of real property is meaningfully constrained. Real estate ownership and land use regulation are traditionally governed by state and local law, limiting the federal government's capability to impose outright ownership bans or transfer prohibitions. From a constitutional perspective, direct restrictions on ownership, particularly if applied retroactively, would raise significant concerns under the Takings Clause and due process principles. Even prospective limitations could face heightened scrutiny if they are viewed as arbitrarily targeting particular classes of lawful owners without a sufficient nexus to a legitimate governmental interest. These legal and structural constraints make sweeping federal prohibitions on corporate ownership of single-family homes unlikely.

Recent developments under the Trump Administration have brought renewed attention to institutional ownership of single-family homes, culminating with the signing of the "Stopping Wall Street from Competing with Main Street Homebuyers" Executive Order (EO) on January 20, 2026. Importantly, the EO does not impose an outright statutory prohibition on institutional ownership of single-family homes or a blanket ban on acquisitions. Instead, it signals a policy shift toward closer scrutiny of large-scale SFR activity and the use of existing federal authorities to influence market behavior. Rather than attempting to restrict ownership directly, the EO operates across multiple regulatory channels designed to influence institutional behavior by introducing friction at key points in the SFR investment and financing lifecycle.

Federal Financing and Liquidity Constraints

The EO directs the Secretary of Agriculture, the Secretary of Housing and Urban Development, the Secretary of Veterans Affairs, the administrator of the General Services Administration, and the director of the Federal Housing Finance Agency to issue guidance within 60 days to prevent agencies and government-sponsored enterprises (GSEs), to the maximum extent permitted by law, from providing for, approving, insuring, guaranteeing, securitizing, or otherwise facilitating the acquisition by a "large institutional investor" of a single-family home that could otherwise be purchased by an individual owner-occupant.

Although public discussion around institutional ownership often focuses on competition with owner-occupants in traditional retail markets, including Multiple Listing Service (MLS)-listed transactions, institutional SFR acquisition strategies in practice have increasingly shifted toward bulk purchases and other nonretail channels. The EO also directs agencies to avoid disposing of federal assets in a manner that transfers single-family homes to large institutional investors, and to promote sales to individual owner-occupants through mechanisms such as anti-circumvention provisions, first-look policies, and enhanced disclosure requirements.

Although many sophisticated SFR sponsors primarily rely on private-label securitization (PLS) and bank-provided warehouse facilities, the curtailment of GSE-linked support and other federal financing channels may nonetheless have meaningful market implications. GSE programs have historically served as an important liquidity backstop and pricing benchmark for residential asset classes, even when direct reliance on agency execution is limited. Reduced access to these channels may therefore affect market-wide liquidity, valuation reference points, and investor perception, particularly during periods of market stress when alternative exits are constrained.

The Definition of "Large Institutional Investor"

The EO tasks the Department of the Treasury with developing definitions of "large institutional investor" and "single-family home" within 30 days for purposes of implementing the order. The scope of these definitions will be critical. The ownership or acquisition threshold ultimately adopted, whether based on portfolio size, transaction volume, or another metric, will determine which sponsors, and by extension which warehouse borrowers, are effectively excluded from the federal support channels addressed by the EO-mandated guidance.

This definitional exercise introduces a layer of regulatory uncertainty that extends beyond federal programs themselves. Market participants will need to evaluate how any adopted threshold aligns with existing portfolio sizes, growth strategies, and financing structures. From a warehouse lending perspective, borrowers that fall within the defined category may face differentiated treatment not only with federal programs, but also in private capital markets that value agency eligibility.

Heightened Antitrust Scrutiny of Portfolio Acquisitions

The EO directs the Department of Justice and the Federal Trade Commission to review "substantial acquisitions," including series of acquisitions, by large institutional investors in local single-family housing markets for potential anti-competitive effects and to prioritize enforcement of the antitrust laws as appropriate. The EO specifically highlights coordinated vacancy and pricing strategies as areas of concern.

