

To: New Jersey Law Revision Commission
From: Staff
Date: March 7, 2011
Re: UCC Article 9

MEMORANDUM

The Uniform Law Commission and the American Law Institute approved revisions to Article 9 of the Uniform Commercial Code in 2010. They recommend a uniform effectiveness date of July 1, 2013 with the hope that legislatures in all states will have an opportunity to consider the revisions before that time.

The most significant change proposed is in regard to specification of the name of debtors who are natural persons. The current Article 9 was found to be insufficiently specific as to the debtor's name as it was to be included in a security filing. The chairman of the drafting committee explained the problem:

Some courts have struggled with the question of what name a financing statement must provide for an individual debtor in order for the debtor's name on the financing statement to be sufficient. The problem arises because an individual does not typically have a single name. The individual's name on his or her birth certificate, driver's license, passport, tax return or bankruptcy petition may all be different. Moreover, the debtor may be known in his or her community by a name that is not reflected on any official document. . .the cases have created a level of uncertainty that has led secured parties to search and file financing statements under multiple names.

The proposed amendments use the drivers license as the source for the "official" version of a person's name. The creditor uses the license to determine the debtor's surname and first personal name. Any other names on the license would be inserted under "additional names." If the debtor does not have a drivers license or non-drivers state identification card, the situation is unchanged from that under current law, no rule for "official" name is provided.

In comments to the draft, the ULC has raised the question as to whether a state's license space for the entry of a name is too limited to allow the license to be a good source for an accurate full name. We have spoken to MVC to determine whether such a problem exists in New Jersey and have been informed that while there is a problem now, the space for the name will be increased by June of this year. As a result, there should be no problem with reliance of the name on a drivers license on the uniform effectiveness date of July 1, 2013.

The proposed Article 9 amendments offer two approaches to the problem. The first alternative requires the use of the drivers license version. The second, the safe haven alternative, does not require the use of that version of the name but specifies that if that

version is used, it is sufficient. The UCC section setting forth the alternatives follows. The alternative language is underlined. We spoke briefly to a representative of the New Jersey Bankers Association for their input. Their tentative preference is for the first, stricter, approach. That position is consistent with banking interests throughout the country.

SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.

(a) **[Sufficiency of debtor's name.]** A financing statement sufficiently provides the name of the debtor:

(1) except as otherwise provided in paragraph (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name of the debtor indicated that is stated to be the registered organization's name on the public organic record of most recently filed with or issued or enacted by the debtor's registered organization's jurisdiction of organization which shows the debtor to have been organized purports to state, amend, or restate the registered organization's name;

(2) subject to subsection (f), if the debtor is a decedent's estate collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the debtor is an estate collateral is being administered by a personal representative;

(3) if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

(A) provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

(B) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust;

collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) provides, as the name of the debtor:

(i) if the organic record of the trust specifies a name for the trust, the name specified; or

(ii) if the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) in a separate part of the financing statement:

(i) if the name is provided in accordance with subparagraph (A)(i), indicates that the collateral is held in a trust; or

(ii) if the name is provided in accordance with subparagraph

(A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

[Alternative A]

(4) subject to subsection (g), if the debtor is an individual to whom this State has issued a [driver's license] that has not expired, only if the financing statement provides the name of the individual which is indicated on the [driver's license];

(5) if the debtor is an individual to whom paragraph (4) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

(4) (6) in other cases:

(A) if the debtor has a name, only if it the financing statement provides the individual or organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) [Additional debtor-related information.] A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

(1) a trade name or other name of the debtor; or

(2) unless required under subsection (a)(4)(B) (a)(6)(B), names of partners, members, associates, or other persons comprising the debtor.

