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*Secretary of State*

2010 Amendments to UCC Article 9

▪ Enacted in 26 states (17 states this year)

○ **Enacted in:**

- Colorado
- Florida
- Hawaii
- Idaho
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maryland

- Michigan
- New Hampshire
- North Carolina
- Ohio
- Oregon
- Puerto Rico
- South Dakota
- Tennessee
- Virginia
- West Virginia

- Wisconsin

○ **Introduced**

- Alabama
- District of Columbia
- Illinois
- Massachusetts
- New Mexico
- Oklahoma
- Pennsylvania

See [www.uniformlaws.org/Act.aspx?title=UCC%20Article%209%20Amendments%20\(2010\)](http://www.uniformlaws.org/Act.aspx?title=UCC%20Article%209%20Amendments%20(2010))

- Changes mainly respond to perfection issues regarding any property acquired by a debtor after he moves to a new jurisdiction and filing issues relating to the sufficiency of a debtor's name as required on a financing statement.
- The existing version of § 9-316(a)(2) gives secured creditors—in most cases—four months to re-file without any loss of perfection when a debtor moves to a new jurisdiction. The amendments add two new subsections ((h) and (i)) that change this by giving the secured party temporary perfection in any after-acquired property for four months.
- Because there have been at least a dozen court decisions dealing with the question of what name needs to be provided on a financing statement for an individual debtor, the amendments provide greater guidance by providing two alternatives. For business entities and other registered organizations, the amendments clarify the proper name to be filed for perfection purposes is the name filed on the entity's "public organic record"—a new definition created to clarify which records should be used to verify the name of a debtor that is an entity.
- A number of additional technical amendments are included. For example, some extraneous information currently provided on financing statements will no longer be required, and current financing and amendment forms are revised.
- The amendments also authorize the secured party of record to file a correction statement—now called an "information statement." The existing version only authorized a debtor to file a correction statement when it believed a financing statement against it was unauthorized.



## UCC Article 9 Amendments (2010) Summary

Article 9 provides the rules governing any transaction (other than a finance lease) that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the property (generally called collateral) to satisfy the debt. The creditor's interest is called a "security interest." Article 9 also covers certain kinds of sales that look like a grant of a security interest.

Article 9 was substantially revised in 1998, and the 1998 revisions are in effect in all states and the District of Columbia. The 2010 amendments to Article 9 modify the existing statute to respond to filing issues and address other matters that have arisen in practice following over a decade of experience with the revised Article 9.

Of most importance, the 2010 amendments provide greater guidance as to the name of a debtor to be provided on a financing statement. For business entities and other registered organizations, the amendments clarify that the proper name for perfection purposes is the name filed with the state and provided on the organization's charter or other constitutive documents, to the extent there is a conflict with the name on an entity database. More importantly, the 2010 Amendments provide significantly greater clarity as to the name of an individual debtor to be provided on a financing statement.

Since the adoption of the 1998 revision of Article 9, there have been at least a dozen court decisions dealing with the question of what name needs to be provided on a financing statement for an individual debtor. Several states have adopted non-uniform amendments to Article 9 to address this issue. The 2010 Amendments to Article 9 give greater guidance by providing states with two alternatives.

- Alternative A, known as the "only-if" rule, requires a filer to provide on the financing statement the name on the debtor's driver's license, if the license has not on its face expired. If the debtor does not have a driver's license, the filer must use either the individual name of the debtor (i.e., whatever the debtor's name is under current law) or the debtor's surname and first personal name. A state considering adopting Alternative A should in particular consider whether the state's driver's license database is compatible with its Uniform Commercial Code database as to characters, field length and the like.

- Alternative B, known as the "safe harbor" rule, leaves intact the requirement that the financing statement use the debtor's "individual name," but provides that the name on the driver's license will also be sufficient as well as the debtor's surname and first personal name.

If a state issues from the same office a non-driver's identification card, and it is not possible for the same individual to hold both a driver's license and a non-driver's identification card, the name provided on the non-driver's identification card may be used with the same effect as a driver's license name under either alternative.

A number of related changes were also made – for example the 2010 amendments make it clear that a change in the name used on a debtor's driver's license or the expiration of the driver's license may qualify as a name change for purposes of 9-507

(c). With respect to trusts, if collateral is held by a statutory trust or in Massachusetts type business trust, the trust is a registered organization and the trust's name is the debtor name. For common law trusts that are not Massachusetts type business trusts, the financing statement must provide the name of the trust as identified in the trust's organic records if it has name indicated there, or otherwise the name of the settlor or testator and sufficient additional information to distinguish a

particular trust from others held by that same settlor or testator.

The Amendments also deal with perfection issues arising on after-acquired property when a debtor (individual or organization) moves to a new jurisdiction. Article 9 currently provides that perfection by filing continues for four months after the jurisdiction in which the debtor is located changes. However, this temporary period of perfection applies only with respect to collateral owned by the debtor at the time of the change. Even if the security interest attaches to after-acquired collateral, there is currently no perfection with respect to such new collateral unless and until the secured party perfects pursuant to the law of the new jurisdiction. The amendments change this by giving the filer perfection for four months in collateral acquired post-move. A similar change is made with respect to a new debtor that is a successor by merger. The new rule provides for temporary perfection in collateral owned by the successor before the merger or collateral acquired by the successor within four months after the merger.

Existing Section 9-518 authorizes the debtor to file a correction statement: a claim that a financing statement filed against it was in fact unauthorized. While this filing has no legal effect on the underlying claim, it does put in the public record the debtor's claim that the financing statement was wrongfully filed. The amendments change section 9-518 in two ways. First, the filing is no longer called a "correction statement," but is instead referred to as an "information statement." Second, the amendments authorize the secured party of record to also file an information statement if the secured party believes that an amendment to its financing statement was not authorized. The change addresses concerns of secured parties that an amendment to a different financing statement may be inadvertently filed on the secured party's financing statement because the amendment contains an error when referring to the file number of the financing statement to be amended. The comments also make clear that the secured party has no duty to file an information statement, even if it knows of the unauthorized filing.

A number of additional technical amendments are also included in this package. For example, some extraneous information currently provided on financing statements will no longer be required. A safe harbor for the transfer of chattel paper in conformance with the Uniform Electronic Transactions Act is included in the amendments, and the amendments make it clear that the broader override contractual restrictions found in Section 9-406(d) applies with respect to enforcement of a security interest through the sale or strict foreclosure of payment intangibles and promissory notes. Clarification is given with respect to certificates of title for title goods where the certificates of title are, in whole or in part, in electronic form, and greater guidance is given with respect to the notice requirements applicable to electronic dispositions of collateral (specifically, time and "electronic location" of online auctions) when a security interest is enforced by sale or other disposition of the collateral.

The amendments are accompanied by changes to the official comments to Article 9 to explain the amendments and also provide some additional clarifications in the official comments.

The amendments are slated to have a uniform effective date of July 1, 2013, so as to allow states to adopt the amendments uniformly and have them become operative simultaneously (thereby avoiding unnecessary conflicts and confusion with respect to interstate transactions). All states are urged to adopt the 2010 Amendments to Article 9 of the Uniform Commercial Code as quickly as possible.

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## Why States Should Adopt 2010 Amendments to UCC Article 9

Article 9 of the Uniform Commercial Code governs secured transactions in personal property. Article 9 was substantially revised in 1998, and the 1998 revisions are in effect in all states and the District of Columbia. The **2010 amendments to Article 9** modify the existing statute to respond to filing issues and address other matters that have arisen in practice following a decade of experience with the revised Article 9.

Of most importance, the amendments provide greater guidance as to the name of an individual debtor to be provided on a financing statement. The amendments offer two alternatives to each state:

- Alternative A provides that, if the debtor holds a driver's license issued by the state where the financing statement is filed, the debtor's name as it appears on the driver's license is the name required to be used on the financing statement. If the debtor does not have such a driver's license, either the debtor's actual name or the debtor's surname and first personal name may be used on the financing statement.
- Alternative B provides that the debtor's driver's license name, the debtor's actual name or the debtor's surname and first personal name may be used on the financing statement.

A state considering adopting Alternative A should in particular consider whether the state's driver's license database is compatible with its Uniform Commercial Code database as to characters, field length and the like.

The amendments further improve the filing system for the filing of financing statements. More detailed guidance is provided for the debtor's name on a financing statement when the debtor is a corporation, limited liability company or limited partnership or when the collateral is held in a statutory or common law trust or in a decedent's estate. Some extraneous information currently provided on financing statements will no longer be required.

In addition, the amendments provide greater protection for an existing secured party having a security interest in after-acquired property when its debtor relocates to another state or merges with another entity.

The amendments also contain a number of technical changes that respond to issues arising in the marketplace and a set of transition rules.

A state should adopt the 2010 amendments so that its Article 9 rules will benefit from the experience with the existing statute and are up to date.

AN ACT TO CONFORM TO CERTAIN CHANGES TO THE MODEL ACT FOR THE UNIFORM COMMERCIAL CODE; TO AMEND SECTION . . . .

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**Section 1. SECTION 75-9-101. Short title.** This article may be cited as Uniform Commercial Code - Secured Transactions.

**SECTION 75-9-102. Definitions and index of definitions.**

(a) In this article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five (35) days earlier or thirty-five (35) days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) ~~To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record~~  
With present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security

interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual and the claim:

(i) Arose in the course of the claimant's business or profession; and

(ii) Does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is One Thousand Dollars (\$1,000.00) or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and



(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family, or household purposes; and

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in Section 75-7-201(b).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to Section 75-9-519(a).

(37) "Filing office" means an office designated in Section 75-9-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to Section 75-9-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying Section 75-9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) ~~[Reserved]~~ "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, (v) farm-raised fish produced in fresh water according to the usual and customary techniques of commercial agriculture, (vi) manufactured homes and (vii) marine vessels (herein defined as every type of watercraft used, or capable of being used, as a means of transportation on water) including both marine vessels under construction, including engines and all items of equipment installed or to be installed therein, whether such vessels are being constructed by the shipbuilder for his own use or for sale (said vessels under construction being classified as inventory within the meaning of Section 75-9-102(48)), and marine vessels after completion of construction so long as such vessels have not become "vessels of the United States" within the meaning of the Ship Mortgage Act of 1920, 46 USCS, Section 911(4), as same is now written or may hereafter be amended (said completed vessels being classified as equipment within the meaning of Section 75-9-102(33)). The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one or more

sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation. "Mortgage" shall mean and include a deed of trust.

(56) "New debtor" means a person that becomes bound as debtor under Section 75-9-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor," except as used in Section 75-9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under Section 75-9-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

(A) The spouse of the individual;

(B) A brother, brother-in-law, sister, or sister-in-law of the individual;

(C) An ancestor or lineal descendant of the individual or the individual's spouse; or

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);

(D) The spouse of an individual described in subparagraph (A), (B), or (C); or

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds," except as used in Section 75-9-609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(64A) "Production-money crops" means crops that secure a production-money obligation incurred with respect to the production of those crops.

(64B) "Production-money obligation" means an obligation of an obligor

incurred for new value given to enable the debtor to produce crops if the value is in fact used for the production of the crops.

(64C) "Production of crops" includes tilling and otherwise preparing land for growing, planting, cultivating, fertilizing, irrigating, harvesting and gathering crops, and protecting them from damage or disease.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 75-9-620, 75-9-621, and 75-9-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Public organic record" means a record that is available to the public for inspection and is:

(A) A record consisting of the record initially filed with or issued by a State or the United States to form or organize an organization and any record filed with or issued by the State or the United States which amends or restates the initial record;

(B) An organic record of a business trust consisting of the record initially filed with a State and any record filed with the State which amends or restates the initial record, if a statute of the State governing business trusts requires that the record be filed with the State; or

(C) A record consisting of legislation enacted by the legislature of a State or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the State or United States which amends or restates the name of the organization.

(b) The following definitions in other articles apply to this article:

"Applicant"	Section 75-5-102
"Beneficiary"	Section 75-5-102

"Broker"	Section 75-8-102
"Certificated security"	Section 75-8-102
"Check"	Section 75-3-104
"Clearing corporation"	Section 75-8-102
"Contract for sale"	Section 75-2-106
"Control"	Section 75-7-106
"Customer"	Section 75-4-104
"Entitlement holder"	Section 75-8-102
"Financial asset"	Section 75-8-102
"Holder in due course"	Section 75-3-302
"Issuer" (with respect to a letter of credit or letter-of-credit right)	Section 75-5-102
"Issuer" (with respect to a security)	Section 75-8-201
"Issuer" (with respect to documents of title)	Section 75-7-102
"Lease"	Section 75-2A-103
"Lease agreement"	Section 75-2A-103
"Lease contract"	Section 75-2A-103
"Leasehold interest"	Section 75-2A-103
"Lessee"	Section 75-2A-103
"Lessee in ordinary course of business"	Section 75-2A-103
"Lessor"	Section 75-2A-103
"Lessor's residual interest"	Section 75-2A-103
"Letter of credit"	Section 75-5-102
"Merchant"	Section 75-2-104
"Negotiable instrument"	Section 75-3-104
"Nominated person"	Section 75-5-102
"Note"	Section 75-3-104
"Proceeds of a letter of credit"	Section 75-5-114
"Prove"	Section 75-3-103
"Sale"	Section 75-2-106
"Securities account"	Section 75-8-501
"Securities intermediary"	Section 75-8-102
"Security"	Section 75-8-102
"Security certificate"	Section 75-8-102
"Security entitlement"	Section 75-8-102
"Uncertificated security"	Section 75-8-102

(c) Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

#### **§ 75-9-105. Control of electronic chattel paper**

(a) A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interest in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) A system satisfies subsection (a), if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:



- (1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
- (2) The authoritative copy identifies the secured party as the assignee of the record or records;
- (3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;
- (4) Copies or ~~revisions~~ amendments that add or change an identified assignee of the authoritative copy can be made only with the participation consent of the secured party;
- (5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (6) Any ~~revision~~ amendment of the authoritative copy is readily identifiable as an authorized or unauthorized ~~revision~~.

#### **§ 75-9-307. Location of debtor**

(a) In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one (1) place of business is located at its place of business.

(3) A debtor that is an organization and has more than one (1) place of business is located at its chief executive office.

(c) Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) A registered organization that is organized under the law of a state is located in that state.

(f) Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or

(3) In the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one (1) state.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this part.

**§ 75-9-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties**

(a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 75-9-310(a);

(2) Sections 63-21-1 through 63-21-77 (the Mississippi Motor Vehicle and Manufactured Housing Title Law) or a certificate of title issued pursuant to Sections 59-25-1 through 59-25-17 (Certificates of Title for Boats and Other Vessels); or

(3) A ~~certificate of title~~ statute of another jurisdiction which provides for a security interest to be indicated on ~~the~~ a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and Sections 75-9-313 and 75-9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) and Section 75-9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

**§ 75-9-316. Continued perfection of security interest following Effect of change in governing law**

(a) A security interest perfected pursuant to the law of the jurisdiction designated in Section 75-9-301(1) or 75-9-305(c) remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four (4) months after a change of the debtor's location to another jurisdiction; or

(3) The expiration of one (1) year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one (1) jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) Thereafter the collateral is brought into another jurisdiction; and

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under Section 75-9-311(b) or 75-9-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) The expiration of four (4) months after the goods had become so covered.

(f) A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four (4) months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in Section 75-9-301(1) or 75-9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral if the debtor had not changed its location.

(2) If a security interest that is perfected by a financing statement that is effective under paragraph (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 75-9-301(1) or 75-9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in Section 75-9-301(1) or 75-9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 75-9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 75-9-301(1) or 75-9-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

**§ 75-9-317. Interests that take priority over or take free of security interest or agricultural lien**

(a) A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under Section 75-9-322; and

(2) Except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) One (1) of the conditions specified in Section 75-9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a ~~security certificate~~ certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of ~~accounts, electronic chattel paper, electronic documents, general intangibles, or investment property collateral~~ other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in Sections 75-9-320 and 75-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (20) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

**§ 75-9-326. Priority of security interests created by new debtor**

(a) Subject to subsection (b), a security interest that is created by a new debtor which is in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that is effective solely under Section 75-9-508 in collateral in which a new debtor has or acquires rights would be ineffective to perfect the security interest but for the application of Section 75-9-316(i)(1) or 75-9-508 is subordinate to a security interest in the same collateral which is

perfected other than by such a filed financing statement that is effective solely under Section 75-9-508.

(b) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under Section 75-9-508 described in subsection (a). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

**§ 75-9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective**

(a) Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subsection (h), notification is ineffective under subsection (a):

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Except as otherwise provided in subsection (e) and Sections 75-2A-303 and 75-9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under Section 75-9-610 or an acceptance of collateral under Section 75-9-620.

(f) Except as otherwise provided in Sections 75-2A-303 and 75-9-407 and subject to subsections (h) and (i), a rule of law, statute or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health-care-insurance receivable.

(j) This section prevails over any inconsistent provision of an existing



or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section, and states that the provision prevails over this section.

**§ 75-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective**

(a) Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under section 75-9-610 or an acceptance of collateral under Section 75-9-620.

(c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-

insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) This section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section, and states that the provision prevails over this section.

**§ 75-9-502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement**

(a) Subject to subsection (b), a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) Provides the name of the secured party or a representative of the secured party; and

(3) Indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in Section 75-9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be

cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

- (1) Indicate that it covers this type of collateral;
- (2) Indicate that it is to be filed for record in the real property records;
- (3) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and
- (4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

- (1) The record indicates the goods or accounts that it covers;
- (2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
- (3) The record satisfies the requirements for a financing statement in this section, but:

(A) The record need not indicate ~~other than an indication~~ that it is to be filed in the real property records; and

(B) the record sufficiently provides the name of the debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom Section 75-9-503(a)(4) applies; and

- (4) The record is duly recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

### **§ 75-9-503. Name of debtor and secured party**

(a) 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 so 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) 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) 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 debtor.

**[End of Alternatives]**

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

(d) 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) A financing statement may provide the name of more than one (1) debtor and the name of more than one (1) secured party.

(f) 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) 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) 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 the subsection (a)(4)(C) refers.

**[End of Alternatives]**

(h) 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 stat, 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.

**§ 75-9-507. Effect of certain events on effectiveness of financing statement**

(a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subsection (c) and Section 75-9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under Section 75-9-506.

~~(c) If a debtor so changes it's the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under Section 75-9-503(a) so that the financing statement becomes seriously misleading under Section 75-9-506:~~

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four (4) months after, the ~~change~~ change filed financing statement becomes seriously misleading; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the ~~change~~ change filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four (4) months after ~~the change~~ the financing statement became seriously misleading.

**§ 75-9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement**

(a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five (5) years after the date of filing.

(b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of thirty (30) years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within six (6) months before the expiration of the five-year period specified in subsection (a) or the thirty-year period specified in subsection (b), whichever is applicable.

(e) Except as otherwise provided in Section 75-9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five (5) years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the

financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under Section 75-9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

#### **§ 75-9-516. What constitutes filing; effectiveness of filing**

(a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;

(B) In the case of an amendment or ~~correction~~-information statement, the record:

(i) Does not identify the initial financing statement as required by Section 75-9-512 or 75-9-518, as applicable; or

(ii) Identifies an initial financing statement whose effectiveness has lapsed under Section 75-9-515;

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's ~~last name~~-surname; or



(D) In the case of a record filed, ~~or filed for record,~~ or recorded in the filing office described in Section 75-9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor; or

(B) Indicate whether the name provided as the name of the debtor is the name of an individual or an organization; ~~or~~

~~(C) If the financing statement indicates that the debtor is an organization, provide:~~

~~(i) A type of organization for the debtor;~~

~~(ii) A jurisdiction of organization for the debtor; or~~

~~(iii) An organizational identification number for the debtor or indicate that the debtor has none;~~

(6) In the case of an assignment reflected in an initial financing statement under Section 75-9-514(a) or an amendment filed under Section 75-9-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by Section 75-9-515(d).

(c) For purposes of subsection (b):

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by Section 75-9-512, 75-9-514 or 75-9-518, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

**§ 75-9-518. Claim concerning inaccurate or wrongfully filed record**

(a) A person may file in the filing office ~~a correction~~ an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

**[Alternative A]**

(b) ~~A correction~~ An information statement under subsection (a) must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is ~~a correction~~ an information statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

**[Alternative B]**

(b) ~~A correction~~ An information statement under subsection (a) must:

(1) Identify the record to which it relates by:

(A) The file number assigned to the initial financing statement to which the record relates; and

(B) If the ~~correction~~ information statement relates to a record filed or recorded in a filing office described in Section 75-9-501(a)(1), the date that the initial financing statement was filed for record and the information specified in Section 75-9-502(b);

(2) Indicate that it is ~~a correction~~ an information statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the persons' belief that the record was wrongfully filed.

**[End of Alternatives]**

(c) A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under Section 75-9-509(d).

**[Alternative A]**

(d) An information statement under subsection (c) must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person's belief that the person that filed the record was not entitled to do so under Section 75-9-509(d).

**[Alternative B]**

(d) An information statement under subsection (c) must:

(1) Identify the record to which it relates by:

(A) The file number assigned to the initial financing statement to which the record relates; and

(B) If the information statement relates to a record filed [or recorded] in a filing office described in Section 75-9-501(a)(1), the date [and time] that the initial financing statement was filed [or recorded] and the information specified in Section 9-502(b);

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person's belief that the person that filed the record was not entitled to do so under Section 75-9-509(d).

**[End of Alternatives]**

~~(e)~~(e) The filing of ~~a correction~~ an information statement does not affect the effectiveness of an initial financing statement or other filed record.

**§ 75-9-521. Uniform form of written financing statement and amendment**

(a) A filing office that accepts written records may not refuse to accept a written initial financing statement ~~in the form and format set forth in the final official text of the 1999 revisions to Article 9 of the Uniform Commercial Code promulgated by The American Law Institute and the National Conference of Commissioners on Uniform State Laws,~~ in the following form and format except for a reason set forth in Section 75-9-516(b).

A. NAME & PHONE OF CONTACT AT FILER (optional)

\_\_\_\_\_

B. E-MAIL CONTACT AT FILER (optional)

\_\_\_\_\_

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

\_\_\_\_\_

THE ABOVE SPACE IS FOR  
FILING OFFICE USE ONLY

1. DEBTOR'S NAME - provide only one Debtor's name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

1a. ORGANIZATION'S NAME

\_\_\_\_\_

OR

1b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

\_\_\_\_\_

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

\_\_\_\_\_

1c. MAILING ADDRESS

\_\_\_\_\_

CITY STATE POSTAL CODE COUNTRY

\_\_\_\_\_

2. DEBTOR'S NAME - (provide only one Debtor name (2a or 2b)(use exact, full name, do not omit, modify, or abbreviate any word in the debtor's name)

2a. ORGANIZATION'S NAME

\_\_\_\_\_

OR

2b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

\_\_\_\_\_

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

\_\_\_\_\_

2c. MAILING ADDRESS

\_\_\_\_\_

CITY STATE POSTAL CODE COUNTRY

\_\_\_\_\_

4. COLATERAL: This financing statement covers the following collateral:

\_\_\_\_\_

5. Check only if applicable and check one box:

Collateral is ☐ held in Trust (see Instructions)

☐ being administered by a Decedent's Personal Representative.