This mandate has immediate relevance for institutional SFR strategies, where portfolio acquisitions, mergers, and bulk transfers frequently serve as exit options when securitization execution is delayed or unavailable. While antitrust review does not prohibit acquisitions per se, increased scrutiny may lengthen transaction timelines, complicate deal certainty, or chill certain forms of consolidation. For warehouse lenders, this dynamic is particularly salient because portfolio sales and sponsor-level transactions are often relied upon as alternative takeout strategies in stressed or evolving market conditions.

Practical Effect of the Executive Order

Taken together, these elements underscore that the EO does not directly impair existing ownership rights but instead seeks to influence institutional SFR participation through financing availability, definitional boundaries, and transactional oversight. The practical impact for the market is therefore less about immediate disruption and more about the introduction of uncertainty at precisely the inflection points that underpin institutional SFR investment and warehouse financing models.

Implications for SFR Financing and Market Strategy

For warehouse lenders, securitization sponsors, and investors, the EO's significance lies not in its immediate legal effect, but in how it may reshape assumptions around liquidity, scale, and exit opportunities. Agency eligibility has long served as an implicit benchmark for residential finance markets, and its potential removal for certain institutional participants may influence underwriting, disclosure, and investor sentiment even in private-label executions.

This policy environment may accelerate differentiation within the SFR asset class itself. The EO expressly contemplates narrowly tailored exceptions for build-to-rent (BTR) communities that are "planned, permitted, financed, and constructed as rental communities," which may make these BTR communities increasingly attractive relative to strategies focused on scattered site properties. Because BTR developments add net new housing supply, they are more closely aligned with stated federal policy objectives centered on affordability and supply expansion, and they are less susceptible to criticism that institutional capital is competing with owner-occupiers.

From a financing perspective, an increased emphasis on BTR assets may affect collateral composition, stabilization timelines, and concentration analysis in warehouse facilities and securitizations. Lenders may consider whether existing eligibility criteria, borrowing base mechanics, and concentration limits sufficiently accommodate BTR assets. In particular, lenders may evaluate tailored treatment for construction-to-stabilization periods, single-plat developments, lease-up covenants, and appraised value methodologies that reflect the nature of BTR communities. As BTR strategies become more prevalent, documentation that provides flexibility to transition assets from development to stabilized rental operations may better align financing structures with federal policy concerning housing supply, which will likely be viewed favorably in an environment of heightened scrutiny of institutional ownership.

Watching Policy Signals Without Overreacting

The renewed focus on institutional ownership of single-family homes reflects broader political and economic pressures surrounding housing affordability. While these concerns are unlikely to recede, longstanding legal and structural constraints significantly limit the federal government's ability to impose direct restrictions on property ownership. For SFR sponsors, warehouse lenders, and securitization market participants, the resulting risks are more likely to be incremental and contextual than disruptive.

As the policy landscape continues to evolve, stakeholders will need to remain attentive to developments while maintaining flexibility in structuring, underwriting, and portfolio strategy. Within this framework, BTR strategies may offer a particularly resilient pathway for continued institutional participation in the SFR market, aligning capital deployment with policy objectives focused on expanding housing supply. ■

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The Move to Alternative Residential Assets

Introduction

Shifts in the current economic climate have forced investors and warehouse markets to adapt to a wider range of residential asset types. In a prolonged higher-rate environment with low inventory, the number of new home buyers has hit an all-time low, potential sellers are forgoing moving, choosing instead to hold onto their low-interest-rate first-lien mortgages, and refinancing remains unattractive for many homeowners, prompting lenders to expand into alternative product markets to remain competitive and meet growing demands from current homeowners to access untapped equity in their homes. The market has also seen an increase in the investment of various alternative mortgage products such as home equity investments (HEIs), second-lien loans, residential transition loans (RTLs), home equity lines of credit (HELOCs), and reverse mortgage loans.

