

## **N.D.A.G. Letter to Meier (June 10, 1987)**

June 10, 1987

Honorable Ben Meier  
Secretary of State  
State Capitol  
Bismarck, ND 58505

Dear Secretary Meier:

Thank you for your letter of May 28, 1987, regarding the appropriate fee to be charged for filing and indexing Uniform Commercial Code termination statements.

The fee for filing and indexing a termination statement of the Uniform Commercial Code is stated to be \$3. N.D.C.C. § 41-09-43(3). The fee of \$3 was provided for by the Legislative Assembly in 1983. 1983 N.D. Sess. Laws ch. 469, § 1.

In 1987, the Legislative Assembly amended N.D.C.C. § 41-09-42(5). S. 2272, 50th Leg., (1987). By this amendment, the Legislature provided for a \$5 fee for the filing and indexing of "any statement" under the Uniform Commercial Code. According to the legislative history as to the enactment of Senate Bill No. 2272, one of the primary reasons for its introduction was to provide a uniform filing fee of \$5 for all U.C.C. documents.

The statutory rule of construction applicable to this situation indicates that conflicts between a general provision in a statute and a special provision in another statute should be reconciled so as to give effect to both provisions. N.D.C.C. § 1-02-07. However, if reconciliation is not possible, the special provision prevails and is construed as an exception to the general provision "unless the general provision shall be enacted later and it shall be the manifest legislative intent that such general provision shall prevail." Id.

It is not possible to reconcile the general \$5 filing fee for all U.C.C. filing statements provided for in N.D.C.C. § 41-09-42(5) with the specific \$3 filing fee for U.C.C. termination statements provided for in N.D.C.C. § 41-09-43(3). The \$5 filing fee requirement is part of a general statute which was passed in the 1987 session. The \$3 filing fee for U.C.C. termination statements was enacted in 1983 and is a part of a specific statute. The legislative history behind the 1987 amendment clearly indicates a legislative intent to provide one filing fee for all U.C.C. documents. The history also indicates the \$5 fee for U.C.C. documents would be identical to the fee for central notice system filings.

Based upon the clear legislative intent as to the enactment of the 1987 amendment to N.D.C.C. § 41-09-42(5) and based upon the rule of statutory construction provided for by N.D.C.C. § 1-02-07, it is my opinion that the fee of \$5 may be charged for filing and indexing any statement under the Uniform Commercial Code including termination statements.

Sincerely,

Nicholas J. Spaeth

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