6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction

☐ A Debtor is Transmitting Utility

6b. Check only if applicable and check only one box

☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor

☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licenser

8. OPTIONAL FILER REFERENCE DATA

-----

9. NAME OF FIRST DEBTOR (same as item 1a or 1b on Financing Statement)

9a. ORGANIZATION'S NAME

-----

OR

9B. INDIVIDUAL'S SURNAME

-----

FIRST PERSONAL NAME

-----

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

-----

-----

THE ABOVE SPACE FOR FILING

OFFICE USE ONLY

10. ADDITIONAL DEBTOR'S NAME - provide only one Debtor name (10a or 10b)(use exact, full name; do not omit, modify, or abbreviate any words in the Debtor's name)

10a. ORGANIZATION'S NAME

-----

OR

10b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

-----

-----

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR

SUFFIX

-----

-----

10c. MAILING ADDRESS

-----

CITY

STATE

POSTAL CODE

COUNTRY

-----

-----

-----

-----

11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME - provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

-----

OR

11b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

-----

-----

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

-----

-----

11c. MAILING ADDRESS

-----

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral)

-----

13. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:

☐ Covers timber to be cut ☐ covers as-extracted collateral

☐ Is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

\_\_\_\_\_

16. Description of real estate:

\_\_\_\_\_

17. MISCELLANEOUS:

\_\_\_\_\_

[UCC FINANCING STATEMENT ADDENDUM (form UCC1 Ad)]

(b) A filing office that accepts written records may not refuse to accept a written record ~~in the form and format set forth in the final official text of the 1999 revisions to Article 9 of the Uniform Commercial Code promulgated by The American Law Institute and the National Conference of Commissioners on Uniform State Laws,~~ in the following form and format except for a reason set forth in Section 75-9-516(b).

A. NAME & PHONE OF CONTACT AT FILER (optional)

\_\_\_\_\_

B. E-MAIL CONTACT AT FILER (optional)

\_\_\_\_\_

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

\_\_\_\_\_

THE ABOVE SPACE IS FOR  
FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER

\_\_\_\_\_

1b. ☐ This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS.

Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13.

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ☐ ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9. For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. PARTY INFORMATION CHANGE:

Check one of these two boxes:

This Change affects ☐ Debtor or ☐ Secured Party of record.

AND

Check one of these three boxes to:

☐ CHANGE name and/or address: Complete item 6a or 6b, and item 7a or 7b and item 7c.

☐ ADD name: Complete item 7a or 7b, and item 7c.

☐ DELETE name: Give record name to be deleted in item 6a or 6b.

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)(use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

6a. ORGANIZATION'S NAME

\_\_\_\_\_

OR

6b.        INDIVIDUAL'S SURNAME                      FIRST PERSONAL NAME

\_\_\_\_\_  
ADDITIONAL NAME(S)/INITIAL(S)

\_\_\_\_\_  
SUFFIX

7.        CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b)(use exact full name; do not omit, modify, or abbreviate any word in the Debtor's name)

7a.        ORGANIZATION'S NAME

OR

7b.        INDIVIDUAL'S SURNAME                      FIRST PERSONAL NAME

\_\_\_\_\_  
ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR

\_\_\_\_\_  
SUFFIX

2c.        MAILING ADDRESS

\_\_\_\_\_  
CITY

\_\_\_\_\_  
STATE

\_\_\_\_\_  
POSTAL CODE

\_\_\_\_\_  
COUNTRY

8.        ☐ COLATERAL CHANGE:

Also check one of these four boxes:

☐ ADD collateral        ☐ DELETE collateral        ☐ RESTATE covered collateral

☐ ASSIGN collateral

Indicate collateral:

9.        NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT - provide only one name (9a or 9b)(name of Assignor, if this is an Assignment)

9a.        ORGANIZATION'S NAME

OR

9B.        INDIVIDUAL'S SURNAME                      FIRST PERSONAL NAME

\_\_\_\_\_  
ADDITIONAL NAME(S)/INITIAL(S)

\_\_\_\_\_  
SUFFIX

10.        OPTIONAL FILER REFERENCE DATA

11.        INITIAL FINANCING STATEMENT FILE NUMBER (same as item 1a on Amendment form)

12.        NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a.        ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

-----  
ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR

SUFFIX  
-----

THE ABOVE SPACE IS FOR  
FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction for item 13 - insert only one Debtor name (13a or 13b)(use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

13a. ORGANIZATION'S NAME  
-----

OR

13b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

-----  
ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX  
-----

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral)  
-----

15. This FINANCING STATEMENT AMENDMENT: ☐ covers timber to be cut

☐ covers as-extracted collateral ☐ is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):  
-----

17. Description of real estate  
-----

18. MISCELLANEOUS:  
-----

[UCC FINANCING STATEMENT AMENDMENT ADDENDUM (form UCC3Ad)]

## § 75-9-607. Collection and enforcement by secured party

(a) If so agreed, and in any event after default, a secured party:

(1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) May take any proceeds to which the secured party is entitled under Section 75-9-315;

(3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on



collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) If it holds a security interest in a deposit account perfected by control under Section 75-9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control under Section 75-9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) The secured party's sworn affidavit in recordable form stating that:

(A) A default has occurred with respect to the obligation secured by the mortgage; and

(B) The secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

#### **Section 75-9-801. Effective Date.**

This [Act] takes effect on July 1, 2013.

#### **Section 75-9-802. Savings Clause.**

(a) Except as otherwise provided in this part, this [Act] applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this [Act] takes effect.

(b) This [Act] does not affect an action, case, or proceeding commenced before this [Act] takes effect.

**Section 75-9-803. Security Interest Perfected Before Effective Date.**

(a) A security interest that is a perfected security interest immediately before this [Act] takes effect is a perfected security interest under [Article 9 as amended by this [Act]] if, when this [Act] takes effect, the applicable requirements for attachment and perfection under [Article 9 as amended by this [Act]] are satisfied without further action.

(b) Except as otherwise provided in Section 75-9-805, if, immediately before this [Act] takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under [Article 9 as amended by this [Act]] are not satisfied when this [Act] takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under [Article 9 as amended by this [Act]] are satisfied within one year after this [Act] takes effect.

**Section 75-9-804. Security Interest Unperfected Before Effective Date.**

A security interest that is an unperfected security interest immediately before this [Act] takes effect becomes a perfected security interest:

(1) Without further action, when this [Act] takes effect if the applicable requirements for perfection under [Article 9 as amended by this [Act]] are satisfied before or at that time; or

(2) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

**Section 9-805. Effectiveness of Action Taken Before Effective Date.**

(a) The filing of a financing statement before this [Act] takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under [Article 9 as amended by this [Act]].

(b) This [Act] does not render ineffective an effective financing statement that, before this [Act] takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in [Article 9 as it existed before amendment]. However, except as otherwise provided in subsections (c) and (d) and Section 75-9-806, the financing statement ceases to be effective:

(1) If the financing statement is filed in this State, at the time the financing statement would have ceased to be effective had this [Act] not taken effect; or

(2) If the financing statement is filed in another jurisdiction, at the earlier of:

(A) The time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) The filing of a continuation statement after this [Act] takes effect does not continue the effectiveness of the financing statement filed before this [Act] takes effect. However, upon the timely filing of a continuation statement after this [Act] takes effect and in accordance with the law of the jurisdiction governing perfection as provided in [Article 9 as amended by this [Act]], the effectiveness of a financing statement filed in the same office in that jurisdiction before this [Act] takes effect continues for the period provided by the law of that jurisdiction.

(d) Subsection (b)(2)(B) applies to a financing statement that, before this [Act] takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in [Article 9 as it existed before amendment], only to the extent that [Article 9 as amended by this [Act]] provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) A financing statement that includes a financing statement filed before this [Act] takes effect and a continuation statement filed after this [Act] takes effect is effective only to the extent that it satisfies the requirements of [Part 5 as amended by this [Act]] for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of Section 75-9-503(a)(2) as amended by this [Act]. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of Section 75-9-503(a)(3) as amended by this [Act].

**Section 75-9-806. When Initial Financing Statement Suffices to Continue Effectiveness of Financing Statement.**

(a) The filing of an initial financing statement in the office specified in Section 75-9-501 continues the effectiveness of a financing statement filed before this [Act] takes effect if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under [Article 9 as amended by this [Act]];

(2) The pre-effective-date financing statement was filed in an office in another State; and

(3) The initial financing statement satisfies subsection (c).

(b) The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

(1) If the initial financing statement is filed before this [Act] takes effect, for the period provided in [unamended Section 75-9-515] with respect to an initial financing statement; and

(2) If the initial financing statement is filed after this [Act] takes effect, for the period provided in Section 75-9-515 as amended by this [Act] with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a), an initial financing statement must:

(1) Satisfy the requirements of [Part 5 as amended by this [Act]] for an initial financing statement;

(2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the pre-effective-date financing statement remains effective.

#### **Section 75-9-807. Amendment of Pre-Effective-Date Financing Statement**

(a) In this section, "pre-effective-date financing statement" means a financing statement filed before this [Act] takes effect.

(b) After this [Act] takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in [Article 9 as amended by this [Act]]. However, the effectiveness of a pre-effective date financing statement may also be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d), if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this [Act] takes effect only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in Section 75-9-501;

(2) An amendment is filed in the office specified in Section 75-9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Section 75-9-806(c); or

(3) An initial financing statement that provides the information as amended and satisfies Section 75-9-806(c) is filed in the office specified in Section 75-9-501.

(d) If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Section 75-9-805(c) and (e) or 75-9-806.

(e) Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after this [Act] takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies Section 75-9-806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in [Article 9 as amended by this [Act]] as the office in which to file a financing statement.

**Section 75-9-808. Person Entitled to File Initial Financing Statement or Continuation Statement.**

A person may file an initial financing statement or a continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:

(A) To continue the effectiveness of a financing statement filed before this [Act] takes effect; or

(B) To perfect or continue the perfection of a security interest.

**Section 75-9-809. Priority.**

This [Act] determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this [Act] takes effect, [Article 9 as it existed before amendment] determines priority.

**\*\*AMENDMENTS TO OTHER ARTICLES\*\***

**Section 2A-103. Definitions and Index of Definitions.**

\* \* \*

(3) The following definitions in other chapters apply to this chapter:

"Account "	Section 75-9-102(a)(2)
"Between merchants "	Section 75-2-104(3)
"Buyer "	Section 75-2-103(1)(a)
"Chattel paper "	Section 75-9-102(a)(11)
"Consumer goods "	Section 75-9-102(a)(23)
"Document "	Section 75-9-102(a)(30)
"Entrusting "	Section 75-2-403(3)
"General intangible "	Section 75-9-102(a)(42)
"Instrument "	Section 75-9-102(a)(47)
"Merchant "	Section 75-2-104(1)
"Mortgage "	Section 75-9-102(a)(55)
"Pursuant to commitment "	<del>Section 75-9-102(a)(68)</del> <u>75-9-102(a)(69)</u>
"Receipt "	Section 75-2-103(1)(c)
"Sale "	Section 75-2-106(1)
"Sale on approval "	Section 75-2-326
"Sale or return "	Section 75-2-326
"Seller "	Section 75-2-103(1)(d)

\* \* \*

# STATE OF CONNECTICUT

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### REPORT OF ADVISORY COMMITTEE ON 2010 AMENDMENTS TO ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE – SECURED TRANSACTIONS

Prepared and Submitted By:

Neal Ossen and  
Thomas J. Welsh  
Co-Chairpersons

December 16, 2010

#### **A. Overview and Recommendation:**

The Connecticut Law Revision Commission at a meeting on October 26, 2010 undertook a review of the revisions to Article 9, Secured Transactions, of the Uniform Commercial Code (“UCC”) that were promulgated by the American Law Institute and the National Conference of Commissioners of Uniform State Laws in 2010.

The Commission review was conducted by a Commission Advisory Committee co-chaired by Commission members Neal Ossen and Thomas J. Welsh. The Advisory Committee included a group of advisors selected on the basis of their expertise in commercial law and transactions, real estate law and transactions and consumer matters and a representative of the Connecticut Bankers Association as well as staff members from the Office of the Secretary of the State. Mr. Richard Taff from the Office of the Legislative Commissioners provided staffing for the Advisory Committee and attended the meetings. Also a representative from the Office of Legislative Research attended these meetings and received the written materials that were distributed. A list of the advisors and staff members that attended the meetings is attached.

The Advisory Committee met on November 4, 2010, November 18, 2010, November 30, 2010 and December 16, 2010 and reviewed all of the proposed revisions and additions to UCC Article 9, as well as Connecticut statutes, common law and practice associated with each of the suggested changes. The Advisory Committee found that the suggested revisions are relatively uncontroversial corrections and refinements of UCC Article 9 – which had been extensively revised and rewritten by the 2001 amendments enacted in Connecticut by Public Act 01-132. The 2010 revisions arose as the result of a few court decisions and non-uniform amendments in a number of states, most notably regarding the issue of what constitutes the name of an individual as a debtor. Since the need for a technical revision to correct some aspects of Article 9 was

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apparent, the drafters added provisions to clarify portions of the statute that had proved problematical and to address a few court decisions in other states that had incorrectly interpreted provisions of Article 9, as well as to anticipate and prepare for future adoption of the Model Entity Transactions Act and similar laws.

In the course of their work, staff from the Office of the Legislative Commissioners prepared the attached draft adapted for enactment in Connecticut. The draft includes necessary amendments to conform the uniform text to Connecticut law and practice and to incorporate the concerns raised by the Office of the Secretary of the State. The Advisory Committee also unanimously recommended the adoption of so-called “Alternative B” in this draft relating to the name of individual debtors – which alternative adopts a ‘safe harbor’ approach making the name of an individual shown on the individual’s Connecticut motor vehicle operator’s license or identity card one of the names that would be sufficient on a financing statement, in addition to the names permitted under current law as well as the first personal name and surname of the individual. The Advisory Committee commercial law experts felt strongly that adoption of the “Alternative A” rule, making the name shown on the motor vehicle operator’s license the only permitted name, would be a major change that could cause existing financing statements for individuals to become ineffective upon any simple change in a driver’s license – also, the Office of the Secretary of the State warned that its computerized filing system and that of the Department of Motor Vehicles were entirely separate systems that might not be fully compatible at this time and either system could be changed in the future without notice to or coordination with the other office or department, so that significant expenditures of state money might have to be devoted to upgrade these systems and to coordinate them in the future if so-called “Alternative A” was adopted.

Consumer representatives on the Advisory Committee and who were consulted on the proposed changes expressed the opinion that these changes did not adversely affect consumer issues and did not alter policy decisions or compromises made when Revised Article 9 was adopted in 2001.

Because of the strong interest in uniformity in the area of commercial law, in general, and in the law of security interests in personal property that underlies most commercial finance, in particular, the Advisory Committee recommends enactment of the 2010 revisions to UCC Article 9 as set forth in the attached enactment draft.

### **B. History of Article 9 Revisions and Goals of the Review Process:**

1. History of Connecticut Adoption and Amendment of Revised Article 9: In 1998 a major revision of Article 9 of the UCC was approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute with a uniform national effective date of July 1, 2001. In Connecticut the Law Revision Commission formed a study committee on March 1, 2000 to study these revisions to Article 9. The report of the Commission to the Judiciary Committee of the General Assembly was dated December 21, 2000, with a supplementary report dated January 11, 2001. The Law Revision Commission recommended



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adoption of these revisions and provided draft text for consideration by the General Assembly. These revisions to Article 9, with minor amendments in the adoption process were enacted in Connecticut as Public Act 01-132, with an effective date of October 1, 2001.

Since the date of the original enactment of revised Article 9 in 2001 several revisions to UCC Article 9 have been adopted. In 2003, Public Act 03-62 was passed to correct a number of technical problems with the original text of Revised Article 9 adopted in Connecticut. This was an effort by practitioners (including a co-chair of this Advisory Committee), state officials and the Connecticut Bar Association to address mostly technical drafting problems found in certain Revised Article 9 provisions and in other statutes that referenced Revised Article 9. In addition, in 2004, in response to concerns by the public finance bar over potential application of Revised Article 9 to public finance transactions, the General Assembly passed revisions in a budget implementation bill, Public Act 04-2, to, among other things, provide an exception to the scope of Revised Article 9 for public finance transactions, conditioned upon the existence of other statutory provisions providing the minimum requisites for creation of such liens and their enforceability against third parties. This Act also deleted the prior option of many state authorities to ‘opt in’ to Revised Article 9.

Finally, in 2008 the National Conference of Commissioners on Uniform State Laws and the American Law Institute formed a joint study committee to review the operation of Revised Article 9 in practice. The study committee determined that there were a number of discrete issues to be addressed and a drafting committee was formed late in 2008 that addressed appropriate statutory changes. Revisions to the Official Comments to Article 9 were also drafted to provide additional guidance to judges and practitioners relating to issues where changes to the statute were not deemed advisable or warranted. The drafting committee’s revisions to the statutory text of Revised Article 9 were approved by the American Law Institute on May 17, 2010 and by the National Conference of Commissioners on Uniform State Laws during the summer of 2010 (the “2010 Uniform Official Text”).

## **2. Standards Employed in the Amendment and Connecticut Review Process:**

The Advisory Committee noted that the national drafting committee considered the following standards in making the revisions to Revised Article 9 in the 2010 Uniform Official Text:

- No changes should be made that would alter policy decisions made during the 1998 revision unless the current provisions appear to be creating significant problems in practice.
- Recommendations for statutory change should focus on issues as to which ambiguities have been discovered in existing statutory language, where there are substantial ambiguities in practice under the current provisions, or as to which there have been significant non-uniform amendments in one or more jurisdictions that suggest the need to consider revisions.

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- Issues should be handled by a revision to the Official Comments rather than to the statutory text whenever the statutory language is sufficiently clear and produces the desired result, but judicial decisions or experience in practice indicates that some clarification might be desirable.

In addition to the foregoing considerations, Co-Chair Welsh recommended that the Advisory Committee adopt the following standards for their review and for recommendations as to any deviations from the 2010 Uniform Official Text in Connecticut:

- The policy decisions made in the 2001 adoption of Revised Article 9 in Connecticut should be preserved whenever possible, unless the change is necessary to give effect to the change recommended in the 2010 Uniform Official Text and provided that any parties that were proponents for these policy decisions are advised and given the opportunity to address the proposed change.
- Changes should not be made to the 2010 Uniform Official Text unless necessary due to deviation from Connecticut law or practice, to reduce any resulting ambiguity or to preserve the policy decisions made in the 2001 adoption of Revised Article 9 in Connecticut. Adherence to the uniform text to the greatest degree possible will advance the goal of the Uniform Commercial Code in Connecticut, as noted in Conn. Gen. Stat. §42a-1-103(a)(3), to “make uniform the law among the various jurisdictions”, and thereby to permit decisions in other states relating to the uniform text to be persuasive authority to be cited to courts in the State of Connecticut.

In general, the Advisory Committee review and discussion employed the above standards and revised the text in the accompanying enactment draft as little as possible from that of the 2010 Uniform Official Text.

**C. Significant Specific Issues and Alternatives Addressed:** The following were the most significant issues addressed in the review and revision of the 2010 amendments to UCC Article 9. (Additionally there are a number of revisions not discussed below, as the Advisory Committee considers them to be technical, noncontroversial and mostly conforming changes.)

1. Alternatives for Names of Individual Debtors: The single most significant decision to be made relating to alternatives set forth in the 2010 Uniform Official Text is to determine which alternative to adopt relating to the name to be specified on a financing statement for a debtor that is an individual (a natural person). This change resulted from a number of cases that had been reported relating to uncertainty of courts as to exactly what was the name of an individual for purposes of Revised Article 9 and non-uniform amendments made by certain states, most notably Texas and Nebraska, making the name shown on the driver’s license (or other state-issued identification card) the sole permitted name for use on a financing statement for an individual debtor. The 2010 Uniform Official Text provided two alternatives to allow each state to determine whether to adopt the driver’s license name ‘only’ (mandatory) model or the driver’s license name ‘safe harbor’ model. Specifically, “Alternative A” in the 2010 Uniform Official Text makes the name shown on an individual’s unexpired driver’s license

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(or state-issued identification card) the sole name permitted on a financing statement to perfect a security interest relating to that individual or the first personal name and surname of an individual without a current driver's license or state identification card. "Alternative B", on the other hand, makes the name of an individual shown on the driver's license or state identification card one of the permitted names, in addition to the first personal name and surname of the individual and/or the actual name of the individual as determined under state law.

An American Bankers Association working group has expressed a preference for "Alternative A," although it appears that secured creditors generally are of the view that adoption of either "Alternative A" or "Alternative B" would be an improvement over the individual debtor's name provisions in existing Revised Article 9. Additionally, drafters of the 2010 Uniform Official Text have noted that "Alternative A" is not feasible if a significant number of names reflected on drivers' licenses issued by a given state cannot be entered into that state's Uniform Commercial Code database, whether due to character set or field size discrepancies or other technical reasons.

After considerable discussion and research the members of the Advisory Committee strongly recommended the adoption by the State of Connecticut of "Alternative B", the 'safe-harbor' model, for the following reasons:

- The requirement that the name of an individual on a financing statement be limited to the name shown on the motor vehicle operator's license or state-issued identification card is a major change from current law that could have the effect of invalidating existing financing statements over relatively minor omissions or additions, such as the omission or addition of a middle initial or a middle name.
- Under 'Alternative A' any change in a name on a motor vehicle operator's license after it is issued or upon renewal (as well as expiration or nonrenewal of an operator's license) could constitute a change in the name of the debtor under Conn. Gen' Stat. §42a-9-507(c), which in turn could render the financing statement ineffective for collateral acquired more than four months after the change unless a correcting amendment is filed. This would be particularly important in cases where an individual was operating a business as a proprietorship or in a general partnership.
- The Office of the Secretary of the State advised the Advisory Committee that their existing computerized filing system and the system for searches of their UCC records utilize a limited set of alphanumeric characters that are permitted in a financing statement and for searches. The computer system employed by the Department of Motor Vehicles for motor vehicle operator's licenses and state identity cards is an entirely separate system that could use a different character set and have different field size limitations than the system of the Office of the Secretary of the State. Therefore, the adoption of "Alternative A" could create instances in which the exact required name from Department of Motor Vehicle records could not be entered onto financing statements in, or searched on the records of, the Office of the Secretary of the State.

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- The Advisory Committee and the Office of the Secretary of the State felt that if “Alternative A” was selected it would be very important to harmonize the name conventions, field sizes and other technical aspects of the computer systems of the Department of Motor Vehicles and the Office of the Secretary of the State to avoid creating a situation in which it could be impossible to file a proper financing statement with the Office of the Secretary of the State because the exact name of the individual debtor shown on the Department of Motor Vehicles system was incompatible with the allowable name conventions in the computer system of the Office of the Secretary of the State.
- The Office of the Secretary of the State advised the Advisory Committee that the cost to the State to study and revise the computer systems of the Office of the Secretary of the State and the Department of Motor Vehicles to support “Alternative A” could be substantial and they could not recommend allocating resources necessary for this task at this time.