[Alternative B]

(4) if the debtor is an individual, only if the financing statement:

(A) provides the individual name of the debtor;

(B) provides the surname and first personal name of the debtor; or

(C) subject to subsection (g), provides the name of the individual which is indicated on a [driver's license] that this State has issued to the individual and which has not expired; and

(4) (5) in other cases:

(A) if the debtor has a name, only if it the financing statement provides the individual or organizational name of the debtor; and

(B) if the debtor does not have a name, only if it the financing statement provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) [Additional debtor-related information.] A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

(1) a trade name or other name of the debtor; or

(2) unless required under subsection (a)(4)(B) (a)(5)(B), names of partners, members, associates, or other persons comprising the debtor.

[End of Alternatives]

(c) **[Debtor's trade name insufficient.]** A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) **[Representative capacity.]** Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) **[Multiple debtors and secured parties.]** A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(f) **[Name of decedent.]** The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the “name of the decedent” under subsection (a)(2).

[Alternative A]

(g) [Multiple driver’s licenses.] If this State has issued to an individual more than one [driver’s license] of a kind described in subsection (a)(4), the one that was issued most recently is the one to which subsection (a)(4) refers.

[Alternative B]

(g) [Multiple driver’s licenses.] If this State has issued to an individual more than one [driver’s license] of a kind described in subsection (a)(4)(C), the one that was issued most recently is the one to which subsection (a)(4)(C) refers.

[End of Alternatives]

(h) **[Definition.]** In this section, the “name of the settlor or testator” means:

(1) if the settlor is a registered organization, the name that is stated to be the settlor’s name on the public organic record most recently filed with or issued or enacted by the settlor’s jurisdiction of organization which purports to state, amend, or restate the settlor’s name; or

(2) in other cases, the name of the settlor or testator indicated in the trust’s organic record.

Legislative Note:

1. This Act contains two alternative sets of amendments relating to the names of individual debtors. A State should enact the same Alternative, A or B, for both subsections (a) and (i) of Section 9-503. A State that enacts Alternative A of the amendments to this section should also enact the amendments to Section 9-502.

2. Both Alternatives refer, in part, to the name as shown on a debtor’s driver’s license. The Legislature should be aware that, in some States, certain characters that may be used by the State’s department of motor vehicles (or similar agency) in the name on a driver’s license may not be accepted by the State’s central or local UCC filing offices under current regulations or internal protocols. This may occur because of technological limitations of the filing offices or merely as a result of inconsistent procedures. Similar issues may exist for field sizes as well. In these situations, perfection of a security interest granted by a debtor with such a driver’s license may be impossible under Alternative A of the amendments and the utility of Alternative B, under which the name on the driver’s license is one of the names that is sufficient, may be reduced. Accordingly, the State may wish to determine if one or more of these issues exist and, if so, to make certain that such issues have been resolved. A successful resolution might be accomplished by statute, agency regulation, or technological change effectuated before or as part of the enactment of this Act.

3. Regardless of which Alternative is enacted, in States in which a single agency issues driver’s licenses and non-driver identification cards as an alternative to a driver’s license, such that at any given time an individual may hold either a driver’s license or an identification card but not both, the State should replace each use of the term “driver’s license” with a phrase meaning “driver’s license or identification card” but containing the analogous terms used in the enacting State. In other States, the State should replace the term “driver’s license” with the analogous term used in the enacting State.

Comment

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2. **Debtor's Name.** The requirement that a financing statement provide the debtor's name is particularly important. Financing statements are indexed under the name of the debtor, and those who wish to find financing statements search for them under the debtor's name. Subsection (a) explains what the debtor's name is for purposes of a financing statement.