As a result, mortgage servicing rights (MSRs), relating to both the alternative asset and the more traditional first-lien mortgage loan, have remained a resilient alternative source of liquidity, despite broader market volatility, and continue to offer investors an appealing way to diversify portfolios and generate cash in an environment where origination of first-lien residential mortgage loans has declined. These alternative mortgage products, along with their corresponding MSRs, have continued to emerge as valuable and highly tradable assets, and have now become central to the residential mortgage-backed securities (RMBS) market. They offer homeowners liquidity and provide investors with higher yields than more-traditional bond investments.

Why Alternative Mortgage Products?

In the current post-COVID environment in which approximately 77% of all homeowners are currently locked into low first-lien mortgage rates (the majority at or below 6%), elevated interest rates have made traditional cash-out refinancing financially unattractive. As a result, homeowners are increasingly turning to second-lien products and HEIs to access liquidity without sacrificing their existing low-rate loans, driving these products to represent 25% of the market.

HEIs, for instance, offer homeowners a compelling alternative by providing them with a lump-sum cash payment without the monthly debt service. In return, investors receive a percentage of the homes' future market value or a share of their appreciation, allowing both investors and homeowners to share in the appreciation or depreciation of the home's value, thereby diversifying risk across these products. Alternatively, homeowners who look to gain access to the equity in their homes through second-lien loans are gaining access to the same equity through a second subordinated loan that requires monthly payments until maturity. In both cases, however, homeowners avoid the need to refinance their low-rate first-lien mortgages that remain fully intact while accessing their untapped equity through a subordinated debt option.

HELOCs, RTLs, and reverse mortgage loans have also been on the rise and used by investors to help fill out their portfolios. Uniquely, each type can sit in the first- or second-lien position and is paid off after a set occurrence—maturity of the initial draw period (HELOCs), closing on the simultaneous purchase of a new home and a sale of a current one (RTLs), or sale, death, or permanent vacancy of the home by the last borrower (reverse mortgage loans).

Market changes away from refinancings and the increase in alternative mortgage products have thus accelerated the popularity and growth of MSR financing as yet another portfolio filler.

In 2025, the MSR market evolved toward its use as a strategic financing and capital management tool. Servicers and investors increasingly treat MSRs as liquid financial assets to finance growth, hedge against interest rate risk, or manage balance sheet exposures. Bulk servicing portfolios continue to attract high multiples and active trading, reflecting strong investor demand and strategic portfolio reshaping. Hedge funds, structured finance firms, and, increasingly, insurance companies continue to explore MSR financing to gain exposure to new means of generating liquidity in a volatile interest rate environment where many existing MSR vintages continue to have solid performance and low volatility (especially those comprising the low COVID-era interest rates), and new MSR vintages relating to alternative mortgage products can round out an investment portfolio.

These developments indicate MSR financings are expanding components of a broader capital market strategy in mortgage finance.

Structuring Options

MSR financings can be structured through a range of credit and capital markets solutions, each tailored to the servicer's portfolio size, liquidity needs, and risk tolerance:

- Bilateral facilities extended by a single lender are common among small- to mid-sized servicers, offering streamlined negotiation and bespoke covenants.
- Larger servicers increasingly use syndicated facilities, where multiple lenders participate under a unified credit agreement typically arranged by a lead bank. These structures support higher advance rates, larger commitments, and shared exposure to interest-rate, prepayment, and valuation risks across the lender group.
- Repurchase arrangements also play a meaningful role in liquidity management and regulatory capital treatment for lenders. Importantly, the "repo" is not of the MSR itself. Instead, MSR owners raise short-term funding by selling and later repurchasing a synthetic participation interest or designated cash-flow strip tied to the servicing asset at an agreed-upon price. Because the underlying MSR cannot be transferred through a true repurchase facility, these synthetic structures allow servicers to unlock interim liquidity while preserving legal ownership and operational control.

- Structured securitizations offer another avenue for financing MSRs by having the servicer transfer the economic rights in the servicing cash flows to a bankruptcy-remote entity that issues securities to investors. Growing MSR valuations and increased investor sophistication have made MSR securitization an appealing option.