Notwithstanding the distribution of this draft report and written materials and the discussions in meetings of the Advisory Committee, no party has expressed any objection to selection of the “Alternative B” ‘safe harbor’ approach recommended by the Advisory Committee.

Although the Advisory Committee has been informed that a few other states currently studying this issue might be recommending enactment of “Alternative A”, it is the strong opinion of the Advisory Committee that enactment of “Alternative B” is the better alternative for the State of Connecticut.

2. Model Entity Transactions Act: The 2010 Uniform Official Text modified the definition of entities designated as “registered organizations” under Revised Article 9 to reflect the fact that model statutes and statutes adopted in some states after the adoption of Revised Article 9 may permit the direct consolidation or redomestication of such entities in a different state than in which they were originally formed. Under prior law such changes were generally only possible indirectly – through mergers or similar mechanisms that were anticipated in the earlier text of Revised Article 9. The 2010 Uniform Official Text defines the term ‘public organic record’ to mean the certificate of incorporation or similar document that is filed and effective to govern an entity. An entity’s ‘public organic record’ would be used for certain Revised Article 9 purposes – including, without limitation, such matters as the proper name of the entity for financing statements and the proper jurisdiction in which to file financing statements. This definition and changes in the 2010 Uniform Official Text were intended to conform to the meanings of the same terms in the Model Entity Transactions Act that had been drafted by the National Conference of Commissioners on Uniform State Laws and which has been adopted in several states.

It came to the attention of the Advisory Committee that the Business Law and Tax Sections of the Connecticut Bar Association have been working on a proposed draft of proposed legislation to be submitted to the General Assembly in 2011 to adopt provisions of the Model Entity Transactions Act in Connecticut (“CT META”). Co-Chair Thomas Welsh met with the

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Connecticut Bar Association drafting committee relating to this draft proposed legislation and reviewed the current draft of their work and provided copies to the Advisory Committee. Although the Advisory Committee noted that certain questions may exist in the proposed CT META draft – for example, over exactly which ‘public organic record’ is determinative for purposes of Revised Article 9 – the Advisory Committee did not believe that any change should be made to the provisions in the 2010 Uniform Official Text on this issue and that any questions should be resolved if and when CT META is submitted for consideration by the General Assembly. The Co-Chairs of the Advisory Committee will continue to coordinate with the Connecticut Bar Association drafting committee on CT META to provide assistance in conforming CT META to the attached proposed revisions to Revised Article 9.

3. Decedent’s Estates as Debtors: The 2010 Uniform Official Text modified the provisions of UCC §9-503(a)(2), relating to the proper name for a financing statement when the debtor is a decedent’s estate. The 2010 Uniform Official Text employed the term “personal representative” of a decedent to refer to the fiduciary of a decedent’s estate. Although Connecticut statutes (*i.e.* Conn. Gen. Stat. §45a-390) define the term “fiduciary” to refer to this position, the Advisory Committee felt that no change was needed to this term in the 2010 Uniform Official Text for enactment in Connecticut since this term could include parties that were ‘personal representatives’ of a decedent’s estate in ancillary proceedings in other jurisdictions and since there was very little likelihood of confusion over the meaning of this term.

In addition, considerable discussion ensued in the Advisory Committee over the question of whether the revision to Conn. Gen. Stat. §42a-9-503(a)(2) would require an amendment to a financing statement that had been filed prior to the death of the debtor to continue the effectiveness of the financing statement, since the pre-death financing statement would presumably not contain the required ‘indication’ that the debtor was an estate. The Advisory Committee determined that an amendment to the pre-death financing statement should not be required to maintain the effectiveness of the financing statement, at least for collateral acquired by the individual debtor prior to death. Further, since, pursuant to Conn. Gen. Stat. §42a-9-506(c), a search of the UCC records in the Office of the Secretary of the State under the name of the decedent utilizing its current search logic would reveal the financing statement (since the estate ‘indication’ is not currently searchable) an argument can be made that the financing statement is not materially misleading and will continue to perfect a security interest in collateral acquired more than four months after the death of the debtor even without an amendment to indicate the estate nature of the debtor. [Of course, if the search logic of the Office of the Secretary of the State should change to allow a search for the estate ‘indication’ this argument would no longer be applicable.]

4. Revisions to Official Comments and Relevance of Official Comments in Connecticut: Notwithstanding the fact that the State of Connecticut does not formally adopt official comments to the Uniform Commercial Code as part of the enactment of the associated statutes, and consequently it was not necessary to submit proposed 2010 revisions to the Official Comments for UCC Article 9 to the General Assembly for approval, the Advisory Committee reviewed the proposed and final revisions to these Official Comments. This brief review was

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intended to determine whether any revision to the Official Comments would affect any of the policy decisions made in the Connecticut enactment of Revised Article 9 – so that an appropriate statutory override could be crafted if necessary. The review of the 2010 revisions to the Official Comments to Article 9 revealed no inconsistency between these changes and any Connecticut statute or policy that would require a change to the statutory provisions.

A considerable discussion occurred in the Advisory Committee, however, over the relevance and use of Official Comments in the interpretation of the Uniform Commercial Code, in general, and of Revised Article 9, in particular. This discussion occurred in the context of Conn. Gen. Stat. §1-2z:

“The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.”

Notwithstanding this statute, which was adopted in 2003 well after the adoption of the Uniform Commercial Code and of Revised Article 9, the Advisory Committee felt that reference to the Official Comments by practitioners and by the courts to assist in determining the meaning and purposes of the Uniform Commercial Code (including the 2010 revisions to Revised Article 9) was warranted.

This position is supported by the general provisions of the Uniform Commercial Code, adopted in Article 1, which specify, in Conn. Gen. Stat. §42a-1-103(a), that:

This title shall be liberally construed and applied to promote its underlying purposes and policies, which are:

- (1) To simplify, clarify and modernize the law governing commercial transactions;
- (2) To permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and
- (3) To make uniform the law among the various jurisdictions.

The goal of uniformity in subsection (3) above justifies reference to the Official Comments and case law from other jurisdictions as persuasive authority for interpretation of the provisions of the UCC and, in this context, Revised Article 9 (including without limitation the 2010 revisions thereto).

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In addition, the Report and Recommendation of the Connecticut Law Revision Commission to the Judiciary Committee dated December 21, 2000, relating to the review and adoption of Revised Article 9 in 2001, stated, on page 2 thereof, that

Because the proposed revisions are to existing Article 9, which Connecticut has substantially enacted, *the summary of the proposed revision that is set out in the commentary to the Official draft applies to the Connecticut draft* except with respect to the limited nonuniform amendments noted below. . . . *With respect to proposed revisions to particular sections, resort should be made to the official comments to those sections in the Official draft.* (emphasis added)

Senator Coleman, in introducing Revised Article 9 as S.B. 1226 in the Connecticut Senate in 2001 also stated that “courts in Connecticut and in the other states look to the experience of other states, *as well as to the official comments of the drafters of a uniform law* in interpreting their commercial statutes” (emphasis added). [Senate Session Transcript, May 31, 2001.] It is also well established that the courts in Connecticut have referred to the Official Comments when interpreting provisions of the Connecticut UCC, including Article 9. See for example, *Hall v. DeChello Distributors, Inc.*, 6 Conn. App. 530, 506 A.2d 1054 (1986), cert. denied, 200 Conn. 807, 512 A.2d 230 (1986) [The purposes and policies of the UCC “are explained in the Official Comments which accompany each section of the Uniform Commercial Code.”] and *Laurel Bank and Trust Co. v. Mark Ford, Inc.*, 182 Conn. 437, 438 A.2d 705 (1980) [referring to the Official Comments in construing Article 9].

Based on the foregoing it is clear that the courts and practitioners should be able to rely upon the Official Comments to assist them in determining the meaning of the provisions of Revised Article 9 (including the 2010 revisions thereto).

5. Expanded Four-Month Rule for Effectiveness of Financing Statement After Change in Location: The 2010 Uniform Official Text revised the provisions of UCC §9-316 by adding new subsections (h) and (i) to allow a financing statement to continue to be effective to perfect a security interest in after-acquired property for up to four (4) months after the debtor changes its location to another jurisdiction or after a “new debtor” in another jurisdiction becomes bound by the debtor’s security agreement. If the secured party perfects its security interest in the new jurisdiction before the expiration of the four-month period (or before the earlier lapse of the prior financing statement) the security interest would continue – otherwise the perfection will lapse as against a bona fide purchaser of the collateral.

This new rule for ‘new debtors’ supplants the non-uniform one-year provision adopted in 2001 in Conn. Gen. Stat. §42a-9-316(a)(4), which had been necessary due to the perceived absence of a rule in the earlier official draft of Revised Article 9. Since these new subsections of §9-316 in the 2010 Uniform Official Text now provide a more comprehensive set of rules in the ‘new debtor’ situation, the Advisory Committee recommended the adoption of the 2010 Uniform Official Text on this point and the deletion of the non-uniform Connecticut provision.

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6. Adoption of Revised Forms By the Office of the Secretary of the State:  
Notwithstanding the provisions of §9-521 of the 2010 Uniform Official Text, the Advisory Committee, with the concurrence of the representatives from the Office of the Secretary of the State, decided not to revise the provisions of Conn. Gen. Stat. §42a-9-521, which permits the Secretary of the State to prescribe the forms that will be acceptable for filing. The national form financing statement and amendment forms are being amended in the 2010 Uniform Official Text; however the Secretary of the State will retain the authority to adopt and to amend the national and local forms for filing as in the current law. The Advisory Committee did not believe that it was necessary or desirable to write the specific content of these forms into the statutory provisions of Revised Article 9, as changes to these forms may be made administratively by the affected state officers if necessary. This policy was established in the adoption of Revised Article 9 in 2001 and the Advisory Committee did not see any compelling reason to recommend a change.

Based upon the substantial work and analysis by the Advisory Committee and staff and the discussions and comments by the various experts and constituencies included in the review process, the Advisory Committee recommends enactment of the 2010 revisions to Revised Article 9 as set forth in the attached enactment draft.



# CONNECTICUT LAW REVISION COMMISSION

## ADVISORY COMMITTEE ON 2010 AMENDMENTS TO ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE – SECURED TRANSACTIONS

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## UCC Issues for New Legislation

There are a variety of topics which should be discussed for new Mississippi UCC legislation beyond the revisions to the model act.

**Bogus filers:** One of our biggest headaches is the onslaught of bogus UCC filings which are sent to us every week. Most of these come from people who call themselves "sovereign citizens" or "Freeman". These are individuals who are using the UCC filing system to circumvent the law or harass innocent individuals. They also file bogus UCCs against elected officials, judges and state or federal agencies.

Fortunately, many other states have already addressed this issue. I have attached with this memo a copy of a document prepared by NASS which outlines the various forms of defense against these types of filings. Policy and Research will need to obtain copies of these various statutes so that the group may compare and contrast what other states have done and offer recommendations for Mississippi. I recommend that we emphasize pre-filing administrative remedies as well as post-filing administrative remedies. We may also wish to offer some type of expedited judicial relief for those against whom bogus UCCs were filed.

**Mailing Requirements:** Under our current statute, we are required to mail copies of filed UCCs, or rejected UCCs, back to the customer. This creates a lot of mail every week. While we certainly must continue to mail back rejected UCCs, we need to explore if it is possible to cease mailing the filed documents. The problem we will have is that the documents themselves cannot be viewed on our website without a subscription. Consequently, only subscribers will be able to see their filed UCC.

We need to adjust our filing statute to allow office to develop new ways to return documents to customers. The existing statute does not give us any flexibility to use new technology to deliver these documents.

**Use of Non-Mississippi Forms:** Our current Act requires us to accept any IACA compliant UCC form. This allows some customers to bypass using our filing system by sending us forms which they have saved in their computers. Although they are nearly identical to our form, the fact that they can use old paper forms allows them to avoid entering the data into our filing system. This makes more work for the BSD staff and makes our filing system obsolete. A change in our Act requiring customers to enter the data in our system would be a tremendous help to our agency. In addition, it would considerably diminish any typographical errors or other translation mistakes which could lead to misinterpretations of a particular filing.

**Copy Request Fees:** we regularly receive requests for copies of UCC filings. The ability for customers to obtain these filings for a fee is covered in the statute. Unfortunately, the copy request fee is only \$10. For that price, a customer can receive a copy of every UCC filed against a specific debtor. This can be 400 pages of documents. Obviously, we lose money on many of these requests.

We should amend the Act to charge \$10 for the first 10 pages then some amount per page thereafter.

# State Strategies to Subvert Fraudulent Uniform Commercial Code (UCC) Filings



A Report for State Business Filing  
Agencies

August 8, 2012



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## Introduction

The vast majority of Uniform Commercial Code (UCC) financing statements filed with Secretary of State offices are legitimate documents authorized by relevant parties. However, financing statements with no legitimate basis under the UCC, often referred to as fraudulent or bogus filings, are a persistent problem for state filing offices and the individuals targeted by these spurious claims. Often used as a retaliatory measure by government separatist group members, prison inmates, and others looking to harass or intimidate public officials and corporations/lending institutions, these filings can create serious financial difficulties for victims.

While various judicial and administrative remedies are available to those who believe that a filing has wrongfully named them as a debtor, there is a general feeling amongst the nation's Secretaries of State that more can and should be done to address the issue. Removing a bogus lien from the public registry can be a costly and time-consuming process. In most states, this action requires a court order. The legal expenses that are involved can run thousands of dollars, and the process can take months, or even years. Restoring damaged credit histories can take even longer.

Collective efforts by states to subvert fraudulent UCC filings date back to 2004, when the National Association of Secretaries of State (NASS) and the International Association of Commercial Administrators (IACA) developed recommendations to help state filing offices promulgate a more uniform, nationwide response to the problem. The recommendations, updated in 2006, included the adoption of a clear judicial remedy for victims of bogus financing statements, along with stronger civil and criminal penalties for those who submit these claims.<sup>1</sup>

Given the dramatic increase in the number of fraudulent UCC filings during the past few years, state officials are now working under the auspices of NASS to identify additional ways to provide victims of bogus filings with expedited relief. Members of the NASS Business Services Committee have also urged states to contemplate faster, less costly options for keeping bogus liens out of public records. The role of the Secretary of State's office and its level of authority in the filings process are typically at the center of this latest push. Nearly half of all states have implemented their own legislative approaches to subverting fraudulent Uniform Commercial Code (UCC) filings, and more than a dozen of them have given the state filing office greater influence or oversight in the process.

This report is designed to provide state filing offices and other government agencies with an understanding of these relatively new laws, as well as the issues they seek to address. Section One provides background information on the rise in fraudulent filings, shedding light on the growing sovereign citizen movement and the most common types of bogus filings. Section Two provides an overview of the Uniform Commercial Code (UCC) and the important influence that this model law has on the role and authority of state filing offices. Section Three outlines the 2006 NASS/IACA Task Force recommendations and highlights recent state approaches to the proliferation of bogus filings.

## **The Rise in Fraudulent UCC Filings**

Bogus UCC filings have become more common in recent years due to the explosion in the number of people who identify with an anti-government belief system called the sovereign citizen movement, a loose network of individuals living across the U.S. who believe that the government is illegitimate. The Federal Bureau of Investigation (FBI) has designated sovereign citizens as a domestic terrorist movement, and a growing threat to law enforcement.<sup>2</sup> By some estimates, there are as many as 300,000 sovereigns in the United States, and their numbers are likely to increase.<sup>3</sup> For many of these individuals, paper-based tactics are used to strike back at government interference in their lives. Numerous websites sell how-to kits or offer to train subscribers on how to perpetrate filing schemes in exchange for large fees.

Most of these filings utilize tell-tale buzzwords and share common indicators, including:

- References to the Bible, the Constitution, U.S. Supreme Court Decisions, or foreign treaties
- Names written in all capital letters, or interspersed with colons
- Signatures followed by the words “under duress,” “Sovereign Living Soul”, or a copyright symbol
- Personal seals, stamps, or thumb prints in red ink
- The words “accepted for value”
- Copies of personal documents, such as birth certificates or Social Security cards

According to the American Bar Association, the vast majority of all bogus UCC financing statements also share another important characteristic: They indicate that the debtor is a transmitting utility.<sup>4</sup> This term is used to refer to “any person who is primarily engaged in the railroad, street, railway or trolley bus business, the electric or electronic communications transmission of electricity, steam, gas, or water, or the provision of sewer service.”<sup>5</sup> Fraudulent filers, particularly sovereigns, use this designation in an attempt to ensure that their financing statements remain indefinitely on file. Under UCC Section 9, transmitting utility filings do not lapse. This is a major contrast to most UCC financing statements, which unless continued by the secured party, will lapse after a period of five years from the date of filing.

In general, there are three main types of bogus filings: harassment filings, strawman filings, and authentication filings. It is important to understand the intent behind these submissions, so that states can effectively deal with them. Learning to recognize the common indicators within these spurious claims can also be helpful for policymakers and those who work in state filing offices on the front lines of UCC transactions. All three types of spurious claims will be covered in the following section of this report.

### **Harassment Filings**

Sovereigns regularly file retaliatory, bogus financing statements and real property liens against government officials, corporations, and banks (or their employees) as a response to a perceived

injustice. Judges, prosecutors, and public defenders are also frequently targeted. Although they are not legally effective, victims may spend years battling their false claims, and some may not even realize they have been targeted until they attempt to conduct a property transaction, or open a line of credit.

Financing statements filed to harass a target victim often falsely indicate that the “debtor” owes large sums of money to the filer or purported “secured party.” Harassment filings have become more common in the past decade as prison inmates have learned about these tactics and adopted them in large numbers. For example, a prisoner seeking retaliation against a government official may file an unauthorized financing statement claiming that the official owes the prisoner millions of dollars.

### **Strawman Filings**

Under a complicated scheme known as “redemption theory,” sovereign citizens believe that the federal government creates a “strawman” account at the U.S. Treasury Department representing the monetary worth of each citizen. An individual’s strawman account supposedly contains anywhere from \$600,000 to \$3 million. Sovereign citizens believe that a UCC financing statement allows them to “secure an interest” in their strawman account and gain access to a secret account holding these funds. This process is sometimes referred to as “freeing money from the strawman.”<sup>6</sup> A strawman filing will often include the same name for both secured party and debtor, with the name of the debtor (the strawman) spelled entirely in uppercase letters. The debtor name may also include the words “corporation” after it. The name of the secured party (the physical individual) is often spelled with initial capital letters only, and a comma or a semicolon before the surname (e.g. John-Robert: Doe).<sup>7</sup>

### **Authentication Filings**

Aside from harassment and strawman claims, sovereigns sometimes submit fraudulent financing instruments in conjunction with bogus UCC filings to try and mislead third parties about the authenticity of the underlying documents.

## **The UCC and the Role of the Secretary of State's Office**

In order to understand why so many bogus or fraudulent liens are accepted for recording by state filing offices in the first place, it is important to highlight the Uniform Commercial Code (UCC) and its influence on the role of the Secretary of State's office. The UCC is a comprehensive model uniform act addressing most aspects of commercial law. The Uniform Law Commission and the American Law Institute are responsible for maintaining and revising its content.

Under Revised Article 9 of the code, Secretary of State offices typically serve as the central filing location for public notices of secured transactions. These public notices, called financing statements, indicate a commercial agreement between a debtor and a secured party.<sup>8</sup> They are used by banks, mortgage



companies, and other lending institutions to determine whether there are existing claims against the collateral of a prospective debtor.

### **The Limitations of the UCC Article 9 in Addressing Fraudulent Filings**

According to the uniform language of the UCC, the Secretary of State's office is limited to its role as a filing office for these public records. The office does not have the authority to verify the accuracy or the validity of documents when they are filed, even if they are blatantly fraudulent. If a financing statement is submitted with all of the required information, the Secretary of State must record the document. In fact, the original text of Article 9 prohibits states from rejecting financing statements unless specific grounds exist for this action. Even then, the reasons for rejection are limited to ministerial issues, such as failure to pay the proper fee, incomplete forms, or illegible writing.<sup>9</sup>

Furthermore, the options available to a person named in an unauthorized financing statement are limited under the UCC. There are two main remedies to assist potential victims: an information statement and a termination statement. Formerly known as a correction statement, an information statement can be submitted to the filing office to show that a named debtor would like to amend the record. A termination statement affirms that the unauthorized financing statement is not effective. The person named as a debtor may demand that the secured party file a termination statement, or if the secured party fails to act, the debtor himself/herself may submit one.<sup>10</sup>

Neither an information statement nor a termination statement provides the means to quickly or completely remove the bogus filing from the public record. In fact, the submission of an information statement does not actually invalidate the financing statement. Its only purpose is to provide public notice that the validity of the financing statement is in dispute.<sup>11</sup> Although the filing of a termination statement will indicate in the public record that the unauthorized financing statement is not valid, it does not remove the financing statement from the registry. The UCC requires the financing statement (including the termination statement) to remain on record until at least one year after it lapses.<sup>12</sup> However, while victims may file a termination statement to indicate that a financing statement is invalid, potential secured parties doing an electronic records search may miss the fact that a termination statement has been filed.

It should be noted that while there are a number of limitations, UCC Revised Article 9 also permits a person named as the debtor in an unauthorized filing to seek injunctive relief, to include the collection of damages for financial harms brought about by the claim.<sup>13</sup> Specifically, individuals who submit unauthorized financing statements may be subject to a \$500 penalty per each bogus filing, and an additional \$500 penalty for each refusal to file a termination statement.<sup>14</sup>

### **NASS/IACA Task Force Recommendations and New Approaches**

The drafters of UCC Revised Article 9 have acknowledged the challenges in dealing with bogus UCC filings, as well as the code's inability to provide a completely satisfactory response to the problem. The

drafters' comments have pointed to judicial remedies and criminal penalties as the most effective and least burdensome approaches.<sup>15</sup>

As a result, the NASS/IACA Bogus Filings Task Force devised its 2006 recommendations around this notion.<sup>16</sup> One recommendation encouraged states to allow individuals named as debtors in an unauthorized financing statement to file a motion for judicial review of the filing without paying a fee. After issuing a decision based solely on the documentation submitted by the relevant parties, the court could then order the filing office to remove fraudulent financing statements from the record. Another recommendation encouraged states to adopt laws that would make it a criminal felony to file a financing statement for the purpose of harassment, while still another focused on civil penalties. Under the recommendation on civil penalties, states were urged to take steps that would allow a person to seek damages, court costs, attorney's fees, related expenses, and an injunction against anyone who files a financing statement for the purpose of harassing or defrauding someone.

While a number of states have adopted laws that conform to these recommendations, the significant increase in fraudulent filings during the past few years has required some states to consider their own Article 9 legislative initiatives. Many of these new laws and legislative proposals have a direct impact on Secretary of State offices and how they handle the filing of UCC records.