a. **Registered Organizations.** As a general matter, if the debtor is a "registered organization" (defined in Section 9-102 so as to ordinarily include corporations, limited partnerships, and limited liability companies, and statutory trusts), then the debtor's name is the name shown on the public records' public organic record" of the debtor's "jurisdiction of organization" (both also defined in Section 9-102). Subsections (a)(2) and (a)(3) contain special rules for decedent's estates and common-law trusts. (Subsection (a)(1) applies to business trusts that are registered organizations.) Subsection (a)(4)(A) essentially follows the first sentence of former Section 9-402(7). Section 1-201(28) defines the term "organization," which appears in subsection (a)(4), very broadly, to include all legal and commercial entities as well as associations that lack the status of a legal entity. Thus, the term includes corporations, partnerships of all kinds, business trusts, limited liability companies, unincorporated associations, personal trusts, governments, and estates. If the organization has a name, that name is the correct name to put on a financing statement. If the organization does not have a name, then the financing statement should name the individuals or other entities who comprise the organization. Together with subsections (b) and (c), subsection (a) reflects the view prevailing under former Article 9 that the actual individual or organizational name of the debtor on a financing statement is both necessary and sufficient, whether or not the financing statement provides trade or other names of the debtor and, if the debtor has a name, whether or not the financing statement provides the names of the partners, members, or associates who comprise the debtor.

b. **Collateral Held in a Trust.** When a financing statement covers collateral that is held in a trust that is a registered organization, subsection (a)(1) governs the name of the debtor. If, however, the collateral is held in a trust that is not a registered organization, subsection (a)(3) applies. (As used in this Article, collateral "held in a trust" includes collateral as to which the trust is the debtor as well as collateral as to which the trustee is the debtor.) This subsection adopts a convention that generally results in the name of the trust or the name of the trust's settlor being provided as the name of the debtor on the financing statement, even if, as typically is the case with common-law trusts, the "debtor" (defined in Section 9-102) is a trustee acting with respect to the collateral. This convention provides more accurate information and eases the burden for searchers, who otherwise would have difficulty with respect to debtor trustees that are large financial institutions. More specifically, if a trust's organic record specifies a name for the trust, subsection (a)(3) requires the financing statement to provide, as the name of the debtor, the name for the trust specified in the organic record. In addition, the financing statement must indicate, in a separate part of the financing statement, that the collateral is held in a trust. If the organic record of the trust does not specify a name for the trust, the name required for the financing statement is the name of the settlor or, in the case of a testamentary trust, the testator, in each case as determined under subsection (h). In addition, the financing statement must provide sufficient additional information to distinguish the trust from other trusts having one or more of the same settlors or the same testator. In many cases an indication of the date on which the trust was settled will satisfy this requirement. If neither the name nor the additional information indicates that the collateral is held in a trust, the financing statement must indicate that fact, but not as part of the debtor's name. Neither the indication that the collateral is held in a trust nor the additional information that distinguishes the trust from other trusts having one or more of the same settlors or the same testator is part of the debtor's name. Nevertheless, a financing statement that fails to

provide, in a separate part of the financing statement, any required indication or additional information does not sufficiently provide the name of the debtor under Sections 9-502(a) and 9-503(a)(3), does not “substantially satisfy[] the requirements” of Part 5 within the meaning of Section 9-506(a), and so is ineffective.

c. Collateral Administered by a Personal Representative. Subsection (a)(2) deals with collateral that is being administered by an executor, administrator, or other personal representative of a decedent. Even if, as often is the case, the representative is the “debtor” (defined in Section 9-102), the financing statement must provide the name of the decedent as the name of the debtor. Subsection (f) provides a safe harbor, under which the name of the decedent indicated on the order appointing the personal representative issued by the court having jurisdiction over the collateral is sufficient as the name of the decedent. If the order indicates more than one name for the decedent, the first name in the list qualifies under subsection (f); however, other names in the list also may qualify as the “name of the decedent” within the meaning of subsection (a)(2). In addition to providing the name of the decedent, the financing statement must indicate, in a separate part of the financing statement, that the collateral is being administered by a personal representative. Although the indication is not part of the debtor’s name, a financing statement that fails to provide the indication does not sufficiently provide the name of the debtor under Sections 9-502(a) and 9-503(a)(2), does not “substantially satisfy[] the requirements” of Part 5 within the meaning of Section 9-506(a), and so is ineffective.

d. Individuals. This Article provides alternative approaches towards the requirement for providing the name of a debtor who is an individual.