Effective execution requires attention to how MSRs are perfected as "general intangibles" under Article 9 of the Uniform Commercial Code (UCC), typically through UCC-1 filings and, in the case of agency MSRs, compliance with agency approval requirements. Investor diligence typically focuses on valuation methodologies (including compliance with recent automated valuation models' quality control standards), stress-testing servicing revenues and advance obligations, counterparty performance, and operational continuity in the event of default. These considerations shape investor confidence in the stability of MSR cash flows and ultimately influence pricing, advance rates, and broader market receptivity.

Balancing Liquidity, Leverage, and Risk

Financing and managing MSRs is inherently complex, but with the right structure, liquidity planning, and governance that complexity can be a source of long-term, durable value. As nonbank servicers now account for a dominant share in the U.S. mortgage market, their reliance on short-term funding and higher leverage makes them more sensitive to market fluctuations. This heightens the need for strong liquidity planning, tighter collateral controls, and clear regulatory processes. With well-crafted financing, conservative advance mechanics, and solid contingency planning, servicers can maintain continuity of operations and turn potential vulnerabilities into reliable, repeatable performance.

MSRs tied to alternative mortgage products, such as non-qualified mortgages (non-QM), second-lien, and HELOC portfolios, present heightened structural and counterparty risks compared to agency-eligible portfolios. Yet, they also offer yield and diversification. With standardized underwriting standards, regular diligence and monitoring of performance data, and increased transparency in cash-flow modeling, the risks can become manageable. Legal structural differences, including regulatory constraints, lien priority, and assignment mechanics, can be best addressed through structures that allow for perfection of collateral interests, control of MSR proceeds, acknowledgement and consent frameworks, and ongoing valuations and due diligence.

Strong market demand, continued trading activity, and the growing role of nonbank servicers underscore the importance of MSRs in modern capital markets.

With respect to MSR valuation and liquidity pressures, it should be noted that nonagency MSR fair values often trade below traditional agency multiples—reflecting a premium that disciplined investors can capture. While MSR cash flows are highly sensitive to interest rate volatility, prepayment speeds, delinquency advances, and regulatory intervention, the mitigants are well established: interest-rate hedging for convexity exposure; advance facilities with stress-tested borrowing bases, sublimits for principal/interest, and tax/insurance advances, and dynamic triggers; conservative haircuts and independent valuation to reduce model risk; and minimum liquidity and capital buffers sized to severe but plausible stress scenarios.

Regulatory fragmentation across agencies and state regimes adds compliance risk and heightened supervisory scrutiny. These evolving obligations increase compliance costs and operational burdens, requiring servicers to integrate robust risk frameworks and maintain adequate capital reserves.

Broader market indicators, such as rising delinquency trends and macroeconomic uncertainty, compound cash-flow risk, placing additional strain on advance facilities and financing structures. These challenges underscore the importance of disciplined risk management, rigorous due diligence, and carefully structured financing arrangements when expanding MSR exposure beyond traditional agency mortgage products.

Conclusion

The rapid expansion of alternative mortgage products and the growing importance of MSRs reflect a fundamental shift in how liquidity, risk, and capital are managed across today's residential finance landscape. As elevated interest rates limit the appeal of traditional refinancing, borrowers and lenders are increasingly turning to mortgage products such as HEIs, second liens, HELOCs, reverse mortgage loans, RTLs, and non-QM assets to bridge liquidity needs and maintain competitive positioning. These products offer investors differentiated yield opportunities while allowing homeowners to leverage equity without sacrificing low-rate first mortgages.

At the same time, MSRs of all mortgage product types have evolved into a sophisticated financing and portfolio-management tool, enabling servicers and investors to strategically manage balance-sheet exposures, hedge interest-rate risk, and unlock additional liquidity through active trading and structured financing channels.