## **State Approaches to Fraudulent Filings**

When the NASS/IACA Bogus Filings Task Force Recommendations came up for renewal in July 2011, Secretaries of State decided the problem of fraudulent filings had become so widespread and prolific, that new approaches were needed. Their decision was based on shared concerns that the NASS/IACA recommendations continued to place significant burdens on victims, as well as the courts, which have experienced some delays and backlogs due to fraudulent filing cases. Instead, NASS members decided to examine alternative approaches that would allow state filing offices to play a more active role in subverting these filings, either by expanding the authority of state filing offices so they can refuse to accept bogus UCC financing statements, or by allowing the offices to quickly and inexpensively terminate financing statements and wipe them from the record under certain conditions.

A number of states have already adopted non-uniform approaches to this problem. In some cases, state Article 9 amendments impose additional duties on the office of the Secretary of State, and in some cases, it is the Secretary of State that must determine whether a contested record was, in fact, filed without authorization.

Generally speaking, the state laws that address this issue can be categorized into four different approaches: pre-filing administrative discretion, post-filing administrative relief, post-filing expedited judicial relief, and enhanced criminal/civil penalties. Each of these approaches is discussed in this section of the report, while summaries of the relevant state laws are provided in Appendices I – IV. In

states where the Secretary of State's office does not handle UCC filing duties, the report focuses on the equivalent state agent.<sup>17</sup>

### **Pre-Filing Administrative Remedy**

A pre-filing administrative remedy gives the Secretary of State's office broader discretion in rejecting a materially false or fraudulent UCC record submitted for filing. At least 14 states currently have some type of statutory pre-filing remedy (see [Appendix I](#)), although the scope of the filing office's authority can vary from state to state. For example, in Nebraska, and North Dakota, the filing office may reject a financing statement that has the same name listed as the debtor and secured party. In North Carolina, the filing office may reject a financing statement that is outside the scope of the law, intended for an improper purpose, or intended to harass someone. In Alabama, the filing office may reject a financing statement that appears fraudulent, or has the same name listed as the debtor and secured party. In Texas, the Secretary of State, in consultation with the Attorney General, may reject a financing statement that appears fraudulent.

For a pre-filing remedy to be most effective, it must be comprehensive enough to cover the various types of bogus UCC filings. While some information can be helpful when identifying a strawman filing (e.g. same name for secured party and debtor), harassment and authentication filings require a more general standard. Thus, a comprehensive pre-filing remedy likely requires that the filing office have broad authority to reject a financing statement.

South Carolina is one state that has taken this approach, adopting a statute that defines submissions that can be rejected by the Secretary of State's office given any of the following conditions:

[The financing statement] is not created pursuant to the UCC; is intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person; names the same person as both debtor and secured party; describes collateral not within the scope of the UCC; or is being filed for a purpose other than a transaction within the scope of the UCC.<sup>18</sup>

The obvious benefit of a pre-filing remedy is that it can prevent a bogus financing statement from being filed in the first place. As a result, a person targeted by a harassment filing does not have to spend the time and resources often required to remove the filing from the public record, and they are spared the potential negative impact that the bogus financing statement could have on their credit, which may linger even after a filing has been expunged from the record. The other benefit important to the Secretaries of State, as stewards of the public record, is this approach maintains the integrity of the public record by not allowing fraudulent information to enter into the public record.

The primary challenge states face when implementing a pre-filing remedy is the limitation of resources in the state filing office. A pre-filing remedy requires active review of filings that come into the office on a daily basis, both in person, as well as electronically. Staff must be trained to review incoming filings

for signs of fraud according to the law. If an electronic filing system cannot help to flag filings for this type of information, the work must be carried out by humans.

### **Post-Filing Administrative Remedy**

A post-filing administrative remedy gives the filing office the authority to take corrective action with respect to existing UCC financing statements. At least seven states have a law authorizing this type of remedy (see [Appendix II](#)). Once again, the designation of an individual debtor as a transmitting utility typically provides grounds for cancelling a financing statement and/or removing it from the public record. In West Virginia, the Secretary of State may remove a financing statement from the record if the same person is listed as debtor and secured party, an individual debtor is listed as a transmitting utility, or if it fraudulently names a public official or employee as a debtor. Laws in Montana and North Carolina are broader, allowing the filing office to cancel and remove a financing statement from the record that has been determined to have been fraudulently, wrongfully, or improperly filed.

A post-filing remedy can be most effective if it provides the filing office with the authority to remove a bogus filing from the record. As part of this process, the state may be required to provide some type of due process to the relevant parties. In Montana, the filing office must give the parties notice, and provide an opportunity to respond prior to removing a filing from the records. In West Virginia, the Secretary of State may commence an administrative proceeding to remove a filing from the record after publishing notice of the proceeding in the state register.

By authorizing the filing office to remove a bogus financing statement from the record, victims of harassment filings do not have to seek removal of the filing through the courts, which can reduce costs to both victims and the state, speed up the termination and removal process, and provide a less complicated means for addressing fraudulent filings.

The main challenge posed by this approach is that the victim of the harassment filing may only find out about this fraudulent filing after encountering trouble securing credit or conducting some kind of property-related transaction.

### **Post-Filing Expedited Judicial Relief**

Post-filing expedited judicial relief authorizes corrective action on an existing financing statement through an accelerated judicial review process, with no fee required to bring about the action (see [Appendix III](#)). These laws are very similar to the judicial remedy proposed by the NASS/IACA Bogus Filing Task Force. At least seven states have adopted this type of law, and others have considered them in recent years. In most cases, state law authorizes a person who believes he/she is named as the debtor on a fraudulent financing statement to file a motion for expedited judicial review of the filing, and the court may order that the filing be removed from the records.

Victims of a harassment filing are provided with a faster, less costly means for obtaining a declaratory judgment or expungement order from the courts to have the filing removed.<sup>19</sup> In some states, this approach has significantly improved the timeframe for resolving questions about a disputed filing and streamlined the legal process for dealing with such records. For example, targets of bogus filings in Minnesota can now resolve the situation in a matter of weeks or months, instead of years.

The benefit of this approach seems to be that the court system continues to bear responsibility for handling these issues, which means that the Secretary of State's office does not need to have additional resources, training, and staffing to provide a faster, less costly solution.

One of the drawbacks of expedited judicial relief is that it still places significant burdens on the victims. Although there may not be a fee for filing a motion for expedited judicial review, it is still a court action, and a victim will often need to hire an attorney and pay the associated costs. Since this remedy also places burdens on the courts, they may be unwilling to support it.

### **Post-Filing Criminal/Civil Penalties**

Criminal and civil penalties are designed to deter and punish those who attempt to file spurious claims using UCC financing statements. At least ten states have laws that make it a crime to fraudulently submit a filing (see [Appendix IV](#)). Typically, the first offense is a misdemeanor crime, while subsequent offenses are charged as a felony. However, a few states, including Minnesota and Texas, make it an outright felony to attempt to harass someone using a fraudulent financing statement.

At least 14 states have laws authorizing civil penalties. Many of these laws permit victims to seek damages, court costs, attorney's fees, related expenses, and injunctions. In a few cases, fines may also be imposed. In West Virginia, the fine is \$500 per fraudulent filing, while a fraudulent filer in Georgia can be charged up to \$10,000 for his or her offense.

Criminal and civil penalties can help prevent the filing of bogus financing statements, and are an important part of a comprehensive approach to the bogus filing problem. However, penalties alone may not provide adequate relief to the victims of bogus filings.

### **Conclusion**

As long as sovereigns and other members of fringe anti-government groups continue to thrive, state filing offices will need to consider laws and policies that deter and defend against bogus UCC filings while maintaining the "open drawer" thrust behind Revised Article 9. Secretaries of State and other state policymakers must decide how they can best equip state filing offices, law enforcement, and members of the public to mitigate the impacts of fraudulent filings and harassment liens. State

solutions must cover a number of problematic filings, including harassment filings, strawman filings, and deceptive authentication filings.

Several pre-filing and post-filing approaches are currently available, along with the NASS/IACA approach that includes strong criminal and civil penalties for those who file bogus UCC claims. The role and authority of the Secretary of State are important aspects of this work. For states that seek to expand the authority of a filing office, budgets may need to be increased to cover all of the additional staffing, training, and other additional costs associated with any changes in the process.

Moving forward, it remains to be seen how imposing a new investigative duty on the Secretary of State will impact the number of fraudulent UCC filings in states that have taken this approach. Additionally, it is unclear whether the adoption of non-uniform legislation impacts the reliability of state filing systems. These issues will undoubtedly be important discussion topics for the members of NASS.

In the meantime, it is clear to the nation's Secretaries of State that states are indeed interested in doing more to assist the targets of fraudulent UCC filings and counterfeit claims. Costly, time-consuming remedies are not providing adequate relief for these citizens, and the fallout is putting a strain on backlogged courts and busy state filing offices. Even where an expedited judicial review is available, the burden of litigation is still on the victims. A remedy that allows state filing offices to subvert a bogus filing and/or allows for its quick removal from the record, in conjunction with strong criminal and civil penalties, will likely be the most effective way for states to alleviate the burdens on bogus filing victims.

## **Appendix I: State Pre-Filing Administrative Remedies**

### **Alabama**

The filing office may reject a UCC filing that appears fraudulent on its face, and a filing that identifies the debtor and secured party as the same person. If the secured party is able to demonstrate that a rejected filing should have been accepted, the filing office must file the document with an effective date of the time that it was originally submitted for filing.<sup>20</sup>

### **California**

The Secretary of State may refuse to perform a service or refuse a filing based on a reasonable belief that the service or filing is being requested for an unlawful, false, or fraudulent purpose, to promote or conduct an illegitimate object or purpose, or is being requested or submitted in bad faith or for the purpose of harassing or defrauding a person or entity.<sup>21</sup>

### **Colorado**

The filing officer may reject a lien or document that the filing officer reasonably believes is “spurious.” A spurious document is one that is groundless, contains a material misstatement or false claim, or is otherwise patently invalid.<sup>22</sup>

The filing officer is not required to accept for filing any lien against a local, state, or federal official or employee based upon the performance or nonperformance of that person’s duties, unless the lien or claim is accompanied by a state or federal court order authorizing the filing.<sup>23</sup>

### **Idaho**

The filing office may reject any UCC financing statement where the debtor and the secured party appear to be the same individual. The filing office may require reasonable proof from the secured party that an individual debtor is in fact a transmitting utility. The Secretary of State may petition the courts to delete unauthorized filings.<sup>24</sup>

### **Illinois**

A filing office may reject a financing statement if the filing office has reason to believe that debtor does not meet the definition of a transmitting utility, the transaction does not meet the definition of a manufactured-home transaction, the transaction does not meet the definition of a public-finance transaction, or the financing statement is unauthorized, invalid, or filed with the intent to harass or defraud. The Secretary of State may refuse to accept a record for filing on these grounds only if the refusal is approved by the Department of Business Services of the Secretary of State and the General Counsel to the Secretary of State.<sup>25</sup>

A secured party who believes in good faith that a record rejected by the filing office was not in violation of applicable law may file an action to require that the record be accepted. If a court determines that a

rejected record should be accepted, the Secretary of State must file the record and include a notice indicating that the record was filed pursuant to its initial filing date.

The above provisions do not apply to a record communicated to the filing office by a regulated financial institution except that the Secretary of State may request from the secured party of record, or the person that communicated the record, additional documentation supporting that the record was communicated by a regulated financial institution.

### **Michigan**

The Secretary of State may reject any filing that the Secretary of State has reason to believe is false or fraudulent; asserts a claim against a current or former federal, state, or local official or employee related to the performance of that person's duties, unless the filer holds a security agreement or court judgment; indicates that the secured party and the debtor are substantially the same; or indicates that the individual debtor is a transmitting utility.

If the Secretary refuses to accept a record for filing, the person attempting the filing may seek a court order requiring the Secretary to accept the filing. If the court orders the record to be filed, it is effective as filed from the initial filing date, except against a person who purchases the collateral in reasonable reliance upon the absence of the filing from the record.<sup>26</sup>

The Secretary of State must provide written notice to individuals named as a debtor in a financing statement and provide them with a copy of the financing statement. The notice must include the remedies that are available if the debtor believes that the financing statement is fraudulent.<sup>27</sup>

### **Montana**

If the filing office has reason to believe that a lien submitted for filing is improper or fraudulent, it may reject the submission after giving notice and an opportunity to respond to the parties.<sup>28</sup>

### **Nebraska**

A financing statement will be rejected if it lists the same person as debtor and secured party.<sup>29</sup>

### **North Dakota**

A UCC financing statement must be rejected if it lists the same individual as both debtor and secured party.<sup>30</sup>

### **North Carolina**

The Secretary of State may refuse to accept a financing statement that the Secretary determines is not created pursuant to the UCC, or is otherwise intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person.<sup>31</sup>



**Ohio**

The Secretary of State may refuse to accept a document for filing or recording if the Secretary has reasonable cause to believe that the document is materially false or fraudulent. If the Secretary of State refuses to accept a document, the person attempting to file the document may seek a court order requiring the Secretary of State to accept it for filing.<sup>32</sup>

**Oregon**

Transmitting utility is re-defined as an organization, not a person, primarily engaged in the business of a utility. The filing office may not accept a claim of encumbrance on the property of a federal or state official or employee based on the performance or nonperformance of their duties. The filing office may refuse to accept a financing statement that on its face reveals it is being filed for a purpose not within the scope of the UCC, including factors such as whether the debtor and the secured party are the same person, or whether the collateral described is within the scope of the UCC.<sup>33</sup> If the Secretary of State refuses to accept a record for filing based on this provision, the secured party may contest the refusal by requesting a hearing before the Secretary of State within 20 days. If the Secretary of State determines that the record should have been filed, the filing office must index the record as of the date it was originally presented for filing.<sup>34</sup>

**South Carolina**

The Secretary of State may refuse to accept a financing statement that the Secretary of State determines is not created pursuant to the UCC, or is otherwise intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person. The Secretary of State may also refuse to accept a financing statement that names the same person as both debtor and secured party, describes collateral not within the scope of applicable law, or is being filed for a purpose other than a transaction within the scope of the UCC.<sup>35</sup>

**Texas**

If the Secretary of State believes that a document filed to create a lien is fraudulent, the Secretary must request that the prospective filer provide additional documentation supporting the existence of the lien, and request the assistance of the attorney general in determining whether the proposed lien is fraudulent. For purposes of this provision, a document is presumed to be fraudulent if it is filed by or on behalf of an inmate in a correctional facility, unless it is accompanied by a sworn, notarized statement signed by the debtor acknowledging that the person entered into a security agreement with the inmate and authorized the filing of the lien.<sup>36</sup>

## **Appendix II: State Post-Filing Administrative Remedies**

### **Illinois**

A person named in a financing statement that the person believes was unauthorized, invalid, or filed with the intent to harass or defraud, may file an affidavit with the secretary of state. Upon receipt of the affidavit the secretary of state must request additional documentation from the relevant parties. The Department of Business Services of the Office of the Secretary of State and the Office of General Counsel must review the documentation within 30 days. The Secretary of State may terminate the record if the Secretary has a reasonable basis for determining the record is in violation of applicable law. The Secretary of State may initiate an administrative action with regard to a filing if the Secretary has reason to believe it is in violation of applicable law. The Secretary of State may give heightened scrutiny to a record that indicates that the debtor is a transmitting utility or that indicates that the transaction to which the records relates is a manufactured-home transaction or a public-finance transaction.

A secured party who believes in good faith that a record communicated to the filing office was not in violation of applicable law may file an action to require that the record be reinstated. If a court determines that a terminated record should be reinstated, the Secretary of State must re-file the record and include a notice indicating that the record was re-filed pursuant to its initial filing date. If the period of effectiveness of a re-filed record would have lapsed during the period of termination, the secured party may file a continuation statement within 30 days after the record is re-filed. A re-filed record is considered to have been ineffective against all persons for all purposes except against a purchaser of the collateral in reasonable reliance on the absence of the record from the files.

The above provisions do not apply to a record communicated to the filing office by a regulated financial institution except that the Secretary of State may request from the secured party of record, or the person that communicated the record, additional documentation supporting that the record was communicated by a regulated financial institution.

### **Michigan**

A person may file an affidavit with the Secretary of State stating that the person is named as the debtor in a fraudulent financing statement. No fee is required for the filing. Filing of a false affidavit is a felony. On receipt of the affidavit, the Secretary of State must terminate the financing statement, and notify the purported secured party. If the secured party claims that the filing is authorized, that person may seek reinstatement of the filing. If a court determines that the financing statement is fraudulent, the filer of the unauthorized statement must pay the court costs and expenses of the person who brought the action.

If a court determines that the financing statement should be reinstated, it must notify the Secretary and the Secretary must reinstate the filing, and indicate that it is effective from the initial filing date. If a financing statement that is reinstated would have lapsed during the period of termination, the secured party may, within 30 days after the filing is reinstated, file a continuation statement retroactive to the

day the filing would have lapsed. However, if, during the time that the financing statement is terminated, someone purchases the collateral based in reasonable reliance on the absence of the statement from the records, the reinstatement or continuation statement is not retroactive against that person.<sup>37</sup>

If a correction statement is filed with the Secretary claiming that a previously filed record was wrongfully filed, the Secretary must determine whether it was wrongfully filed. The Secretary may require the person who filed the correction statement or the secured party to provide any relevant additional information. If the Secretary finds that the record was wrongfully filed, the Secretary must terminate the record, and notify the secured party.<sup>38</sup>

### **Montana**

If the filing office receives a complaint that a filed lien is improper or fraudulent, the filing office may remove the filing from the existing records after giving both parties notice and an opportunity to respond.<sup>39</sup>

### **North Carolina**

When a person files a correction statement alleging that a previously filed record was wrongfully filed and should have been rejected, the Secretary of State must determine whether must determine whether the assertions are correct. In order to make this determination, the Secretary of State may require the person filing the correction statement and the secured party to provide any additional relevant information requested by the Secretary of State. If the Secretary of State finds that the record was wrongfully filed and should have been rejected, the Secretary of State must cancel the record and it will be void and have no effect.<sup>40</sup>

### **Oregon**

If a filing of encumbrance has been made against a federal or state official or employee based on the performance or nonperformance of their duties, a sworn notice may be given to the office which shall clear title to the property. An expedited show cause order for judicial relief may be filed and shall result in the invalid encumbrance being stricken from the record.

### **Pennsylvania**

Department of State may conduct an administrative hearing to determine if a financing statement was fraudulently filed. A financing statement is fraudulent if no rational basis exists entitling the person to file the financing statement, and it appears that the person filed the initial financing statement with the intent to annoy, harass, or harm the debtor. If the Department determines that the financing statement is fraudulent, and no appeal is filed, the Department must file a correction statement indicating that the financing statement was found to be fraudulent and may be ineffective. If the decision is appealed and the court affirms the decision, the correction statement must indicate this.<sup>41</sup>

**West Virginia**

The Secretary of State may commence administrative proceedings to remove a financing statement from the records if the Secretary determines that an individual debtor and an individual secured party appear to be the same individual, the individual debtor claims to be a transmitting utility without supporting documentation, or a financing statement naming a public official or employee as a debtor is fraudulent. A financing statement is considered fraudulent if it was unauthorized, and submitted for the purpose of harassment, intimidation, or fraudulent intent of the alleged debtor.

The Secretary must publish notice of the administrative review in the state register. If the Secretary determines that the filing of the financing statement was fraudulent, the filing party will be responsible for all costs incurred by the Secretary in reaching a final determination, including reimbursement for all costs of the hearing. If the Secretary of State's review, or a subsequent appeal of the Secretary of State's decision, determines that a filing is not fraudulent, the Secretary may award costs and expenses, including attorney's fees, to the prevailing party.

Pending the outcome of any appeal, the financing statement may not be removed from the records of the Secretary, but must be identified in the records as having been adjudicated to be fraudulent, subject to a pending appeal.<sup>42</sup>

## **Appendix III: State Post-Filing Expedited Judicial Relief**

### **Colorado**

Any person who believes a spurious lien or document has been filed against the person's property may seek a court order declaring the lien invalid. The person who filed the document will have up to 20 days to appear before the court and show cause why the document should not be declared invalid. If the person fails to appear, the lien will be declared invalid and released. If, following a hearing, the court finds that the document is spurious, it must issue an order releasing the spurious document, and it must award costs, including attorney's fees, to the person who brought the action.<sup>43</sup>

### **California**

A public officer or employee whose property is subject to a false lien or other encumbrance may petition the court for an order directing the person claiming the lien or encumbrance to appear before the court at a hearing and show cause why the lien or encumbrance should not be stricken. The hearing date must allow adequate time for notice. If the court finds that the lien or encumbrance is false, it may issue an order striking and releasing the lien or encumbrance and may award costs and reasonable attorney fees to the petitioner.<sup>44</sup>

### **Kansas**

A person named as the debtor on a lien the person believes to be fraudulent may file a motion for expedited judicial review of the status of the lien. A lien is considered fraudulent if the person named as debtor did not consent to the lien. No filing fee is required for the motion. The court may issue a finding based solely on the documentation submitted with the motion, and without notice of any kind. The court must send a copy of its findings to each party within 7 days after the findings are issued. The court's findings may include an order setting aside the lien and directing the filing office to nullify the lien. In the case of documents filled under the UCC, the order will act as a termination statement.<sup>45</sup>

### **Maine**

A person named as the debtor on a UCC financing statement the person believes to be fraudulent may file a motion for expedited judicial review to determine the authorization of the filing. No fee is required to file the motion. The purported secured party must be given 20 day notice of the court's review. The court's finding may be based solely on a review of the documentation submitted by the parties. The court must send a copy of its findings to each party within 7 days after the findings are issued. If the court finds that the financing statement is in fact unauthorized, it must order the filing officer to remove the filing from the records, effective at the expiration of the time period for appeal of the decision, or upon the decision being affirmed following an appeal. If the secured party appeals the court's decision, it must give notice of the appeal to the filing office.

### **Minnesota**

A person who has reason to believe that a UCC financing statement is fraudulent may file a motion for judicial review of the effectiveness of the financing statement. No fee is required for filing the motion.

A UCC financing statement is fraudulent if it is filed without the authorization of the person named as the debtor. A copy of the motion must be mailed to the person indicated as the secured party on the financing statement, along with a form for responding to the motion and the relevant section of law.

The person named as secured party has 20 days to respond to the motion and request a hearing. If a hearing is requested, the court must hold the hearing within five days. If a hearing is not requested by the 20<sup>th</sup> day, the court must conduct a review of the motion within five days after the 20 day period expires, and its findings may be based solely on a review of the documentation included with the motion. The court must send each party a copy of its finding within 7 days of its decision. The court may find that the financing statement was unauthorized and not legally valid, and may also order the filing office to remove the financing statement from the records. The person who brought the motion must file a copy of the court's findings with the filing office. No filing fee is required. The court may award the prevailing party all costs related to the review, including filing fees, attorney fees, and administrative costs.<sup>46</sup>

### **Oregon**

If an invalid encumbrance has been filed, an expedited show cause order for judicial relief may be filed and shall result in the invalid encumbrance being stricken from the record.