Alternative A. Alternative A distinguishes between two groups of individual debtors. For debtors holding an unexpired driver’s license issued by the State where the financing statement is filed (ordinarily the State where the debtor maintains the debtor’s principal residence), Alternative A requires that a financing statement provide the name indicated on the license. When a debtor does not hold an unexpired driver’s license issued by the relevant State, the requirement can be satisfied in either of two ways. A financing statement is sufficient if it provides the “individual name” of the debtor. Alternatively, a financing statement is sufficient if it provides the debtor’s surname (i.e., family name) and first personal name (i.e., first name other than the surname).

Alternative B. Alternative B provides three ways in which a financing statement may sufficiently provide the name of an individual who is a debtor. The “individual name” of the debtor is sufficient, as is the debtor’s surname and first personal name. If the individual holds an unexpired driver’s license issued by the State where the financing statement is filed (ordinarily the State of the debtor’s principal residence), the name indicated on the driver’s license also is sufficient.

Name indicated on the driver’s license. A financing statement does not “provide the name of the individual which is indicated” on the debtor’s driver’s license unless the name it provides is the same as the name indicated on the license. This is the case even if the name indicated on the debtor’s driver’s license contains an error.

Example 1: Debtor, an individual whose principal residence is in Illinois, grants a security interest to SP in certain business equipment. SP files a financing statement with the Illinois filing office. The financing statement provides the name appearing on Debtor’s Illinois driver’s license, “Joseph Allan Jones.” Regardless of which Alternative is in effect in Illinois, this filing would be sufficient under Illinois’ Section 9-503(a), even if Debtor’s correct middle name is Alan, not Allan. A filing against “Joseph A. Jones” or “Joseph Jones” would not “provide the name of the individual which is indicated” on the debtor’s driver’s license. However, these filings might be sufficient if Alternative A is in effect in Illinois and Jones has no current (i.e., unexpired) Illinois driver’s license, or if Illinois has enacted Alternative B. Determining the name that should be provided on the financing statement must not be done mechanically. The order in which the

components of an individual's name appear on a driver's license differs among the States. Had the debtor in Example 1 obtained a driver's license from a different State, the license might have indicated the name as "Jones Joseph Allan." Regardless of the order on the driver's license, the debtor's surname must be provided in the part of the financing statement designated for the surname. Alternatives A and B both refer to a license issued by "this State." Perfection of a security interest by filing ordinarily is determined by the law of the jurisdiction in which the debtor is located. See Section 9-301(1). (Exceptions to the general rule are found in Section 9-301(3) and (4), concerning fixture filings, timber to be cut, and as-extracted collateral.) A debtor who is an individual ordinarily is located at the individual's principal residence. See Section 9-307(b). (An exception appears in Section 9-307(c).) Thus, a given State's Section 9-503 ordinarily will apply during any period when the debtor's principal residence is located in that State, even if during that time the debtor holds or acquires a driver's license from another State. When a debtor's principal residence changes, the location of the debtor under Section 9-307 also changes and perfection by filing ordinarily will be governed by the law of the debtor's new location. As a consequence of the application of that jurisdiction's Section 9-316, a security interest that is perfected by filing under the law of the debtor's former location will remain perfected for four months after the relocation, and thereafter if the secured party perfects under the law of the debtor's new location. Likewise, a financing statement filed in the former location may be effective to perfect a security interest that attaches after the debtor relocates. See Section 9-316(h).