Strong market demand, continued trading activity, and the growing role of nonbank servicers underscore the importance of MSRs in modern capital markets. However, these opportunities are accompanied by meaningful challenges: valuation pressures, advancing obligations, regulatory fragmentation, counterparty risk, and the absence of bankruptcy safe-harbor protections all elevate the operational and financing risks tied to MSR portfolios, particularly those linked to nonagency or alternative mortgage products.

As the mortgage market continues to adapt to structural and macroeconomic pressures, disciplined risk management, rigorous due diligence, and careful transaction design will be essential. Stakeholders that proactively integrate these principles will be best positioned to navigate market volatility and capture emerging opportunities in this evolving landscape. ■

Liens Gone Wild: Navigating the World of Nuisance UCC Filings

The Uniform Commercial Code (UCC) is designed to create regulatory consistency and predictability for business transactions across the United States, making commerce efficient and reliable from state to state. While there are numerous UCC articles covering everything from banking to loans, including the new Article 12 covering digital assets, Article 9 of the UCC sets forth the rights and responsibilities of debtors and creditors in secured transactions.

Despite Article 9's intent to streamline and safeguard commercial dealings, the UCC filing system has become a target for exploitation—particularly by individuals known as "sovereign citizens." Over recent years, states have seen a surge in nuisance filings, where fraudulent or unauthorized UCC financing statements are weaponized to harass, confuse, or extort individuals and, perhaps more importantly, organizations.

As such, nuisance filings under the UCC have become a growing concern for businesses and financial institutions alike. This article unpacks the mechanics of UCC filings, the nature and consequences of fraudulent filings, and provides actionable insight into research, documentation, and termination procedures.

Understanding Article 9 and Key Terminology

Article 9 governs the creation and enforcement of security interests in personal property and fixtures, such as accounts receivable, inventory, equipment, and chattel paper. Key concepts to understanding the UCC include "attachment" and "perfection." A "security interest" (a legal claim in someone else's property, created by contract or law) "attaches" when value is given, the debtor has rights in the asset used to secure the transaction (subject to seizure in the event of default ("collateral")), and a signed agreement describes the collateral.

Perfection makes the security interest effective against third parties and determines the order of priority when a default occurs. Perfection often requires filing a UCC financing statement with the state but can also occur through possession, control of collateral, or, under certain circumstances, automatically.

In a typical secured transaction, the debtor pledges collateral to the secured party as a guarantee for payment. If the debtor defaults, the secured party may seize the collateral to satisfy the debt. Both secured parties and debtors have defined rights and duties, such as the obligation to use reasonable care in preserving collateral and the ability to redeem collateral under certain circumstances.

Nuisance UCC Filings: What Are They?

Nuisance or unauthorized filings are UCC statements submitted without valid consent or factual basis. Filing offices, such as secretaries of state, are mandated to accept and record all submissions as long as the paperwork contains the required information and the required fees are paid. The filing officers do not independently verify the accuracy or validity of most filings—which has created the opening for unauthorized filings. This regulatory gap has enabled a wave of filings designed to disrupt legitimate transactions. Furthermore, as credit bureaus factor in UCC records, fraudulent UCCs that are filed against individuals can impact credit scores.

Who files nuisance UCCs and why

To understand nuisance filings, one must also understand the people who file them. A significant portion of nuisance filings originate from adherents of the "sovereign citizen" movement, a loosely connected group that rejects the legitimacy of U.S. government authority. With an estimated population of between 100,000 and 300,000, these individuals believe that the use of tell-tale buzzwords (e.g., signatures "under duress") or names spelled in all-caps interspersed with colons can manipulate the legal systems. There are even instances of sovereign citizens convincing homeowners to sign over foreclosed property, exploiting confusion and desperation. These same individuals exploit the UCC system, believing it grants them access to "secret government accounts" or enables them to retaliate against perceived adversaries through "paper terrorism."