### **Texas**

A person named as the debtor on a document purporting to claim a lien believes that the document is false; the person may file a motion with the court for judicial review. The court's review may be made ex parte without delay or notice of any kind, and the court's findings may be based solely on a review of the documentation attached to the motion. No filing fee is required. A copy of the finding must be sent to each party within 7 days of the court's decision.<sup>47</sup> If the lien that is the subject of the court's findings is one that is filed with the Secretary of State, any person may file a copy of the court's findings with the Secretary of State. The Secretary of State must file the findings with the records pertaining to the original document.<sup>48</sup>

## **Appendix IV: State Criminal and Civil Penalties**

### **Arkansas**

It is a crime to file a fraudulent financing statement with the purpose to defraud or harass a person. A first offense is a misdemeanor, and subsequent offense is a felony. Arkansas also provides civil penalties that include damages, courts costs, attorney's fees, and related expenses. A person may also seek injunctive relief.<sup>49</sup>

### **California**

No person may knowingly file a false lien or other encumbrance against a public officer or employee with the intent to harass or hinder the person in discharging his/her official duties. Any person who violates this provision is liable for civil damages.<sup>50</sup>

### **Georgia**

It is unlawful for a person to knowingly file a false lien or encumbrance in a public record or private record that is generally available to the public against the real or personal property of a public officer or employee on account of the performance of the officer or employee's official duties, knowing or having reason to know that such lien or encumbrance is false or contains a materially false, fictitious, or fraudulent statement or representation. Any person who violates this provision is guilty of a felony and, upon conviction, shall be punished by imprisonment of not less than one nor more than ten years, a fine not to exceed \$10,000, or both.<sup>51</sup>

### **Illinois**

No person shall cause to be communicated to the filing office for filing a false record the person knows or reasonably should know is not authorized, is not related to a valid transaction, lien, or court judgment, and is filed with the intent to harass or defraud the person identified as the debtor in the record or any other person. A violation of this provision is a misdemeanor for a first offense, and a felony for a second or subsequent offense.

A person who violates this provision is also liable in a civil action for damages, attorney's fees, court costs, and other related expenses.

### **Kansas**

A person aggrieved by a fraudulent lien may bring an action for civil penalties and injunction against the person who filed the unauthorized lien. Potential civil penalties include damages, court costs, and attorney's fees. A court may also issue an injunction preventing the defendant from filing any future liens without authorization of the court.<sup>52</sup>

### **Maine**

Criminal and civil penalties apply against those who file an unauthorized financing statement with the intent to harass, hinder, or defraud the person named as the debtor. Potential civil penalties include

damages, court costs, attorney's fees, and related expenses. A person impacted by the unauthorized financing statement, or the attorney general, may bring an action to recover damages or seek an injunction.<sup>53</sup>

### **Michigan**

Knowingly or intentionally filing a false or fraudulent financing statement with the office of the Secretary of State is a felony. If the person is convicted of the violation, the court may find that the financing statement is ineffective and may order the office of the Secretary of State to terminate the financing statement and may order restitution.

A debtor named in a false or fraudulent financing statement may file an action against the person that filed the financing statement seeking relief or damages, including, an order declaring the financing statement ineffective and ordering the office of the secretary of state to terminate the financing statement, and attorney fees.<sup>54</sup>

### **Minnesota**

Civil and criminal penalties apply against a person who knowingly files a financing statement that is not related to a valid lien or security agreement, or is for an improper purpose, including harassing, hindering, or defrauding any person. Filing a fraudulent financing statement is a gross misdemeanor, unless it is intended to harass any person, in which case it is a felony.<sup>55</sup> Potential civil penalties include damages, court costs, attorney's fees, and related expenses. A person impacted by the unauthorized financing statement, the attorney general, or the county or city attorney, may bring an action to recover damages or seek an injunction.<sup>56</sup>

### **Montana**

A person adversely affected by a fraudulent lien may recover damages from the person responsible for filing the lien.<sup>57</sup>

### **New Hampshire**

A person who files a fraudulent financing statement is liable for damages, court costs, and attorney's fees. A financing statement is fraudulent if it is not authorized, contains a material false statement, or is groundless. An owner of property covered by a fraudulent financing statement may file suit in court to have the fraudulent financing statement released or cancelled.<sup>58</sup>

### **North Dakota**

Criminal and civil penalties apply against a person who knowingly files a financing statement that the person knows is not authorized by the individual named as the debtor, and was filed with the intent to harass, hinder, or defraud any person. A first offense is a misdemeanor, and after two or more violations it becomes a felony. Potential civil penalties include damages, court costs, attorney's fees; and related expenses. A person impacted by the unauthorized financing statement, the attorney general, state's attorney, or municipal attorney may bring an action to recover civil damages or seek an injunction.<sup>59</sup>



**South Carolina**

It is a felony to knowingly or intentionally file a false or fraudulent financing statement for the purpose of hindering, harassing, or wrongfully interfering with another person. If a person is convicted of violating this provision, the court may find that the financing statement is ineffective, may order the filing office to terminate or purge the financing statement, and may order restitution to an aggrieved party.

A person named as a debtor in a false or fraudulent financing statement may file an action against the person who filed the document seeking relief or damages, including an order declaring the financing statement ineffective, ordering the filing office to terminate or purge the financing statement, and awarding reasonable attorney fees.<sup>60</sup>

**Texas**

A person may not intentionally or knowingly file a UCC financing statement that contains a material false statement or is groundless. A person who files a fraudulent financing statement is liable for damages, court costs, and attorney's fees. An owner of property covered by a fraudulent financing statement may also request release of the fraudulent statement.<sup>61</sup> An offense of this law is a misdemeanor, unless the fraudulent financing statement is filed with the intent to harass or defraud, in which case it is a felony.<sup>62</sup>

Civil penalties apply against a person who files a fraudulent lien or claim against real or personal property with the intent to cause another person financial injury, mental anguish, or emotional distress. Potential penalties include damages, court costs, and attorney's fees. Civil penalties also apply against any inmate who files a financing statement, or any person who files a financing statement on an inmate's behalf, unless the financing statement is accompanied by a statement indicating that the document is being filed by an inmate, or by a person on the inmate's behalf. A person impacted by a fraudulent lien, the attorney general, or a district, county, or municipal attorney may bring an action to recover damages or seek an injunction.<sup>63</sup>

**Utah**

A person is guilty of the crime of wrongful lien if that person knowingly makes, utters, records, or files a lien having no objectively reasonable basis to believe he has a present and lawful property interest in the property or a claim on the assets. A violation is a third degree felony unless the person has been previously convicted of this offense, in which case the violation is a second degree felony.<sup>64</sup>

**West Virginia**

A person who files a fraudulent financing statement may be subject to a civil penalty of up to five hundred dollars per filing.<sup>65</sup>

## Endnotes

<sup>1</sup> NASS/IACA Joint Task Force on Bogus UCC Documents, *Report and Recommendations* <[www.iaca.org/downloads/BogusFiling/Recommendations\\_on\\_Bogus\\_Filings.pdf](http://www.iaca.org/downloads/BogusFiling/Recommendations_on_Bogus_Filings.pdf)> (2006).

<sup>2</sup> Federal Bureau of Investigation, *Sovereign Citizens: A Growing Domestic Threat to Law Enforcement* <[www.fbi.gov/stats-services/publications/law-enforcement-bulletin/september-2011/sovereign-citizens](http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/september-2011/sovereign-citizens)> (Sept. 2011).

<sup>3</sup> Southern Poverty Law Center, *Sovereign Citizens Movement* <[www.splcenter.org/get-informed/intelligence-files/ideology/sovereign-citizens-movement](http://www.splcenter.org/get-informed/intelligence-files/ideology/sovereign-citizens-movement)> (accessed on Mar. 12, 2012).

<sup>4</sup> The American Bar Association Section on Business Law Joint Task Force on Filing Office Operations & Search Logic, *States Ring in the New Year by Amending UCC Article 9* <<http://apps.americanbar.org/buslaw/committees/CL190000pub/newsletter/200901/subcommittees/foosl.pdf>> (accessed May 5, 2012).

<sup>5</sup> *Uniform Commercial Code* § 9-501(1)(n) (2004).

<sup>6</sup> See Federal Bureau of Investigation, *supra* n. 2.

<sup>7</sup> U.S. Department of Justice, *News Release* [www.justice.gov/usao/ohn/news%202005-2009/11September2006.html](http://www.justice.gov/usao/ohn/news%202005-2009/11September2006.html) (Sept. 11, 2006); Southern Poverty Law Center, *The Sovereigns: A Dictionary of the Peculiar* <[www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2010/fall/sovereign-idioticon-a-dictionary-of-the](http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2010/fall/sovereign-idioticon-a-dictionary-of-the)> (Fall 2010).

<sup>8</sup> Article 9 covers transactions involving both tangible property (e.g. goods, inventory, equipment) and intangible property (e.g. promissory notes, letters of credit, deposit accounts) as collateral. Transactions involving real property, including mortgages, are generally not within the scope of Article 9.

<sup>9</sup> *Uniform Commercial Code* §§ 9-516(a), [9-520\(a\)](#).

<sup>10</sup> *Id.* § 9-513, cmt. 3.

<sup>11</sup> *Id.* § [9-518](#), cmt. 2.

<sup>12</sup> *Id.* §§ 9-513 cmt. 5; [9-519\(g\)](#) & cmt. 6.

<sup>13</sup> *Id.* § [9-625\(a\)](#), (b) & cmt. 2.

<sup>14</sup> *Id.* 9-625(e)(3), (e)(4); also see Scott E. Reynolds, *How To Recognize and Remedy an Unauthorized Financing Statement*, New Jersey Law Journal <[http://riker.com/images/uploads/pdfs/Reynolds\\_December\\_2011\\_NJLJ\\_Article.pdf](http://riker.com/images/uploads/pdfs/Reynolds_December_2011_NJLJ_Article.pdf)> (Dec. 5, 2011); *Williams*, 476 F. Supp. 2d 1368 at 1379 (awarding damages to victims of bogus filing under Florida's UCC remedies provision ([Fla. Stat.](#) § 679.625(5)(c) (2012))).

<sup>15</sup> Uniform Commercial Code, § 9-518 cmt. 3.

<sup>16</sup> It should be noted that Congress also took this approach, passing a law in 2008 that makes it a federal offense to file a false retaliatory lien against a federal official.

<sup>17</sup> Some of these provisions refer to financing statements, and others refer to liens. Provisions using the latter reference are included to the extent that they are located in a state's UCC Article 9 laws, or otherwise appear to cover financing statements.

<sup>18</sup> [S.C. Code Ann.](#) § 36-9-516(b)(8), (9) (2012).

<sup>19</sup> See e.g. *U.S. v. Leitner*, No. 3:10cv454/RS-CJK (N.D. Fla.) (2011) (court order removing bogus UCC financing statements the Florida UCC registry); *U.S. v. Davenport*, No. CV-10-027-JLQ (E.D. Wash.) (2010) (court order expunging bogus UCC financing statements from the Washington State UCC records).

<sup>20</sup> [Ala. Admin. Code](#) r. 820-4-3.02(3)(b), (3)(c), (7) (2007).

<sup>21</sup> [Cal. Govt. Code Ann.](#) § 12181 (2012).

<sup>22</sup> [Colo. Rev. Stat.](#) §§ 38-35-201, 202 (2012); also see Colorado Secretary of State, *Uniform Commercial Code FAQs* <[www.sos.state.co.us/pubs/UCC/FAQs/spurious.html](http://www.sos.state.co.us/pubs/UCC/FAQs/spurious.html)> (describing a bogus financing statement that contains a false lien of claim as a spurious document).

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- <sup>23</sup> *Id.* § 202(3).
- <sup>24</sup> [Idaho Code](#) 28-9-516A (2012).
- <sup>25</sup> [5 Ill. Comp. Stat.](#) 9-516(b)(3.5), (e) (2012); [Ill. HB.5190, 97<sup>th</sup> General Assembly](#) (HB. 5190 was passed by the General Assembly on May 22<sup>nd</sup>, 2012. The bill was sent to the Governor on June 20<sup>th</sup>. As of July 1, 2012 the bill had not yet been signed into law).
- <sup>26</sup> [Mich. Comp. Laws](#) § 440.9520 (2012).
- <sup>27</sup> *Id.* § [9501](#)(4), (5); also see Michigan Secretary of State, *Secretary of State Takes Action to Prevent UCC Fraud* <[www.michigan.gov/sos/0,4670,7-127-1640\\_9150-117815--,00.html](http://www.michigan.gov/sos/0,4670,7-127-1640_9150-117815--,00.html)> (May 11, 2005).
- <sup>28</sup> [Mont. Code. Ann.](#) §30-9A-420(1) (2012).
- <sup>29</sup> [Neb. Rev. Stat.](#) § 9-516(8) (2012).
- <sup>30</sup> [N.D. Admin. Code](#) 72-01-02-06 (2012).
- <sup>31</sup> [N.C. Gen. Stat.](#) § 29-516(8) (2012).
- <sup>32</sup> [Ohio Rev. Code Ann.](#) § 111.24(A), (B) (2012).
- <sup>33</sup> [Or. Rev. Stat. Ann.](#) § 79.0516(2)(h) (2012).
- <sup>34</sup> *Id.* § 0520(5).
- <sup>35</sup> [S.C. Code Ann.](#) § 36-9-516(b)(8), (9) (2012).
- <sup>36</sup> [Tex. Govt. Code. Ann.](#) § 405.022 (2012).
- <sup>37</sup> [Mich. Comp. Laws](#) § 440.9501a.
- <sup>38</sup> *Id.* § [9520](#).
- <sup>39</sup> [Mont. Code. Ann.](#) §30-9A-420(1).
- <sup>40</sup> [N.C. Gen. Stat.](#) § 29-518 (2012).
- <sup>41</sup> [13 Pa. Consol. Stat. Ann.](#) § 9518 (2012).
- <sup>42</sup> [W. Va. Code](#) § 46-9-516(e) (2012).
- <sup>43</sup> Colo. Rev. Stat. § 204.
- <sup>44</sup> [Cal. Code. Civ. Proc.](#) §§ 765.010, 030.
- <sup>45</sup> [Kan. Stat. Ann.](#) § 58-4301(2012).
- <sup>46</sup> [Minn. Stat.](#) § 545.05 (2012).
- <sup>47</sup> [Tex. Govt. Code Ann.](#) § 51.903.
- <sup>48</sup> *Id.* § 905; also see Texas Attorney General, *Wiping Out Fraudulent Liens* <[www.oag.state.tx.us/alerts/alerts\\_view.php?id=114.&type=3](http://www.oag.state.tx.us/alerts/alerts_view.php?id=114.&type=3)> (Sept. 1, 2005) (describing procedures available for removing fraudulent liens).
- <sup>49</sup> [Ark. Code Ann.](#) § 5-37-215 (LEXIS L. Publg. 2012).
- <sup>50</sup> [Cal. Govt. Code Ann.](#) § 6223.
- <sup>51</sup> [2012 Ga. Laws](#). Act 582
- <sup>52</sup> [Kan. Stat. Ann.](#) § 58-4302(2012)
- <sup>53</sup> [Title 5, Me. Rev. Stat. Ann.](#) § 90-E (2012).
- <sup>54</sup> [Mich. Comp. Laws](#) § 440.9501(6), (7).
- <sup>55</sup> [Minn. Stat.](#) § 609.7475.
- <sup>56</sup> [Minn. Stat.](#) § 604.17.
- <sup>57</sup> Mont. Code. Ann. §30-9A-420(2).

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<sup>58</sup> [N.H. Rev. Stat. Ann.](#) § 382-A:9-529 (2011).

<sup>59</sup> [N.D. Cent. Code](#) § 41-10.

<sup>60</sup> S.C. Code Ann. § 36-9-501(c)(d).

<sup>61</sup> [Tex. Bus. Com. Code Ann.](#) § 9-5185 (2012).

<sup>62</sup> [Tex. Penal Code Ann.](#) § 37.101 (2012).

<sup>63</sup> [Tex. Civ. Prac. And Remedies Code](#) § 12.002, .003 (2012).

<sup>64</sup> [Utah Code Ann.](#) § 76-6-503.5 (2012).

<sup>65</sup> W. Va. Code § 46-9-516(e).

# UCC Revised Article 9 Transition Matrix - 2012

State	2011 Legislation-status/bill#	Bill #	<u>9-102 Public Organic Record</u>	<u>9-102: Registered Organization</u>	<u>9-316: Effect of Change in Governing Law</u>	<u>9-503: Name of Debtor and Secured Party</u>	<u>9-516: Rejection Reasons: Organizational Debtor Information</u>	<u>9-518: Claim Concerning Inaccurate or Wrongfully Filed Record</u>	<u>9-521: UCC-1 and UCC-3 Forms</u>	<u>9-801: Effective Date</u>
Alabama	Pending	<a href="#">Senate Bill 308</a>	Uniform	Uniform	Uniform	Individual Name: Alternative B	Uniform	Uniform	No reference to forms	1-Jul-13
Alaska										
Arizona										
Arkansas										
California										
Colorado	Enacted	<a href="#">House Bill 1262</a>	Uniform	Uniform	Uniform	Individual Name: Alternative B	Uniform	Uniform	No reference to forms	1-Jul-13
Connecticut	Enacted	<a href="#">House Bill 6274</a>	Uniform	Uniform	Uniform	Individual Name: Alternative B	Uniform	Uniform	No reference to forms	1-Jul-13
Delaware										
District of Columbia	Pending	<a href="#">B19-0222</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Uniform: Reference to placeholder text only, no pics of UCC forms	1-Jul-13
Florida	Enacted	<a href="#">House Bill 483</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	No reference to forms	1-Jul-13
Georgia										
Hawaii	Enacted	<a href="#">House Bill 2162</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Uniform: Reference to placeholder text only	1-Jul-13
	Pending	<a href="#">Senate Bill 2444</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Uniform: Reference to placeholder text only	1-Jul-13
Idaho	Enacted	<a href="#">Senate Bill 1307</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform + Assumed Name	Uniform	Reference to "Following Form" but no pics yet	1-Jul-13
Illinois	Pending	<a href="#">Senate Bill 3764</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Reference to official text only	1-Jul-13
Indiana	Enacted	<a href="#">House Bill 1321</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Uniform: Reference to placeholder text only	1-Jul-13

# UCC Revised Article 9 Transition Matrix - 2012

State	2011 Legislation-status/bill#	Bill #	<u>9-102 Public Organic Record</u>	<u>9-102: Registered Organization</u>	<u>9-316: Effect of Change in Governing Law</u>	<u>9-503: Name of Debtor and Secured Party</u>	<u>9-516: Rejection Reasons: Organizational Debtor Information</u>	<u>9-518: Claim Concerning Inaccurate or Wrongfully Filed Record</u>	<u>9-521: UCC-1 and UCC-3 Forms</u>	<u>9-801: Effective Date</u>
	Pending	<a href="#">Senate Bill 341</a>	Uniform	Uniform	Uniform	Non-Uniform: (4) if the debtor is an individual, only if:  (A) it provides the individual name of the debtor; or  (B) it provides the surname and first personal name of the debtor...	Uniform	Uniform	Uniform: Reference to placeholder text only	1-Jul-13
Iowa	Enacted	<a href="#">House Bill 2321</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	No reference to forms	1-Jul-13
	Pending	<a href="#">Senate Bill 3147</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	No reference to forms	1-Jul-13
Kansas	Enacted	<a href="#">House Bill 2621</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	No reference to forms	1-Jul-13
Kentucky	Enacted	<a href="#">Senate Bill 97</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Reference to official text only	1-Jul-13
Louisiana	Enacted	<a href="#">House Bill 369</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	No reference to forms	1-Jul-13
Maine										
Maryland	Enacted	<a href="#">House Bill 713</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Reference to official text only	1-Jul-13
Massachusetts	Pending	<a href="#">House Bill 25</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Non-Uniform: No changes made to 9-516 organizational information	Uniform	Uniform: Reference to placeholder text only, no pics of UCC forms	1-Jul-13
Michigan	Enacted	<a href="#">House Bill 5083</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	No pic, but refers to ULC & SOS adoptions	1-Jul-13
Minnesota	Pending	<a href="#">House Bill 444</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	No reference to forms	1-Jul-13
	Enacted	<a href="#">Senate Bill 194</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	No reference to forms	1-Jul-13
Mississippi										
Missouri										

# UCC Revised Article 9 Transition Matrix - 2012

State	2011 Legislation-status/bill#	Bill #	<a href="#">9-102 Public Organic Record</a>	<a href="#">9-102: Registered Organization</a>	<a href="#">9-316: Effect of Change in Governing Law</a>	<a href="#">9-503: Name of Debtor and Secured Party</a>	<a href="#">9-516: Rejection Reasons: Organizational Debtor Information</a>	<a href="#">9-518: Claim Concerning Inaccurate or Wrongfully Filed Record</a>	<a href="#">9-521: UCC-1 and UCC-3 Forms</a>	<a href="#">9-801: Effective Date</a>
Montana										
Nebraska	Enacted	<a href="#">Legislative Bill 90</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Uniform: Reference to placeholder text only	1-Jul-13
Nevada	Enacted	<a href="#">Assembly Bill 109</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	No reference to forms	1-Jul-13
New Hampshire	Enacted	<a href="#">Senate Bill 204</a>	Uniform	Uniform	Uniform	Individual Name: Alternative B	Uniform	Uniform	Uniform: Reference to placeholder text only	1-Jul-13
New Jersey										
New Mexico										
New York										
North Carolina	Pending	<a href="#">House Bill 1068</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Images of forms included	1-Jul-13
	Pending	<a href="#">Senate Bill 844</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Images of forms included	1-Jul-13
North Dakota	Enacted	<a href="#">House Bill 1137</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	No reference to forms	1-Jul-13
Ohio	Enacted	<a href="#">Senate Bill 208</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Uniform: Reference to placeholder text only	1-Jul-13
Oklahoma	Pending	<a href="#">House Bill 1833</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Uniform: Reference to placeholder text only	1-Jul-13
	Pending	<a href="#">Senate Bill 609</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Uniform: Reference to placeholder text only	1-Jul-13
	Pending	<a href="#">Senate Bill 1219</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Uniform: Reference to placeholder text only	1-Jul-13
Oregon	Pending	<a href="#">House Bill 4035</a>	Uniform	Uniform	Uniform	Individual Name: Alternative B	Non-Uniform	Uniform	Refers to ALI, ULC	1-Jul-13

# UCC Revised Article 9 Transition Matrix - 2012

State	2011 Legislation-status/bill#	Bill #	<u>9-102 Public Organic Record</u>	<u>9-102: Registered Organization</u>	<u>9-316: Effect of Change in Governing Law</u>	<u>9-503: Name of Debtor and Secured Party</u>	<u>9-516: Rejection Reasons: Organizational Debtor Information</u>	<u>9-518: Claim Concerning Inaccurate or Wrongfully Filed Record</u>	<u>9-521: UCC-1 and UCC-3 Forms</u>	<u>9-801: Effective Date</u>
Pennsylvania	Pending	<a href="#">House Bill 2159</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	No reference to forms	1-Jul-13
Rhode Island	Enacted	<a href="#">House Bill 5573</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Uniform: Reference to placeholder text only	1-Jul-13
	Enacted	<a href="#">Senate Bill 520</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Uniform: Reference to placeholder text only	1-Jul-13
South Carolina										
South Dakota	Enacted	<a href="#">House Bill 1059</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Placeholder forms, No text	1-Jul-13
Tennessee	Pending	<a href="#">House Bill 3150</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Reference, but no form or placeholder text	1-Jul-13
	Enacted	<a href="#">Senate Bill 2931</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Reference, but no form or placeholder text	1-Jul-13