Individual name of the debtor. Article 9 does not determine the "individual name" of a debtor. Nor does it determine which element or elements in a debtor's name constitute the surname. In some cases, determining the "individual name" of a debtor may be difficult, as may determining the debtor's surname. This is because in the case of individuals, unlike registered organizations, there is no public organic record to which reference can be made and from which the name and its components can be definitively determined. Names can take many forms in the United States. For example, whereas a surname is often colloquially referred to as a "last name," the sequence in which the elements of a name are presented is not determinative. In some cultures, the surname appears first, while in others it may appear in a location that is neither first nor last. In addition, some surnames are composed of multiple elements that, taken together, constitute a single surname. These elements may or may not be separated by a space or connected by a hyphen, "i," or "y." In other instances, some or all of the same elements may not be part of the surname. In some cases, a debtor's entire name might be composed of only a single element, which should be provided in the part of the financing statement designated for the surname. In disputes as to whether a financing statement sufficiently provides the "individual name" of a debtor, a court should refer to any non-UCC law concerning names. However, case law about names may have developed in contexts that implicate policies different from those of Article 9. A court considering an individual's name for purposes of determining the sufficiency of a financing statement is not necessarily bound by cases that were decided in other contexts and for other purposes. Individuals are asked to provide their names on official documents such as tax returns and bankruptcy petitions. An individual may provide a particular name on an official document in response to instructions relating to the document rather than because the name is actually the individual's name. Accordingly, a court should not assume that the name an individual provides on an official document necessarily constitutes the "individual name" for purposes of the sufficiency of the debtor's name on a financing statement. Likewise, a court should not assume that the name as presented on an individual's birth certificate is necessarily the individual's current name. In applying non-UCC law for purposes of determining the sufficiency of a debtor's name on a financing statement, a court should give effect to the instruction in Section 1-103(a)(1) that the UCC "must be liberally construed and applied to promote its underlying purposes and policies," which include simplifying and clarifying the law governing commercial transactions.

Thus, determination of a debtor's name in the context of the Article 9 filing system must take into account the needs of both filers and searchers. Filers need a simple and predictable system in which they can have a reasonable degree of confidence that, without undue burden, they can determine a name that will be sufficient so as to permit their financing statements to be effective. Likewise, searchers need a simple and predictable system in which they can have a reasonable degree of confidence that, without undue burden, they will discover all financing statements pertaining to the debtor in question. The court also should take into account the purpose of the UCC to make the law uniform among the various jurisdictions. See Section 1-103(a)(3). Of course, once an individual debtor's name has been determined to be sufficient for purposes of Section 9-503, a financing statement that provides a variation of that name, such as a "nickname" that does not constitute the debtor's name, does not sufficiently provide the name of the debtor under this section. Cf. Section 9-503(c) (a financing statement providing only a debtor's trade name is not sufficient). If there is any doubt about an individual debtor's name, a secured party may choose to file one or more financing statements that provide a number of possible names for the debtor and a searcher may similarly choose to search under a number of possible names. Note that, even if the name provided in an initial financing statement is correct, the filing office nevertheless must reject the financing statement if it does not identify an individual debtor's last name surname (e.g., if it is not clear whether the debtor's name surname is Perry Mason or Mason Perry). See Section 9-516(b)(3)(C).

3. Secured Party's Name. New subsection (d) makes clear that when the secured party is a representative, a financing statement is sufficient if it names the secured party, whether or not it indicates any representative capacity. Similarly, a financing statement that names a representative of the secured party is sufficient, even if it does not indicate the representative capacity.

Example 2: Debtor creates a security interest in favor of Bank X, Bank Y, and Bank Z, but not to their representative, the collateral agent (Bank A). The collateral agent is not itself a secured party. See Section 9-102. Under Sections 9-502(a) and 9-503(d), however, a financing statement is effective if it names as secured party Bank A and not the actual secured parties, even if it omits Bank A's representative capacity. Each person whose name is provided in an initial financing statement as the name of the secured party or representative of the secured party is a secured party of record. See Section 9-511.

4. Multiple Names. Subsection (e) makes explicit what is implicit under former Article 9: a financing statement may provide the name of more than one debtor and secured party. See Section 1-102(5)(a) 1-106 (words in the singular include the plural). With respect to records relating to more than one debtor, see Section 9-520(d). With respect to financing statements providing the name of more than one secured party, see Sections 9-509(e) and 9-510(b).