There are three primary manifestations of fraudulent sovereign citizen UCC filings: harassment filings, strawman filings, and authentication filings. Harassment filings falsely allege massive debts against the victim. Strawman filings are based on a belief that a UCC statement allows access to a secret account tied to one's birth certificate, often with the same name listed as both debtor and secured party (as seen in Figure 1). Authentication filings are fraudulent filings that, when paired with misleading financing documents, are intended to deceive third parties about their legitimacy.

Figure 1.

The information set forth in the Wrongfully Filed UCC-1 is as follows:

Filing Reference Number	XXXXXXXXXX
Date and Time of Filing	MM DD, YYYY 00:00:00
Debtors	Jane Jane Smith T Doe [Address] ["Debtor"] [Address]
Secured Party	Jane Jane Smith T Doe [Address]

Identifying problem filings

A fraudulent UCC will not have a valid security interest against the "debtor" because no value has been exchanged. UCC financing statements filed against corporate entities that are submitted by individuals are often a red flag. By examining a suspect UCC financing statement further, one can begin to see language and patterns that provide confirmation that the UCC filing is fraudulent.

Common indicators of fraudulent filings include:

- Rambling, unintelligible collateral descriptions.
- Latin legal terms, references to admiralty law, or unrealistic amounts (e.g., "$10 quadrillion").

- Biblical citations, birth certificate references, and tell-tale terms like "living trust," "strawman," or "without prejudice" used out of context.
- Names in all caps, personal seals, or red thumbprints.
- Attempts to designate the debtor as a "transmitting utility" to keep the filing on record indefinitely (see Figure 2).

This financing statement covers the following collateral:

This is the entry of collateral by Trustee/Secured Party on behalf of the Trust/Estate; [redacted] in the Commercial Chamber under necessity to secure the all rights, title(s), and interest in and to the Transmitting Utility identified a [redacted], including but not limited to:
All commercial accounts; ATS Diversified Management LLC xx-xxx[redacted], Navy Federal Credit Union Business Checking #xxxxxx[redacted] and Savings #xxxxxx[redacted], US Bank Business Checking #xxxxxxxx[redacted], Chase Business Checking #xxxxx[redacted], all deposit accounts; Navy Federal Credit Union Checking #xxxxx[redacted] and Savings #xxxxx[redacted], securities accounts, financial instruments, and funds held or controlled by the Transmitting Utility, whether now existing or hereafter arising.
All cash, proceeds, credits, receivables, refunds, chargebacks, and claims from the Transmitting Utility's commercial activities.
All contracts; Coverall North America #[redacted], agreements, licenses, and entitlements executed or entered into by the Transmitting Utility, including any claims against third parties or rights to future payments.
All intellectual property owned or controlled by the Transmitting Utility, including copyrights, patents, trademarks, and trade secrets.
All physical and electronic records, metadata, and transactional data associated with the Transmitting Utility's operations.
All replacements, additions, substitutions, and modifications to the assets rights described above, together with all future interests, entitlements, or otherr property acquired by the Transmitting Utility.
All Certificates of Birth Document [redacted], SSN CARD# [redacted], SSN/UCC Contract Trust Account-prepaid account Number: [REDACTED]; Exemption Identification Number: [redacted], is herein lie and claimed. Adjustment of this filing is in accord with both public policy and the national Uniform Commercial Code. 4.
Obligations:
All liabilities, duties, and debts of the Debtor to the Secured Party, whether existing now or arising in thee future.

Figure 2.

Remedies: Researching and Terminating Nuisance Filings

UCC remedies

Because the UCC favors broad access to filing, there are few preventive measures. Remedies under Article 9 for nuisance filings include:

- Information Statement (UCC §9-518). Allows a debtor or secured party to append comments to UCC records, flagging questionable filings—though these statements have no legal force.
- Statutory Penalties (UCC § 9-625). Debtors may turn to litigation to recover damages for unauthorized filings, but statutory damages are minimal (e.g., $500) and actual damages are hard to prove. The cost of the litigation itself far exceeds the potential damages awarded.
- Termination Statement (UCC § 9-513). The debtor can file a termination if the secured party fails to do so within 20 days of a demand and no obligation exists. However, this process is slow and cumbersome. In addition, the subject UCC-1 financing statement, while terminated, still remains visible in the UCC search results until at least the original five-year term has lapsed. See "Preparing and Delivering Termination Documentation" below for more details on the UCC §9-513 termination process.