# UCC Revised Article 9 Transition Matrix - 2012

State	2011 Legislation-status/bill#	Bill #	<a href="#">9-102 Public Organic Record</a>	<a href="#">9-102: Registered Organization</a>	<a href="#">9-316: Effect of Change in Governing Law</a>	<a href="#">9-503: Name of Debtor and Secured Party</a>	<a href="#">9-516: Rejection Reasons: Organizational Debtor Information</a>	<a href="#">9-518: Claim Concerning Inaccurate or Wrongfully Filed Record</a>	<a href="#">9-521: UCC-1 and UCC-3 Forms</a>	<a href="#">9-801: Effective Date</a>
Texas	Enacted	<a href="#">Senate Bill 782</a>	Uniform	Uniform	Uniform	Non-Uniform: Similar to Alternative A, but slightly amended. (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 or to whom the agency of this state that issues driver's licenses has issued, in lieu of a driver's license, a personal identification card that has not expired, only[,] if the financing statement provides the [individual's] name of the individual that is indicated [shown] on the [individual's] driver's license or personal identification card [certificate issued by the individual's state of residence]; (5) if the debtor is an individual to whom Subdivision (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...	Non-Uniform: No changes made to 9-516 organizational information	Amends form name from "correction statement" to "information statement"	No reference to forms	1-Jul-13

# UCC Revised Article 9 Transition Matrix - 2012

State	2011 Legislation-status/bill#	Bill #	<a href="#">9-102 Public Organic Record</a>	<a href="#">9-102: Registered Organization</a>	<a href="#">9-316: Effect of Change in Governing Law</a>	<a href="#">9-503: Name of Debtor and Secured Party</a>	<a href="#">9-516: Rejection Reasons: Organizational Debtor Information</a>	<a href="#">9-518: Claim Concerning Inaccurate or Wrongfully Filed Record</a>	<a href="#">9-521: UCC-1 and UCC-3 Forms</a>	<a href="#">9-801: Effective Date</a>
	Pending	<a href="#">House Bill 1617</a>	Uniform	Uniform	Uniform	Non-Uniform: Similar to Alternative A, but slightly amended. (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 or to whom the agency of this state that issues driver's licenses has issued, in lieu of a driver's license, a personal identification card that has not expired, only[,] if the financing statement provides the [individual's] name of the individual that is indicated [shown] on the [individual's] driver's license or personal identification card [certificate issued by the individual's state of residence]; (5) if the debtor is an individual to whom Subdivision (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...	Non-Uniform: No changes made to 9-516 organizational information	Non-Uniform: Does not allow a SP to file	No reference to forms	1-Jul-13
Utah										
Vermont										
Virginia	Enacted	<a href="#">Senate Bill 51</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	Following form, but no pics	1-Jul-13
Washington	Enacted	<a href="#">House Bill 1492</a>	Uniform	Uniform	Uniform	Individual Name: Alternative B	Uniform	Uniform	Uniform: Reference to placeholder text only	1-Jul-13
West Virginia	Enacted	<a href="#">House Bill 4251</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	No form reference	1-Jul-13
	Pending	<a href="#">Senate Bill 374</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	No form reference	1-Jul-13

UCC Revised Article 9 Transition Matrix - 2012

State	2011 Legislation- status/bill#	Bill #	<u>9-102 Public Organic Record</u>	<u>9-102: Registered Organization</u>	<u>9-316: Effect of Change in Governing Law</u>	<u>9-503: Name of Debtor and Secured Party</u>	<u>9-516: Rejection Reasons: Organizational Debtor Information</u>	<u>9-518: Claim Concerning Inaccurate or Wrongfully Filed Record</u>	<u>9-521: UCC-1 and UCC-3 Forms</u>	<u>9-801: Effective Date</u>
Wisconsin	Enacted	<a href="#">Senate Bill 416</a>	Uniform	Uniform	Uniform	Individual Name: Alternative A	Uniform	Uniform	No pics of form text	1-Jul-13
Wyoming										

## Twenty Questions About an Individual Debtor's Name Under Amended Article 9 Section 9-503(a)(4) Alternative A

Richard H. Nowka

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TWENTY QUESTIONS ABOUT AN INDIVIDUAL  
DEBTOR'S NAME UNDER AMENDED ARTICLE 9  
SECTION 9-503(A)(4) ALTERNATIVE A

RICHARD H. NOWKA<sup>\*</sup>

ABSTRACT

*This Article answers questions created by the financing statement requirements for sufficiency of the name of an individual debtor under the amendments to Uniform Commercial Code Article 9—Secured Transactions. An individual debtor in a security interest transaction could be known by various names: birth certificate name, driver's license name, passport name, or nickname. Revised Article 9 provides no guidance on what name is the correct name of the debtor for entry on the financing statement, and a financing statement that does not provide the correct name of the debtor does not perfect the security interest. To resolve this problem, the Joint Review Committee for Article 9 considered possible amendments to the individual debtor name requirements. Even the Joint Review Committee struggled with the issue, finally adopting two alternatives for sufficiency of the name of an individual debtor and asking states to choose between them. The Uniform Law Commission and the American Law Institute accepted the proposal and have offered the alternatives to the states, along with other amendments to Article 9. The proposed effective date of the amendments to Article 9 is July 1, 2013.*

*To date, most states have adopted Alternative A to section 9-503(a)(4) of amended Article 9. It is known as the "only if" rule. In accordance with this rule, a financing statement is sufficient only if it provides the name of the individual debtor as indicated on the debtor's unexpired driver's license. However, a secured party complying with section 9-503(a)(4) Alternative A could still face many questions regarding the debtor's name. This Article asks and answers twenty such questions. The Article also examines the statutory requirements of section 9-503(a)(4) Alternative A and how a filed financing statement that does not satisfy those requirements could nevertheless remain effective.*

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## INTRODUCTION

Brooks L. Dickerson, better known in his community as Louie Dickerson, borrowed money from two banks.<sup>1</sup> Each bank took a security interest in Dickerson's cattle.<sup>2</sup> The first secured party filed a financing statement providing the debtor's name as "Louie Dickerson."<sup>3</sup> The second secured party filed a financing statement providing the debtor's name as "Brooks L. Dickerson."<sup>4</sup> Do both financing statements sufficiently provide the name of the debtor? Cases such as this have presented problems for courts trying to determine whether the financing statement complies with the Article 9, section 9-502 requirement that the financing statement "provides the name of the debtor."<sup>5</sup> The only direct guidance from Article 9 was that the "financing statement sufficiently provides the name of the debtor ... only if it provides the individual ... name of the debtor."<sup>6</sup> Article 9 provides no explanation of the meaning of "individual name,"<sup>7</sup> so a few jurisdictions adopted their own legislation to answer that question.<sup>8</sup> This uncertainty led the Article 9 Review Committee to include the matter on its list of issues being considered by a drafting committee.<sup>9</sup>

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<sup>1</sup> *Peoples Bank v. Bryan Bros. Cattle Co.*, 504 F.3d 549, 551 (5th Cir. 2007).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 552.

<sup>5</sup> "Subject to subsection (b), a financing statement is sufficient only if it: (1) provides the name of the debtor ...." U.C.C. § 9-502(a)(1) (2002) (The 2002 Official Text of the U.C.C., better known as "Revised Article 9," is the Official Text immediately preceding the Amendments to Article 9, the 2010 Approved Amendments.); *see also In re Kinderknecht*, 308 B.R. 71, 72–73 (B.A.P. 10th Cir. 2004) (determining whether a nickname satisfies the Article 9 requirement); *In re Jones*, 2006 WL 3590097, at \*1 (Bankr. D. Kan. Dec. 7, 2006) (determining whether a "full name" is required to satisfy the Article 9 requirement); *In re Stewart*, 2006 WL 3193374, at \*1 (Bankr. D. Kan. Nov. 1, 2006) (determining whether any name other than the name on a birth certificate satisfies the Article 9 requirement).

<sup>6</sup> U.C.C. § 9-503(a)(4) (2002). One court noted that the caption for the debtor's name box in the initial financing statement form approved in section 9-521(a) provides, "Debtor's Exact Full Legal Name." *In re Erwin*, 2003 WL 21513158, at \*9 (Bankr. D. Kan. June 27, 2003).

<sup>7</sup> *See* U.C.C. § 9-503.

<sup>8</sup> Tennessee and Texas amended their sections 9-503(a) to establish sufficiency of an individual debtor's name if the financing statement provides the name as indicated on a driver's license or identification card. TENN. CODE ANN. § 47-9-503(a) (2010); TEX. BUS. & COM. CODE ANN. § 9.503(a)(4) (West 2009).

<sup>9</sup> U.C.C. Article 9 Review Comm., *Statutory Modification Issues List*, A.L.I. 1, 1–2 (June 24, 2008), available at [http://extranet.ali.org/directory/files/UCC9\\_IssuesList.pdf](http://extranet.ali.org/directory/files/UCC9_IssuesList.pdf). The Uniform Law Commissioners and the American Law Institute formed the Article 9



After two years of study, the Joint Review Committee for Article 9, unable to agree on a single approach, recommended two alternatives for amending the requirements for sufficiency of the name of an individual debtor on a financing statement.<sup>10</sup> Alternative A, labeled the “only if” alternative, mandates that “[a] financing statement sufficiently provides the name of the debtor ... 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].”<sup>11</sup> Alternative B, labeled the “safe harbor” alternative, states that:

A financing statement sufficiently provides the name of the debtor ... 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) ... 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.<sup>12</sup>

The Reporter’s Note to section 9-503 discloses the committee’s struggle with the issue.<sup>13</sup>

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Review Committee in 2008. NAT’L CONFERENCE OF COMM’RS ON UNIF. STATE LAWS, DRAFT FOR APPROVAL AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9 (2010), at Reporter’s Prefatory Note 1, *available at* [http://www.law.upenn.edu/bll/archives/ulc/ucc9/2010am\\_draft.pdf](http://www.law.upenn.edu/bll/archives/ulc/ucc9/2010am_draft.pdf) [hereinafter ARTICLE 9 AMENDMENTS DRAFT FOR APPROVAL].

<sup>10</sup> ARTICLE 9 AMENDMENTS DRAFT FOR APPROVAL, *supra* note 9, at Reporter’s Prefatory Note 1. The note lists the many factors weighed by the committee in reaching its decision. *Id.* The Uniform Law Commissioners and the American Law Institute formed the Joint Review Committee after deciding to proceed with drafting amendments to Article 9. *Id.*

<sup>11</sup> U.C.C. § 9-503(a)(4) (Alt. A) (Approved Amendments 2010). Alternatives A and B place brackets around “driver’s license” to allow a state to replace that term with an analogous term used by the state. *See id.* § 9-503 legis. n.3. If “this State” has not issued an unexpired driver’s license, Alternative A requires the “individual name of the debtor or the surname and first personal name of the debtor.” *Id.* § 9-503(a)(5).

<sup>12</sup> *Id.* § 9-503(a)(4) (Alt. B).

<sup>13</sup> ARTICLE 9 AMENDMENTS DRAFT FOR APPROVAL, *supra* note 9, at Reporter’s Prefatory Note 2.

The provisions governing the name required to be provided with respect to a debtor who is an individual were the most contentious and perhaps the most difficult issues addressed by the Joint Review Committee. Recognizing the diversity of views, the Joint Review Committee recommends that each State be asked to choose between two alternatives.<sup>14</sup>

The American Law Institute and the Uniform Law Commissioners approved section 9-503 with the alternatives and have offered the Article 9 amendments to the states for adoption.<sup>15</sup>

Section 9-503(a)(4) Alternative B raises few questions regarding its operation. Because one of the Alternative B options is identical to the individual name requirement of pre-amendment Revised Article 9,<sup>16</sup> filers and searchers will have familiarity with the requirement, regardless of the problems it created previously. The other safe harbors of Alternative B give filers two additional opportunities to provide a sufficient name on the financing statement.<sup>17</sup> A secured creditor that acts with due diligence should have little trouble satisfying the debtor's name requirement of Alternative B because any of three options is sufficient.<sup>18</sup>

Section 9-503(a)(4) Alternative A, with its driver's-license-only sufficiency requirement, raises many questions concerning its operation. For example: What if the debtor has multiple driver's licenses? What happens when the license expires? What happens when the debtor changes her name? What happens when the debtor moves to another state? The answers to those questions are important because the majority of jurisdictions adopting the Article 9 amendments also adopt Alternative A.<sup>19</sup> This

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<sup>14</sup> *Id.*

<sup>15</sup> The amendments specify an effective date of July 1, 2013. U.C.C. § 9-801 (Approved Amendments 2010).

<sup>16</sup> The "financing statement sufficiently provides the name of the debtor ... only if it provides the individual ... name of the debtor ...." U.C.C. § 9-503(a)(4)(A) (2002).

<sup>17</sup> U.C.C. § 9-503(a)(4) (Alt. B) (Approved Amendments 2010).

<sup>18</sup> *Id.*

<sup>19</sup> Of the nine jurisdictions that have enacted the Article 9 amendments to date, seven chose Alternative A: Indiana, H.B. 1321, 117th Gen. Assemb., Reg. Sess. (Ind. 2011); Minnesota, S.F. 194, 87th Legis. Sess., Reg. Sess. (Minn. 2011); Nebraska, L.B. 90, 102d Legis. Sess. (Neb. 2011); Nevada, A.B. 109, 76th Reg. Sess. (Nev. 2011); North Dakota, H.B. 1137, 62d Leg. Assemb. (N.D. 2011); Rhode Island, H.B. 5573, Jan. Sess. (R.I. 2011); and Texas, S.B. 782, 82d Leg. (Tex. 2011). Connecticut and Washington enacted Alternative B. H.B. 6274, 2011 Sess. (Ct. 2011); H.B. 1492, 62d Leg., Reg. Sess. (Wash. 2011). There is debate about which is the better alternative. *See, e.g.,* Harry C. Sigman, *Improvements (?) to the UCC Article 9 Filing System*, 46 GONZ. L. REV. 457, 459 (2010–11) (supporting Alternative B); American Bankers Association UCC Article 9 Working Group, *Section 9-503. Name of Debtor and Secured Party Position Paper* (Mar. 17,

Article asks and answers questions pertaining to satisfying the financing statement requirements for the name of an individual debtor under section 9-503(a)(4) Alternative A.

Part I of this Article examines the debtor's name requirements of sections 9-503(a)(4) and (a)(5), Alternative A. Part II explains the Article 9 sections that can save a financing statement that does not satisfy those requirements. Part III answers twenty questions that relate to complying with the debtor's name requirements under Alternative A.

#### I. SECTION 9-503(A)(4) ALTERNATIVE A

Section 9-503(a)(4) Alternative A establishes the rule for sufficiency of the name of an individual debtor for a financing statement.<sup>20</sup> If the jurisdiction governing perfection ("this State") has issued a driver's license that has not expired, a financing statement is sufficient as to the name of the debtor only if it provides the name of the individual as it is indicated on the driver's license.<sup>21</sup> The section creates a straightforward test—if this State has issued an unexpired driver's license, a financing statement must provide the name indicated on the license.<sup>22</sup> It is the only name that allows a financing statement to be sufficient.<sup>23</sup>

In some states, the agency that issues a driver's license also can issue an identification card to an individual who does not hold a driver's license.<sup>24</sup> The legislative note to section 9-503 advises those states to replace "driver's license" in subsection (a)(4) with an appropriate term that

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2011), <http://www.aba.com/aba/documents/GeneralCounsel/UniformLaws/Article9PositionPaper03172011.pdf> (supporting Alternative A); Letter from Patrick M. Costell, Committee Co-Chair, Uniform Commercial Code Committee of the Business Law Section of the State Bar of California, to Uniform Law Commission and Article 9 Review Committee, *Re: Possible Amendments to Uniform Commercial Code Article 9 Individual Debtor Name Provisions* (July 9, 2009), available at [http://www.law.upenn.edu/bll/archives/ulc/ucc9/letter\\_2009july9.pdf](http://www.law.upenn.edu/bll/archives/ulc/ucc9/letter_2009july9.pdf) (supporting Alternative B); Barkley Clark, *Four Reasons to Adopt Alternative A for Individual Debtor Names*, AMERICAN BANKERS ASSOCIATION (Mar. 18, 2011), <http://www.aba.com/aba/documents/GeneralCounsel/UniformLaws/UCC9FourReasons03182011.pdf> (supporting Alternative A).

<sup>20</sup> U.C.C. § 9-503(a)(4) (Alt. A) (Approved Amendments 2010).

<sup>21</sup> The drafters recognized that not all states will use the term "driver's license" to denote the license that authorizes an individual to operate a motor vehicle. *Id.* § 9-503 legis. n.3. For example, a state may use "operator's license." Such states should insert the applicable term in section 9-503(a)(4).

<sup>22</sup> *Id.* § 9-503(a)(4) (Alt. A).

<sup>23</sup> *Id.*

<sup>24</sup> See, e.g., *Adult ID Card*, VIRGINIA DEPARTMENT OF MOTOR VEHICLES, [http://www.dmv.state.va.us/webdoc/citizen/id/adult\\_id.asp](http://www.dmv.state.va.us/webdoc/citizen/id/adult_id.asp) (last visited Jan. 31, 2012).

covers both documents.<sup>25</sup> In a state whose section 9-503(a)(4) includes “driver’s license or identification card,” a financing statement is sufficient if it provides the name indicated on an identification card when the state has not issued a driver’s license.<sup>26</sup> The Legislative Note limits this option to states where “an individual may hold either a driver’s license or an identification card but not both.”<sup>27</sup>

“This State” in subsection (a)(4) is the state whose Article 9 governs perfection of the security interest determined under sections 9-301 and 9-307.<sup>28</sup> The general rule of section 9-301 is that the law of the jurisdiction where the debtor is located governs perfection.<sup>29</sup> Section 9-307(b)(1) provides that an individual debtor is located at the individual’s principal residence.<sup>30</sup> For example, if an individual debtor resides in Iowa, Iowa’s Article 9 governs perfection of a security interest created by the debtor.

Secured parties must be cognizant of the order in which the driver’s license or identification card lists the debtor’s names. The first name listed on the license could be the debtor’s surname or the debtor’s first personal name. For example, a driver’s license that provides “John, Elton” could be indicating “John” as the surname or the first personal name.<sup>31</sup> The secured party must provide the name of the debtor as indicated on the license in the correct boxes on the financing statement: “Individual’s Surname”; “First Personal Name”; and “Additional Name(s)/Initial(s).”<sup>32</sup> Note that if

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<sup>25</sup> U.C.C. § 9-503 legis. n.3. Of the seven states that have enacted section 9-503(a)(4), Alternative A, only Nebraska did not include an identification card as a means for determining the debtor’s name. L.B. 90, 102d Legis. Sess. (Neb. 2011). For a list of states enacting Alternative A, see *supra* note 19.

<sup>26</sup> See, e.g., IND. CODE § 26-1-9.1-503, Version b.

<sup>27</sup> U.C.C. § 9-503 legis. n.3.

<sup>28</sup> *Id.* § 9-301(1); *id.* § 9-307(b). The first question a party should answer for any security interest is: “Which jurisdiction’s Article 9 governs the security interest?”

<sup>29</sup> “Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in collateral.” *Id.* § 9-301(1).

<sup>30</sup> *Id.* § 9-307(b)(1). The amendments to Article 9 amend only section 9-307(f), the location of a registered organization organized under federal law. *Id.* § 9-307(f)(2).

<sup>31</sup> Determining the surname and first personal name can be complicated for names from international cultures. See *Corona Fruits & Veggies, Inc., v. Frozsun Foods, Inc.*, 48 Cal. Rptr. 3d 868, 870–71 (Ca. Ct. App. 2006) (rejecting Latin American naming conventions as controlling under a U.S. law); *All Bus. Corp. v. Choi*, 634 S.E.2d 400, 401 (Ga. Ct. App. 2006) (highlighting the difficulty in determining the surname of “Sang Woo Gu”).

<sup>32</sup> See U.C.C. § 9-503 cmt. 2d. The “Debtor’s Name,” box 2b, has spaces for the “Individual’s Surname” and “First Personal Name,” and “Additional Name(s)/Initial(s).” See *UCC Financing Statement (Form UCC1)*, INT’L ASS’N OF COMMERCIAL ADM’RS, <http://www.ubcc.com>.

a driver's license does not provide a debtor's additional name or initial, no such name is required or necessary.<sup>33</sup>

Not every state will have issued either a driver's license or an identification card to an individual debtor, regardless of whether "this State" has laws authorizing an individual to obtain a driver's license or identification card. An individual may decide to have neither form of identification. For example, an individual could use a government-issued passport for identification in lieu of a driver's license or identification card. In those situations, section 9-503(a)(4) cannot apply because the state has not issued the requisite document.<sup>34</sup> Section 9-503(a)(5) applies when subsection (a)(4) does not.<sup>35</sup> Subsection (a)(5) establishes another "only if" rule.<sup>36</sup> A financing statement is sufficient as to the name of the debtor "only if the financing statement provides the individual name of the debtor" or the "surname and first personal name of the debtor."<sup>37</sup> Use of either name sufficiently indicates the name of the debtor.<sup>38</sup>

The "individual name of the debtor" option is identical to the name requirement of pre-amendment section 9-503(a)(4)(A).<sup>39</sup> Thus, the same difficulties a secured party encountered previously in determining the "individual name" of a debtor will continue into amended Article 9.<sup>40</sup> Nevertheless, a financing statement sufficiently provides the name of the debtor if it indicates the individual name of the debtor.<sup>41</sup>

In addition, the amendments provide a new option—the "surname and first personal name of the debtor."<sup>42</sup> No middle name or middle initial is required or necessary.<sup>43</sup> In theory, determining the debtor's surname, also known as an individual's last name or family name, should not be difficult. The secured party can simply ask the debtor her name or, as a safer option, determine the name by requiring that the debtor furnish mail addressed to the debtor or a copy of the debtor's tax return. Determining the first name of the debtor might be more difficult. This requirement be-

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[www.iaca.org/downloads/forms/ucc1.pdf](http://www.iaca.org/downloads/forms/ucc1.pdf) (last visited Jan. 31, 2012) [hereinafter *Form UCC-1*].

<sup>33</sup> U.C.C. § 9-503(b) (Alt. A).

<sup>34</sup> *Id.* § 9-503(a)(4) (Alt. A).

<sup>35</sup> *Id.* § 9-503(a)(5) (Alt. A).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> U.C.C. § 9-503(a)(4)(A) (2002).

<sup>40</sup> See cases cited *supra* note 5.

<sup>41</sup> U.C.C. § 9-503(a)(5) (Alt. A) (Approved Amendments 2010).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

comes tangled in the web of nickname versus actual name. What is the “first personal name” of “Michael” who uses the name “Mike”? For most courts it is “Michael,” but he may respond “Mike” when asked.<sup>44</sup>

The problems arising in determining an individual debtor’s name by using either the individual name or surname and first personal name likely contributed to the drafters’ decision to adopt the debtor’s driver’s license name as the first-tier requirement of section 9-503(a)(4) Alternative A.<sup>45</sup> Although mandating use of the driver’s license name does not solve all problems, it does provide a means for determining the name of an individual debtor that a secured party can use easily and which most debtors will be able to supply.

## II. EFFECTIVENESS OF A FINANCING STATEMENT THAT PROVIDES AN INCORRECT NAME OF THE DEBTOR

The apparent goal of the financing statement name requirements is that the secured party strictly complies. Evidence of that is seen in the Article 9 sections pertaining to financing statements: a financing statement that does not satisfy the name requirements of Article 9 is not effective.<sup>46</sup> Nevertheless, a financing statement that fails to provide the correct name of the debtor is not completely without effect. Article 9 includes two sections that validate, in some instances, a financing statement that provides an incorrect name.<sup>47</sup> Those sections are not, however, a panacea for an insuf-

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<sup>44</sup> See *In re Larsen*, 2010 WL 909138, at \*1 (Bankr. S.D. Iowa Mar. 10, 2010) (analyzing security agreement by a Michael D. Larsen with listed name of “Mike Larsen”); *In re Borden*, 353 B.R. 886, 887 (Bankr. D. Neb. 2006) (analyzing security agreement by a Michael Borden with listed name of “Mike Borden”); *In re Berry*, 2006 WL 2795507 (Bankr. D. Kan. Sept 26, 2006) (analyzing security agreement by a Michael R. Berry, Jr. with listed name of “Mike R. Berry, Jr.”); *In re Erwin*, 2003 WL 21513158 (Bankr. D. Kan. June 27, 2003) (analyzing security agreement by a Michael A. Erwin with listed name of “Mike Erwin”).

<sup>45</sup> American Bankers Association UCC Article 9 Working Group, *supra* note 19 (supporting Alternative A); Clark, *supra* note 19 (supporting Alternative A).

<sup>46</sup> See U.C.C. § 9-310(a) (2002) (“Except as otherwise provided ... a financing statement must be filed to perfect all security interests ....”); U.C.C. § 9-502(a) (Approved Amendments 2010) (“[A] financing statement is sufficient only if it ... provides the name of the debtor ....”); *id.* § 9-506(b) (“[A] financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a) is seriously misleading.”).

<sup>47</sup> *Id.* § 9-506(c) (validating a financing statement that incorrectly provides the debtor’s name); *id.* § 9-507(c) (a filed financing statement remains effective after name it provides becomes seriously misleading).

ficient financing statement. A secured party must be diligent in satisfying the debtor's name requirements.

*A. Section 9-506(c)—A Search Discloses the Financing Statement*

Section 9-506(c) provides relief for some financing statements that do not satisfy the name requirements of section 9-503(a).<sup>48</sup> Unfortunately, it provides a cure in limited situations only.<sup>49</sup> Initially, section 9-506(b) adopts a severe rule that a financing statement is seriously misleading if it fails to provide the name of the debtor as required by section 9-503(a).<sup>50</sup> A financing statement that is seriously misleading is not effective to perfect a security interest.<sup>51</sup> However, section 9-506(c) is an exception to the rule of section 9-506(b),<sup>52</sup> which lessens the severity of section 9-506(b) by, in some cases, transforming a financing statement that is seriously misleading into one that is not seriously misleading,<sup>53</sup> provided certain criteria are fulfilled.

The rule of section 9-506(c) is simple, but lacking in detail. A filed financing statement that does not satisfy the debtor's name requirement nevertheless is not seriously misleading if a search under the correct name of the debtor, using the standard search logic of the filing office, would disclose the financing statement.<sup>54</sup> Simple enough—the financing statement is not seriously misleading if the search discloses it regardless of the fact that it does not sufficiently provide the debtor's name.<sup>55</sup>

But what is “standard search logic”? Although Article 9 offers no detail on its meaning, the International Association of Commercial Administrators (IACA) has promulgated model rules for standard search logic.<sup>56</sup> Basically, standard search logic is the search methodology that a filing office applies when it conducts a search of its filing records for financing

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<sup>48</sup> *Id.* § 9-506(c).

<sup>49</sup> *Id.*

<sup>50</sup> “Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a) is seriously misleading.” U.C.C. § 9-506(b).

<sup>51</sup> *See supra* note 46.

<sup>52</sup> U.C.C. § 9-506(c).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* The search is performed in the records of the office where the financing statement is filed. *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *See* INT’L ASS’N OF COMMERCIAL ADM’RS (IACA), UNIFORM COMMERCIAL CODE, ARTICLE 9; MODEL ADMINISTRATIVE RULES §§ 100–505 (2010), available at [http://www.iaca.org/downloads/2010Conference/STS/v14-2010\\_Model\\_Administrative\\_Rules.pdf](http://www.iaca.org/downloads/2010Conference/STS/v14-2010_Model_Administrative_Rules.pdf) [hereinafter IACA MODEL RULES].

statements filed against a debtor.<sup>57</sup> Search methodology rules cover aspects of the debtor's name such as punctuation, upper and lower case letters, accent marks, abbreviations, and number of matches returned.<sup>58</sup> Searches conducted by filing offices that implement and apply standard search logic produce uniform results because human judgment is not a factor in the search.<sup>59</sup> States can adopt the IACA rules or create rules of their own.<sup>60</sup>

To illustrate section 9-506(c), assume the debtor's correct name under section 9-503(a)(4) Alternative A is "Michael R. Borden."<sup>61</sup> The secured party files a financing statement providing the debtor's name as "Mike Borden," because that is the name the debtor gives to the secured party, so on its face, the financing statement is seriously misleading for failing to comply with the name requirement of section 9-503(a)(4).<sup>62</sup> However, section 9-506(c) makes the financing statement not seriously misleading if a search of the financing statement records under the correct name of the debtor using the standard search logic of the filing office would disclose the filed financing statement.<sup>63</sup> A standard search logic search would not save this financing statement unless the filing office's standard search logic retrieves all financing statements filed under "Borden" whose first personal name begins with the letter "M." It is unlikely that any filing office has adopted such search logic.<sup>64</sup> A search of "Michael Borden" using the model standard search logic would retrieve a financing statement providing the initial "M," but not a financing statement providing another name that begins with "M."<sup>65</sup> This hypothetical demonstrates the limited ability of section 9-506(c) to save a financing statement that provides an incorrect name.

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<sup>57</sup> *Id.* § 501.4.

<sup>58</sup> *Id.* § 503.1.

<sup>59</sup> *Id.* § 503.

<sup>60</sup> The IACA webpage has links to the rules of each state. *Model Administrative Rules for UCC Article 9*, INT'L ASS'N OF COMMERCIAL ADM'RS, <http://www.iaca.org/node/46> (last visited Jan. 31, 2012) [hereinafter *Model Administrative Rules*].

<sup>61</sup> The correct name is the driver's license name for states enacting Alternative A to section 9-503. U.C.C. § 9-503(a)(4) (Alt. A) (Approved Amendments 2010).

<sup>62</sup> *Id.* § 9-506(b).

<sup>63</sup> *Id.* § 9-506(c).

<sup>64</sup> For the IACA webpage with links to the rules of each state, see *supra* note 60.

<sup>65</sup> See IACA MODEL RULES, *supra* note 56, § 503.1.8.



*B. Section 9-507(c)—Financing Statement that Becomes Insufficient Remains Effective*

Section 9-507(c) pertains to the situation in which the name of the debtor on a filed financing statement becomes seriously misleading.<sup>66</sup> It operates whenever the debtor's name provided on a filed financing statement becomes insufficient, causing the financing statement to become seriously misleading.<sup>67</sup> A filed financing statement becomes seriously misleading when it does not provide the name of the debtor as required by section 9-503(a)(4), regardless of the reason why the name becomes insufficient.<sup>68</sup> For example, insufficiency of the debtor's name could result from a name change of the debtor, the expiration of the debtor's driver's license, or the issuance of multiple unexpired licenses by the governing jurisdiction.<sup>69</sup> Nevertheless, under section 9-507(c)(1), the financing statement remains effective to perfect the security interest in collateral that the debtor acquired before and within four months after the filed financing statement becomes seriously misleading.<sup>70</sup> No action need be taken by the secured party to continue that perfection.<sup>71</sup>

To illustrate section 9-507(c)(1), assume the debtor is a sole proprietor whose full individual name is "Lucille Jennifer Koch," and the collateral

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<sup>66</sup> The operation of section 9-507(c) presumes that the filed financing statement sufficiently provides the name of the debtor. U.C.C. § 9-507(c) ("[T]he name that a filed financing statement provides for a debtor *becomes insufficient* as the name of the debtor ....") (emphasis added).

<sup>67</sup> Section 9-507(c) provides relief much more frequently than section 9-506(c) because many common occurrences cause the name on a filed financing statement to become seriously misleading. See *infra* note 69 and accompanying text.

<sup>68</sup> The section was amended in the 2010 amendments to Article 9. U.C.C. § 9-507 (Approved Amendments 2010). Previously, it applied when the debtor changed its name so that a filed financing statement became seriously misleading. U.C.C. § 9-507(c) (2002). The amendments make the section applicable to the situation in which the name on a filed financing statement becomes seriously misleading, not only when the debtor changes its name. U.C.C. § 9-507(c) (Approved Amendments 2010). The section applies to all debtors, not only an individual debtor.

<sup>69</sup> These situations are discussed in Questions 13–17. See *infra* Part III.

<sup>70</sup> U.C.C. § 9-507(c)(1) (Approved Amendments 2010). Although the continued perfection established by section 9-507(c)(1) is phrased as "or" ("effective to perfect a security interest in collateral acquired by the debtor before, *or* within four months after ....") (emphasis added) there is no logical reason to interpret "or" as indicating an alternative between existing collateral and after-acquired collateral. *Id.* The section uses "or" but the meaning must be "and." If the financing statement remains effective, it must be effective for existing collateral as well as for collateral the debtor acquires within four months after the seriously misleading event. Cf. *id.* § 9-508(b)(2).

<sup>71</sup> *Id.* § 9-507(c).

for the security interest is the debtor's existing and after-acquired inventory. The secured party filed a financing statement that provides the name as indicated on the debtor's driver's license, "Jen Koch."<sup>72</sup> When her driver's license expires on December 31, 2013, the debtor neglects to obtain a new driver's license and, because there is no unexpired driver's license, section 9-503(a)(5) applies and fixes the name of the debtor as either "Lucille Jennifer Koch" or "Lucille Koch."<sup>73</sup> That change causes the financing statement to become seriously misleading on that date unless a standard search logic search would disclose the filed financing statement.<sup>74</sup> Nevertheless, under section 9-507(c)(1) the financing statement remains effective to perfect the security interest in all inventory the debtor had before the financing statement became seriously misleading and all inventory the debtor acquires within four months after it became seriously misleading.<sup>75</sup> Thus, the security interest is perfected in all inventory the debtor possesses as of April 30, 2014 (four months after the financing statement became seriously misleading). The security interest remains perfected in such collateral until perfection would otherwise lapse.<sup>76</sup>

Section 9-507(c)(1) offers significant protection for a secured party. Events that can cause the name on a filed financing statement to become seriously misleading are common and likely to occur without the knowledge of the secured party.<sup>77</sup> Regardless of whether the secured party is negligent, neglectful, or without fault for not discovering the event, losing

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<sup>72</sup> The name of the debtor indicated on the debtor's driver's license could be different from the debtor's individual name because the name on the documentation that a jurisdiction requires to issue a driver's license might not be identical to the debtor's individual name. Because the governing jurisdiction has enacted section 9-503(a)(4) Alternative A, the financing statement must provide the name as indicated on the debtor's driver's license, regardless of whether it is the same as the debtor's individual name. *Id.* § 9-503(a)(4) (Alt. A).

<sup>73</sup> The correct name of the debtor is either her individual name or her surname and first personal name. *Id.* § 9-503(a)(5) (Alt. A).

<sup>74</sup> U.C.C. § 9-506(b)–(c). The discrepancy between the names makes it highly unlikely that a standard search logic search under the correct name would retrieve the filed financing statement.

<sup>75</sup> *Id.* § 507(c)(1).

<sup>76</sup> For most security interests perfected by filing, the period of effectiveness of a financing statement, and consequently the period of perfection of the security interest, is five years from the date of filing. *Id.* § 9-515(a), (c). Filing an effective continuation statement can extend the life of a financing statement for an additional five years. *Id.* § 9-515(e).

<sup>77</sup> A name change of the debtor, the expiration of the debtor's driver's license, or issuance of multiple licenses to the debtor by the governing jurisdiction can all cause the name on a filed financing statement to become seriously misleading. *Id.* § 506(b). The secured party has no way of knowing if these events occur.

perfection of its security interest would be an unforgiving penalty. Another secured party that extends credit based on the debtor's correct name would prefer its competitor's loss of perfection, but that secured party is likely in a better position to discover the various names that the debtor uses or previously used, simply by asking during the credit application process.

The protection of section 9-507(c) is not without limits—not all collateral will be automatically protected. To perfect the security interest in any collateral the debtor acquires more than four months after the financing statement becomes seriously misleading, the secured party must amend the financing statement within that four month period to sufficiently provide the name of the debtor.<sup>78</sup> The amendment must provide the name in accordance with the applicable “only if” rule—either section 9-503(a)(4) or (a)(5).<sup>79</sup> Filing an amendment that sufficiently provides the name of the debtor perfects the security interest in all collateral, without any gap in perfection.<sup>80</sup> Using the names of the hypothetical discussed above, the amendment must provide the name “Lucille Jennifer Koch” or “Lucille Koch.”

In limiting the automatic perfection of the security interest to collateral the debtor has or acquires up to four months after the financing statement becomes seriously misleading, the drafters give the secured party four months to discover that the financing statement has become seriously misleading and to take remedial action.<sup>81</sup> This rule provides some protection for the secured party that extends credit based on the debtor's current correct name and adds a diligence requirement for the secured party whose filed financing statement became seriously misleading.<sup>82</sup>

A secured party that fails to amend the financing statement will not be perfected in collateral the debtor acquires more than four months after the financing statement becomes seriously misleading.<sup>83</sup> Although the security interest will attach to that collateral, provided the security agreement includes an after-acquired property clause, the filed financing statement will not perfect it.<sup>84</sup> For example, assume the financing statement becomes

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<sup>78</sup> *Id.* § 9-507(c)(2). A financing statement is amended in accordance with section 9-512. U.C.C. § 9-512. Section 9-509(b) authorizes the secured party to file an amendment to the financing statement. *Id.* § 9-509(b).

<sup>79</sup> *Id.* § 503(a)(4), (5) (Alt. A).

<sup>80</sup> *Id.* § 9-507(c)(2).

<sup>81</sup> *Id.* § 9-507(c).

<sup>82</sup> *Id.*

<sup>83</sup> U.C.C. § 9-507(c)(2).

<sup>84</sup> U.C.C. § 9-204(a) (2002) (validating an after-acquired property clause).

seriously misleading on December 31, 2013. The secured party has not filed an amendment to the financing statement. Because the security agreement includes an after-acquired property clause, the security interest attaches to collateral the debtor acquires on May 12, 2014, but the security interest in that collateral is no longer perfected because the four-month safe harbor ended on April 31, 2014. However, failing to file an amendment has no effect on perfection of the security interest in collateral the debtor acquired before the end of the four-month period.

A secured party that fails to timely file an amendment can file it as soon as the secured party discovers that the financing statement has become seriously misleading, regardless that the discovery occurs outside the four-month period.<sup>85</sup> If filed within the four-month grace period, an amendment that makes the financing statement not seriously misleading will perfect the security interest in all collateral, whenever acquired.<sup>86</sup> However, if the financing statement is amended after the grace period, the security interest in collateral acquired after the grace period is perfected only from the date of filing the amendment.<sup>87</sup> Continuing with the previous example, if the secured party files an amendment on June 1, 2014, the financing statement will perfect collateral the debtor acquired on May 12, 2014. However, because the four-month grace period expired, the amendment is effective only from the time of its filing, and there is a gap in perfection for any collateral acquired between the end of the four-month period and the filing of the amendment.<sup>88</sup> As a result of the gap, the collateral acquired on May 12 has a priority of June 1.<sup>89</sup> The security interest in the “gap” collateral likely would be subordinate to another security interest perfected before or during the gap period.<sup>90</sup>

### III. TWENTY QUESTIONS CONCERNING THE NAME OF THE DEBTOR

The following twenty questions involve pre-filing and post-filing issues. Questions 1 through 11 discuss questions that can arise when a se-

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<sup>85</sup> See U.C.C. § 9-507 cmt. 4 (Approved Amendments 2010) (noting that a secured party may file an amendment either before or after the expiration of the four-month grace period).

<sup>86</sup> See *id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* § 9-507 cmt. 4; *Id.* § 9-512(c).

<sup>89</sup> *Id.* § 9-322(a)(1).

<sup>90</sup> Section 9-322(a), the general priority rule of Article 9, awards priority to the security interest with the earlier time of filing or perfection. U.C.C. § 9-322(a). For any “gap” collateral, priority would go to the first security interest to file or perfect during that period. *Id.*

cured party is determining the appropriate name to provide on the financing statement and how to provide it. Question 12 provides guidance on the debtor's name a secured party searches under in a standard search logic search<sup>91</sup> of the financing statement records. Questions 13 through 20 address events that affect the sufficiency of the debtor's name on a filed financing statement, and consequently the perfection of the security interest.

*A. Questions*

*1. What if "this State" Has Not Issued the Debtor a Driver's License?*

Suppose the debtor does not have a driver's license. The "only if" rule of section 9-503(a)(4) may nevertheless control sufficiency of the debtor's name. If "this State" (the jurisdiction that governs perfection) is a state in which the same agency that issues a driver's license also issues an identification card to an individual as an alternative to a driver's license *and* the section 9-503(a)(4) of the governing jurisdiction includes both documents in the "only if" rule, then the financing statement is sufficient as to the debtor's name only if it provides the name as it is indicated on the identification card.<sup>92</sup>

If the section 9-503(a)(4) of the governing jurisdiction does not include identification cards and the state has not issued a driver's license, then section 9-503(a)(5) supplies the requirements for sufficiency of the debtor's name.<sup>93</sup> In that case, the financing statement is sufficient only if it provides the individual name of the debtor or the surname and first personal name of the debtor.<sup>94</sup> This rule, examined in Part I, requires the secured party to ascertain one of those two names of the debtor and place it on the financing statement;<sup>95</sup> either name is sufficient.<sup>96</sup>

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<sup>91</sup> A "standard search logic search" under section 9-506(c) is explained *supra* Part II.A.

<sup>92</sup> U.C.C. § 9-503(a)(4) (Alt. A). The uniform section 9-503(a)(4), Alternative A places brackets around "driver's license" so that a state can provide appropriate terminology if it adopts the identification card option. *Id.* § 9-503 legis. n.3.

<sup>93</sup> Section 9-503(a)(5) applies "if the debtor is an individual to whom paragraph (4) does not apply." *Id.* § 9-503(a)(5) (Alt. A). Subsection (a)(4) does not apply because the governing jurisdiction has not issued a driver's license or identification card.

<sup>94</sup> *Id.* § 9-503(a)(5) (Alt. A), as discussed *supra* Part I.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

2. *What if “this State” Has Not Issued the Debtor a Driver’s License or an Identification Card?*

Assume that, although the section 9-503(a)(4) of the governing jurisdiction includes identification cards in its “only if” rule, the debtor has neither driver’s license nor identification card.<sup>97</sup> Because that debtor is an “individual to whom paragraph [9-503(a)](4) does not apply,” section 9-503(a)(5) governs the debtor’s name.<sup>98</sup> Sufficiency of the debtor’s name under the “only if” rule of subsection (a)(5) requires that the financing statement provide the individual name of the debtor or the surname and first personal name of the debtor.<sup>99</sup>

3. *What if “this State” Has Issued the Debtor a Driver’s License and an Identification Card that Provide Different Names?*

Assume the section 9-503(a)(4) of the governing jurisdiction includes identification cards in its “only if” rule. The state issued the debtor an identification card in 2012 that indicates the name as “Beth Gannon.” The state issued her a driver’s license in 2014 that indicates the name as “Elizabeth Gannon.”<sup>100</sup> Neither document has expired. Which name is required for a sufficient financing statement?

Section 9-503(g) resolves this name quandary. If the governing state has issued more than one unexpired driver’s license or identification card, the financing statement must provide the name on the document issued most recently.<sup>101</sup> The “only if” rule—financing statement must provide name indicated on the applicable driver’s license or identification card—is subject to section 9-503(g), which requires use of the name on the most

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<sup>97</sup> Having neither form of identification would seem to be a rare situation for a debtor who is seeking secured credit, but is possible nevertheless. Perhaps a passport serves as the debtor’s identification.

<sup>98</sup> U.C.C. § 9-503(a)(5) (Alt. A).

<sup>99</sup> *Id.*

<sup>100</sup> The feasibility of this situation depends on the state requirements for establishing the name of an individual on a driver’s license or identification card. To establish a name on a license or identification card, a state might require mail addressed to the debtor, a social security card, or a birth certificate. Each document could indicate the individual’s name differently.

<sup>101</sup> “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.” U.C.C. § 9-503(g) (Alt. A). The brackets placed around “driver’s license” allow states to substitute words that add an identification card to subsection (g). *See id.* § 9-503 legis. n.3.

recently issued document for sufficiency of the financing statement.<sup>102</sup> In this situation the secured party should use “Elizabeth Gannon” on the financing statement.

*4. What if “this State” Has Issued the Debtor Multiple, Unexpired Driver’s Licenses?*

Suppose the debtor loses his unexpired driver’s license from “this State” and obtains a replacement driver’s license using a different name. For example, Henry Beams’ driver’s license indicates his name as “Henry Beams.” He loses that license and obtains a replacement that indicates his name as “Hank Beams.” Later he finds the lost license and now has two unexpired licenses.<sup>103</sup> Should a filer indicate “Henry” or “Hank” on a financing statement?

Because the state has issued more than one unexpired driver’s license, section 9-503(g) is the applicable rule.<sup>104</sup> The financing statement is sufficient as to the debtor’s name only if it indicates the name from the most recently issued license.<sup>105</sup> “Hank Beams” is the name necessary for sufficiency.

*5. What if Multiple States Have Issued the Debtor Unexpired Driver’s Licenses?*

Suppose the debtor spends December to April in Florida at her beach-front condominium and April to December in Michigan at her lakeside cottage and consequently has unexpired driver’s licenses issued by both states. Her Michigan license indicates her name as “Florence M. Sheen” while her Florida license provides her name as “Mary Sheen.” A secured party takes a security interest in her personal art collection, housed in both locations. Which name should the secured party indicate on the financing statement?