State remedies

In recent years, there has been such an uptick in nuisance UCC filings that many state officials have been working with the National Association of Secretaries of State to develop remedies for victims. Since current remedies are largely limited to post-filing actions, states have been attempting to provide more preemptive remedies (e.g., blocking unauthorized filings at the submission stage) to prevent victims from having to pursue lengthy and costly corrective processes.

Each state has its own statutes and procedures for filing termination statements, but this article will focus on Delaware and Ohio because these are the two state filing offices with which the authors have recent and direct experience. Delaware offers post-filing remedies but no pre-filing protections. To challenge a wrongful filing, one must follow statutory requirements, including an information statement identifying the original record and an explanation of the grounds for contesting its validity. Ohio provides slightly more robust pre-filing protections: the secretary of state may refuse filings suspected to be materially false. Post-filing, Ohio's process to contest a nuisance filing mirrors Delaware's but requires certain additional details (e.g., the time of filing).

Preparing and Delivering Termination Documentation

This section describes the procedures and best practices for terminating a nuisance filing in Delaware and Ohio.

Both Delaware and Ohio require an "authenticated demand" to initiate termination. It is suggested that this authenticated demand include:

- A table summarizing information from the wrongful UCC-1 (Ohio also requires the precise time of filing) (see Figure 1).
- A clear statement of why the filing was wrongfully filed that references applicable state law (see Figure 3).

Figure 3.

> The undersigned, on behalf of the ["Debor"], wrongfully identified as the "Debtor" in the Wrongfully Filed UCC-1 (the "Demanding Party"), hereby certifies that (1) there is no, and never has been any, obligation secured by the collateral covered by the Wrongfully Filed UCC-1, and there is no, and never has been any, commitment to make an advance, incur an obligation, or otherwise give value; and (2) the Demanding Party did not authorize the filing of the Wrongfully Filed UCC-1. As such, you were not permitted to file the Wrongfully Filed UCC-1 and pursuant to 6 Delaware Code §9-510(a) (UCC §9-510(a)), the Wrongfully-Filed UCC-1 is not, and never was, an effective financing statement.

- Timelines for response and next steps if consent is not provided within 20 days upon receipt, as required by state law and the UCC) (see Figure 4).

Figure 4.

> Accordingly, in accordance with 6 Delaware Code §9-513 (UCC §9-513), this Authenticated Demand is hereby made upon you to file an amendment terminating the Wrongfully Filed UCC-1. The amendment terminating the Wrongfully Filed UCC-1 must be filed immediately and in no event more than twenty (20) days after receipt of this Authenticated Demand. Please provide to the undersigned a copy of the filed amendment terminating the Wrongfully Filed UCC-1 as accepted by the Secretary of State of the State of Delaware (the "UCC-3 Filing Confirmation").
>
> In the alternative, please execute the acknowledgement hereto. By acknowledgment hereof, you authorize the Demanding Party to file an amendment terminating the Wrongfully Filed UCC-1 in substantially the form attached as Exhibit B (the "UCC-3 Termination Statement (Authorization by Secured Party)").

- Reservation of rights language for additional protection (see Figure 5).

Figure 5.

> If the Demanding Party does not receive the UCC-3 Filing Confirmation or the acknowledgment hereto authorizing the Demanding Party to file the UCC-3 Termination Statement (Authorization by Secured Party) within twenty (20) days, then pursuant to 6 Delaware Code §9-509(d)(2) (UCC §9-509(d)(2)), the Demanding Party will file a UCC amendment terminating the Wrongfully Filed UCC-1 in substantially the form attached as Exhibit C (the "UCC-3 Termination Statement (Authorization by Debtor").
>
> Failure to timely file an amendment terminating the Wrongfully Filed UCC-1 or failure to provide the acknowledgment hereof will subject you to liability for any loss or damage caused to the Demanding Party by such failure, and the Demanding Party may seek all remedies available under the law, including, but not limited to, statutory damages, recovery of costs, and attorney's fees. In addition, you may be subject to potential criminal liability for knowingly making or failing to correct a fraudulent record.

Proper documentation is essential, and all paperwork should be organized carefully. For the avoidance of doubt, attach to the authenticated demand not only the wrongfully filed UCC-1 but also two types of termination statements (one if the purported "secured party" provides consent and the other if there is no response within 20 days of receipt of the authenticated demand). For accuracy, there should be at least two pairs of eyes reviewing the termination filings before the authenticated demands are mailed.

Mailing best practices

All correspondence should be sent by certified mail with return receipt requested to establish proof of delivery. This process establishes a legal record of when and to whom the notice was delivered, which is critical for meeting statutory requirements.

- Keep records of all documents (i.e., a scan of each authenticated demand), certified mail labels, and tracking numbers.
- Minimize the firm's branding on envelopes for privacy.
- Ensure addresses match the original filing exactly.
- Keep a record of delivery confirmations and dates to track the 20-day period.

While "receipt" definitions vary and Delaware and Ohio statutes do not provide guidance, standard practice considers notice given upon hand delivery, next business day via courier, or three business days after depositing in mail.

Responding to filers

When dealing with sovereign citizens, one can expect some unusual or confrontational reactions to receiving an authenticated demand. When a response is received from the filer, consider the client's risk tolerance before engaging. Hostile, confrontational, or nonsensical replies are generally best ignored unless they threaten legal action. In such cases, involve the client's legal counsel to ensure a measured response.

Filing Terminations: A Step-by-Step Guide

If the purported secured party provides consent for the termination or if there has been no response within 20 days of delivery of the authenticated demand, the unauthorized financing statement may be terminated.

To recap:

1. Stay organized to track timing around delivery dates and termination eligibility.
2. Review signed authenticated demands to determine which version of the UCC-3 termination form to file.
3. Obtain clear written consent from clients before filing.
4. File terminations in the correct capacity: as the "debtor" (most wrongful filings will require this approach) or "secured party" (in the rare circumstances in which consent to terminate has been provided), as applicable.

Conclusion

Driven in part by the sovereign citizen movement, unauthorized and wrongfully filed UCC-1 financing statements have become a growing risk for institutional clients. The state-level legal frameworks governing the UCC provide limited and after-the-fact corrective measures that require authenticated demands and the passage of time to become eligible to file the applicable UCC-3 termination statements. Organizations facing these nuisance filings should periodically review their UCC records, be proactive in pursuing terminations, and advocate for stronger state protections against unauthorized and wrongfully filed UCC-1 financing statements.

Key Takeaways

- Nuisance UCC filings present serious reputational and financial risks.
- Understand the legal limitations and remedies available under Article 9 of the UCC and state law.
- Organize and document every step of the termination process.
- Engage with the nuisance filers only when necessary, and seek legal counsel for complex scenarios.

While nuisance UCC filings present real challenges, understanding the legal landscape and best practices to address these issues can help organizations protect themselves and minimize disruption. ■

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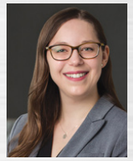

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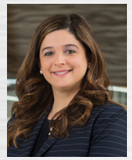

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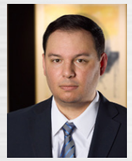

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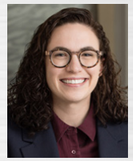

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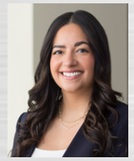

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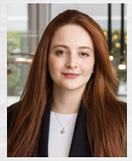

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