This question raises an issue of which jurisdiction’s Article 9 governs perfection of a security interest. The answer to that question determines which name is sufficient on a financing statement, because the amendments to Article 9 do not change the choice-of-law rules with respect to

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<sup>102</sup> *Id.* § 9-503(a)(4), (g) (Alt. A).

<sup>103</sup> Because both licenses are unexpired, the hypothetical posed in the text has two driver’s licenses of a kind described in section 9-503(a)(4), and multiple licenses activate section 9-503(g). *See id.* § 9-503(g). *See supra* note 100 for the possibility of this situation.

<sup>104</sup> U.C.C. § 9-503(g) (Alt. A).

<sup>105</sup> *Id.*

individual debtors.<sup>106</sup> Perfection of a non-possessory security interest in goods is governed by the jurisdiction in which the debtor is located.<sup>107</sup> Other types of collateral are subject to different choice-of-law rules.<sup>108</sup> Section 9-307(b)(1) provides that an individual debtor is located at the individual's principal residence.<sup>109</sup> Article 9 does not define "principal residence," nor does the Official Comment provide guidance, but in most situations, the location of the principal residence should be clear.<sup>110</sup> In close cases, the comment advises filing in each jurisdiction that could be the location of the principal residence.<sup>111</sup>

In the hypothetical above, it seems the debtor's principal residence is Michigan because she spends eight months of the year there, thus Michigan law governs perfection of a security interest.<sup>112</sup> The financing statement should be filed in Michigan and indicate the debtor as "Florence M. Sheen" using the name on the Michigan license. The "only if" rule does not require an alternate filing in Michigan with the name "Mary Sheen."<sup>113</sup> However, the Comment's advice is sound and caution dictates filing another financing statement in Florida indicating "Mary Sheen," the name indicated on the Florida license, as the debtor.

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<sup>106</sup> Compare U.C.C. §§ 9-301(1)–307(b)(1) (2002), with U.C.C. §§ 9-301(1)–307(b)(1) (Approved Amendments 2010).

<sup>107</sup> U.C.C. § 9-301(1) (Approved Amendments 2010). Note that the jurisdiction governing priority of a security interest can be different from that governing perfection. See *id.* § 9-301(3)(C).

<sup>108</sup> The governing law for a security interest in goods covered by a certificate of title is the jurisdiction whose certificate of title covers the goods. U.C.C. § 9-303 (2002). The governing law for a security interest in a deposit account is the jurisdiction of the bank that maintains the account. *Id.* § 9-304(a). The governing law for a security interest in investment property depends on the type of investment property and the method of perfection. *Id.* § 9-305. The governing law for a security interest in a letter-of-credit right is the jurisdiction of the issuer or nominated person. *Id.* § 9-306.

<sup>109</sup> U.C.C. § 9-307(b)(1) (Approved Amendments 2010).

<sup>110</sup> *Id.* § 9-307 cmt. 2; see also *LOL Fin. Co. v. Paul Johnson & Sons Cattle Co.*, 758 F. Supp. 2d 871, 893 (D. Neb. 2010) (principal residence found where debtors had lived continuously in jurisdiction for fifteen years); *In re Reel*, 2005 WL 1668279, at \*1 (Bankr. D. Wyo. June 7, 2005) (principal residence found where debtor made purchase and subsequently resided in jurisdiction).

<sup>111</sup> U.C.C. § 9-307 cmt. 2.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* § 9-503(a)(4) (Alt. A).



6. *What if “this State” Has Not Issued the Debtor a Driver’s License, but Another State Has Done so?*

Suppose the debtor moves from Missouri to Kansas, establishing his principal residence in Kansas. Missouri has issued an unexpired driver’s license to the debtor indicating the debtor’s name as “Randall N. Chambers.” The debtor grants a security interest to a Kansas secured party, signing the security agreement as “Randy Chambers,” but has not obtained a Kansas driver’s license. Which name should the secured party provide on the financing statement?

This scenario initially raises a choice-of-law issue. Because the debtor’s principal residence is in Kansas, the Article 9 of Kansas governs perfection of the security interest,<sup>114</sup> making Kansas “this State.” The fact that Missouri has issued an unexpired license is irrelevant for two reasons. First, the Article 9 of Missouri does not govern perfection.<sup>115</sup> Second, this is not a situation where the governing law changes while there is a perfected security interest because the debtor did not grant a security interest during the time when his principal residence was Missouri.<sup>116</sup>

After determining the governing law, the secured party can deal with the issue of the debtor’s name. Section 9-503(a)(4) does not apply because Kansas has not issued a driver’s license.<sup>117</sup> Thus, the “only if” rule of section 9-503(a)(5) governs. The financing statement is sufficient only if it provides the individual name of the debtor or the surname and first personal name of the debtor.<sup>118</sup> Once again the secured party must ascertain one of those two names of the debtor and place it on the financing statement. The Missouri driver’s license is evidence of the debtor’s name and might be the name the secured party chooses to provide on the financing statement. Whether it is sufficient depends on its being the debtor’s individual name or surname and first personal name.

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<sup>114</sup> The Article 9 of Kansas governs under the rules of 9-301(1) and 9-307(b)(1).

<sup>115</sup> See U.C.C. § 9-307(b)(1).

<sup>116</sup> *Id.* § 9-316(a) would have continued perfection of a security interest that was perfected before the governing jurisdiction changed. See *infra* Question 18.

<sup>117</sup> Application of the “only if” rule of section 9-503(a)(4) depends on “this State” having issued a driver’s license that has not expired. U.C.C. § 9-503(a)(4) (Alt. A).

<sup>118</sup> *Id.* § 9-503(a)(5) (Alt. A).

*7. What if the Name on the Debtor's Unexpired License Differs from Her Individual Name?*

Assume that debtor informs secured party that her name is Judith H. McCormack. Secured party examines debtor's unexpired driver's license, which indicates debtor's name as "Judy McCormack." Upon further investigation, secured party determines that debtor's name is Judith H. McCormack. Which name should secured party place on the financing statement?

The "only if" rule of section 9-503(a)(4) controls sufficiency of the debtor's name.<sup>119</sup> There is only one name that is sufficient—the name as indicated on the debtor's driver's license.<sup>120</sup> It is the only name that is sufficient, even though the driver's license name is not the correct name of the individual.<sup>121</sup> The financing statement must provide the name as "Judy McCormack."

The driver's-license-name-only rule applies regardless of the reason for the difference in name.<sup>122</sup> Suppose the name of the debtor is misspelled on the driver's license—actual name "Judith," driver's license name "Judth"—missing the letter "i." To accomplish sufficiency, the financing statement must indicate the name as "Judth." That is the name on the driver's license and section 9-503(a)(4) mandates its use.<sup>123</sup> A secured party must resist the temptation to use the debtor's correct name. The "only if" rule of section 9-503(a)(4) authorizes only one name for sufficiency—the name on the unexpired driver's license.<sup>124</sup> A cautious secured party might file a financing statement that lists all the debtor's names, but the only name necessary is the name on the unexpired driver's license.

In any situation where the driver's license name differs from the debtor's individual name, the secured party may want to file separate financing statements under the various names of the debtor or list multiple names of the debtor on the financing statement.<sup>125</sup> Nevertheless, the rule of section 9-503(a)(4) is clear for a court to apply—the only name neces-

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<sup>119</sup> *Id.* § 9-503(a)(4) (Alt. A).

<sup>120</sup> Recall that the name on an identification card could supply sufficiency if the applicable section 9-503(a)(4) includes identification cards. *See supra* Question 1.

<sup>121</sup> Article 9 does not determine the "individual name" of the debtor, nor does it provide any guidance on determining such name. U.C.C. § 9-503 cmt. 2d.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* § 9-503(a)(4) (Alt. A).

<sup>124</sup> *Id.*

<sup>125</sup> Section 9-509 authorizes the secured party to file records necessary to perfect the security interest. *Id.* § 9-509. Section 9-503(e) authorizes the secured party to provide multiple names on the financing statement. *Id.* § 9-503(e).

sary for sufficiency of an individual debtor's name is the name as indicated on the debtor's driver's license.<sup>126</sup>

*8. What if the Driver's License Provides a Suffix to the Debtor's Name?*

The debtor's driver's license indicates the name as "Ken Griffey, Jr." Does a sufficient financing statement require "Jr."? If the name on the unexpired driver's license adds "Jr.," that suffix is part of the debtor's name and the financing statement must provide it.<sup>127</sup> Both the current and the draft Form UCC-1 include a space to provide a suffix.<sup>128</sup>

Other suffixes can indicate status. Suppose the debtor's driver's license indicates the name as "Kristen Price, MD." If the suffix is provided on the driver's license as part of the name, its inclusion is necessary for sufficiency of the financing statement.<sup>129</sup> The secured party should provide "MD" in the "suffix" field on the financing statement. Entering "Kristen Price" in the "additional debtor" space on the financing statement seems warranted in this situation.<sup>130</sup>

*9. What Surname Issues Might Arise?*

States may vary in the order in which they list the debtor's name on a driver's license. A license could first list the surname or the first personal name of the debtor. The secured party must know the order in which the debtor's name appears on the driver's license because it must enter the appropriate name in the space on the financing statement designated for that name.<sup>131</sup> The financing statement will not be sufficient unless the parts of the debtor's name are placed in the appropriate space on the financing statement.<sup>132</sup>

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<sup>126</sup> U.C.C. § 9-503(a)(4) (Alt. A).

<sup>127</sup> See *id.* § 9-503 cmt. 2d; see also *UCC Financing Statement Addendum (Form UCC1Ad)*, INT'L ASS'N OF COMMERCIAL ADM'RS, <http://www.iaca.org/downloads/forms/UCC1AD.pdf> (last visited Jan. 31, 2012) [hereinafter *Form UCC-1Ad*].

<sup>128</sup> U.C.C. § 9-521(a); *Form UCC-1*, *supra* note 32; *UCC Financing Statement (2013) (Approved)*, INT'L ASS'N OF COMMERCIAL ADM'RS, [http://www.iaca.org/downloads/2011Conference/STS/04.02UCC1\(2013\).pdf](http://www.iaca.org/downloads/2011Conference/STS/04.02UCC1(2013).pdf) (last visited Jan. 31, 2012) [hereinafter *2013 Approved UCC-1*].

<sup>129</sup> See U.C.C. § 9-503(a)(4) (Alt. A).

<sup>130</sup> Section 9-503(e) authorizes entry of multiple debtor and secured party names on a financing statement. *Id.* § 9-503(e); see also *Form UCC-1Ad*, *supra* note 127.

<sup>131</sup> See U.C.C. § 9-503 cmt. 2d.

<sup>132</sup> See *All Bus. Corp. v. Choi*, 634 S.E. 2d 400, 404 (Ga. Ct. App. 2006) (illustrating the problems caused by misplaced names).

This problem can be made more difficult when the license includes three names, two of which could be surnames. For example, if the debtor's driver's license reads "Rosalie Lopez Garcia," the secured party must ascertain whether the surname is "Lopez" or "Garcia."<sup>133</sup>

A secured party must also be careful with a surname that includes a hyphen. If the driver's license indicates the debtor's surname is hyphenated, the financing statement must include that name in the surname space.<sup>134</sup>

*10. What if the Debtor's Name on the Mortgage Record Is Used as the Financing Statement?*

Article 9 allows a record of a mortgage to operate as the financing statement filed as a fixture filing.<sup>135</sup> The mortgage record must satisfy the general requirements of a sufficient financing statement in addition to specific requirements relating to a fixture filing.<sup>136</sup> In a jurisdiction that enacts the "only if" requirement of Alternative A, should the secured party provide the debtor's driver's license name on the mortgage record?

A secured party logically would assume that the mortgage must provide the debtor's driver's license name because that is the only name sufficient under Alternative A.<sup>137</sup> However, that is not the rule the drafters adopted. Instead, a mortgage record is effective as a financing statement if the record provides the "individual name" of the debtor or the "surname and first personal name" of the debtor.<sup>138</sup> This is virtually identical to the "only if" rule of section 9-503(a)(5),<sup>139</sup> which applies when the governing

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<sup>133</sup> See *Corona Fruits & Veggies, Inc. v. Frozsun Foods*, 143 Cal. App. 4th 319, 322–25 (2006) (highlighting the issues with multiple potential surnames). If there is a question regarding multiple surnames, both names should be included in the financing statements. *Id.* at 325. The approved financing statement form UCC-1 includes a space for "additional name(s)/initial(s)." *2013 Approved UCC-1*, *supra* note 128.

<sup>134</sup> See U.C.C. § 9-503 cmt. 2d (Approved Amendments 2010).

<sup>135</sup> *Id.* § 9-502(c).

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* § 9-503(a)(4) (Alt. A). As noted in Part I, the financing statement must provide the name indicated on the driver's license if the governing jurisdiction has issued an unexpired driver's license. See *supra* Part I.

<sup>138</sup> U.C.C. § 9-502(c)(3)(B).

<sup>139</sup> The difference between section 9-503(a)(5) and section 9-502(c)(3)(B) is that section 9-503(a)(5) reads "only if," followed by the name requirements, while section 9-502(c)(3)(B) reads "if," followed by the name requirements. Compare *id.* § 9-503(a)(5), with *id.* § 9-502(c)(3)(B). It seems unlikely that the omission signifies an important difference.

jurisdiction has not issued an unexpired driver's license.<sup>140</sup> The drafters did not indicate why they chose not to authorize use of the driver's license name. Regardless of their rationale, the financing statement must provide the debtor's individual name or the debtor's surname and first personal name to satisfy the name requirement<sup>141</sup>—either name suffices.<sup>142</sup> The debtor's driver's license name is sufficient for the mortgage record if it matches the debtor's individual name or the surname and first personal name.<sup>143</sup>

### *11. What Data Field Issues Might Be Encountered?*

Data field issues provide a problem a secured party never wants to encounter.<sup>144</sup> Suppose the name on the driver's license includes a special character, which the filing office cannot process, for example “~,” a tilde, or the name on the driver's license exceeds the data field size capability of the filing office. What happens next?

Optimistically, the legislatures adopting Alternative A have heeded the advice of the drafters of the Article 9 amendments and have determined whether such issues exist and resolved them before enactment of Alternative A.<sup>145</sup> Regardless, it is the responsibility of the secured party to ensure that the filed financing statement mirrors the driver's license name.<sup>146</sup> Compliance could require that the secured party file a tangible financing statement to secure consistency between the names. A secured party can facilitate consistency by searching the financing statement index under the debtor's name after filing its financing statement and checking the information indicated on the record retrieved against the information on the financing statement the secured party submitted. The secured party should resolve any discrepancy between the records with the filing office.

A secured party that complies with Article 9's filing requirements receives protection from section 9-516(a). Section 9-516(a) provides that

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<sup>140</sup> See *supra* Part I (discussing section 9-503(a)(5)).

<sup>141</sup> U.C.C. § 9-503(a)(5) (Alt. A).

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* § 9-502(c)(3).

<sup>144</sup> The data field issues would arise predominantly in electronic filing situations.

<sup>145</sup> In the Legislative Notes to section 9-503, the drafters raise these issues and advise the states to “make certain that such issues have been resolved.” U.C.C. § 9-503 legis. n.2. These issues can arise in jurisdictions that have adopted Alternative B, but they are not as troublesome because the financing statement can sufficiently provide the debtor's name in any of three ways under the safe harbor rule of Alternative B. *Id.* § 9-503(a)(4) (Alt. B).

<sup>146</sup> *Id.* § 9-506 cmt. 2.

“communication”<sup>147</sup> of a sufficient financing statement to the filing office with tender of the filing fee “constitutes filing.”<sup>148</sup> Thus, a financing statement is filed when the secured party fulfills those requirements, regardless of what the filing office does with the financing statement or how the filing office enters it into the filing index.<sup>149</sup> The key for the filer is to correctly enter the debtor’s name on the financing statement, having regard for any problems with the data field limitations of the filing office.<sup>150</sup> Taking that action initiates the protection of section 9-516(a).<sup>151</sup>

### 12. *What Search Issues Should Be Considered?*

Suppose a debtor uses various names: “Becky Johnson,” “Rebecca L. Johnson,” and “Becca Johnson.” Her driver’s license indicates her name as “Becky Johnson” and that is the only name she has used on her driver’s licenses.<sup>152</sup> A potential secured creditor wants to know the existence of any filings against her since they would indicate the possibility of a security interest.<sup>153</sup> In which names should the secured party search?

Because “this State” has enacted Alternative A, the only sufficient name for the financing statement is “Becky Johnson.”<sup>154</sup> A financing statement that provides only a different name is seriously misleading un-

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<sup>147</sup> “Communicate” includes sending a tangible record or electronically sending a record to a filing office that accepts filings made in that manner. *Id.* § 9-102(a)(18).

<sup>148</sup> *Id.* § 9-516(a).

<sup>149</sup> U.C.C. § 9-517 (2002) (“The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.”).

<sup>150</sup> U.C.C. § 9-516(a) (Approved Amendments 2010).

<sup>151</sup> *Id.*

<sup>152</sup> The facts of Question 12 are limited to the situation in which the debtor has used the same name for all her driver’s licenses. Question 19 discusses the priority issue created if a filed financing statement provides a sufficient name from a previous driver’s license but that name is different from the name on the current license. *See infra* Question 19.

<sup>153</sup> A filed financing statement does not guarantee that the security interest is perfected. Perfection requires that the secured party fulfill all attachment and perfection requirements. U.C.C. § 9-308(a) (2002). However, the filing date can fix the priority of a security interest and a potential secured creditor would be interested in that information. *See* U.C.C. § 9-322(a) (Approved Amendments 2010).

<sup>154</sup> *Id.* § 9-503(a)(4) (Alt. A).

less a standard search logic search would disclose it.<sup>155</sup> Thus, an interested creditor should search “Becky Johnson.”<sup>156</sup>

The search logic rule of section 9-506(c) does not necessitate searching under other names.<sup>157</sup> That rule validates a financing statement that would be disclosed through a search using the debtor’s correct name.<sup>158</sup> Any financing statement retrieved through a search under “Becky Johnson” would not be seriously misleading. Thus, searching in the names of “Becca Johnson” or “Rebecca L. Johnson” is not necessary to find sufficient financing statements.

Beyond the desire to discover sufficient financing statements filed against a debtor, a potential secured party might want to know the complete secured debt position of the debtor.<sup>159</sup> To gain that knowledge, the secured party should search all possible names of the debtor. Retrieving a filed financing statement that provides an incorrect, seriously misleading debtor’s name does not jeopardize the priority position of the security interest because the security interest coupled to that financing statement is unperfected and a perfected security interest has priority over an unperfected security interest.<sup>160</sup> Knowledge of a prior, unperfected security interest does not affect the priority of a perfected security interest.<sup>161</sup> It does, however, provide a creditor with knowledge of other debts and a potential secured party may wish to search other names of the debtor for that reason.

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<sup>155</sup> *Id.* § 9-506(b)–(c). A financing statement that provides additional names for the debtor can be effective, even if those names are incorrect, if it also provides the correct name. *Id.* § 9-503(a)(4), (e).

<sup>156</sup> If the jurisdiction whose law governs the security interest has changed, searches under other names of the debtor are warranted because a security interest perfected under the law of the previously applicable jurisdiction remains perfected under section 9-316(a) for a limited period of time. *Id.* § 9-316(a). Question 18 provides a more complete discussion of such a situation. *See infra* Question 18.

<sup>157</sup> *See* U.C.C. § 9-506(c).

<sup>158</sup> *See supra* Part II.A (discussing rule 9-506(c)).

<sup>159</sup> A security interest that has attached but is not perfected is “effective according to its terms.” U.C.C. § 9-201(a) (2002). A filed financing statement that does not provide a sufficient name of the debtor cannot perfect a security interest unless the financing statement is not seriously misleading under the search logic rule of section 9-506(c). U.C.C. § 9-506(c) (Approved Amendments 2010).

<sup>160</sup> *Id.* § 9-322(a)(2).

<sup>161</sup> The rule of section 9-322(a) bases priority on time of filing or perfection. Knowledge, notice, or the lack of either are not factors. *See id.* § 9-322(a); *id.* § 9-322 cmt. 4.

*13. What Happens if the Debtor's Driver's License Expires while the Debt Remains Unpaid?*

A secured party that correctly provides the debtor's driver's license name on the financing statement satisfies the sufficiency requirement for the debtor's name,<sup>162</sup> but what happens when the debtor's driver's license expires and the debtor neglects to renew the license?<sup>163</sup>

Section 9-503(a)(4) does not control this issue because there is no longer an unexpired driver's license.<sup>164</sup> Subsection (a)(5) provides the name requirement.<sup>165</sup> A sufficient name is now either the individual name of the debtor or the surname and first personal name of the debtor.<sup>166</sup> The expiration of the driver's license creates no problems if the name of the debtor on the driver's license is the same as either of the names that are sufficient under subsection (a)(5).<sup>167</sup> If so, the financing statement still sufficiently indicates the name of the debtor and the security interest remains perfected, assuming all other perfection requirements are satisfied.

The problem for the secured party arises if the driver's license name, although correctly provided on the filed financing statement, differs significantly from the names that are sufficient under subsection (a)(5).<sup>168</sup> A financing statement is seriously misleading if it "fails sufficiently" to provide the name of the debtor in accordance with section 9-503(a),<sup>169</sup> and a security interest is not perfected if the financing statement is seriously misleading.<sup>170</sup> Although the search logic rule of section 9-506(c) can validate a financing statement and thus save perfection of the security interest,

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<sup>162</sup> *Id.* § 9-503(a)(4) (Alt. A).

<sup>163</sup> State law controls the duration of a driver's license. *See, e.g.*, KY. REV. STAT. § 186.412(7)(d) (West 2011) (Kentucky law requiring driver's license renewal every four years).

<sup>164</sup> Section 9-503(a)(4) applies when "this State" has issued an unexpired driver's license or, if applicable, an identification card. U.C.C. § 9-503(a)(4) (Alt. A).

<sup>165</sup> *Id.* § 9-503(a)(5) (Alt. A).

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> The difference could result from a variance between the driver's license name and the section 9-503(a)(5) names, or from the debtor changing his name.

<sup>169</sup> Section 9-506(b) establishes the rule that a financing statement that "fails sufficiently" to provide the name of the debtor in accordance with section 9-503(a) is seriously misleading, unless saved by the search logic rule of section 9-506(c). U.C.C. § 9-506(b).

<sup>170</sup> *See supra* note 46.



such result is unlikely if there is a significant difference between the names.<sup>171</sup>

Section 9-507(c), however, provides partial protection for the security interest in this case.<sup>172</sup> It makes the financing statement effective for collateral the debtor acquired before and within four months after the filed financing statement becomes seriously misleading.<sup>173</sup> To perfect the security interest in collateral the debtor acquires more than four months after the financing statement becomes seriously misleading, the secured party must amend the financing statement to provide sufficiently the name of the debtor within that four-month period.<sup>174</sup>

*14. What if the Debtor's Driver's License Expires and "this State" Issues Him a New License with Different Name?*

The debtor, Robert Allen Zimmerman, legally changes his name to "Bob Dylan." When his driver's license expires, he renews it and is issued a license indicating his name as "Bob Dylan." The filed financing statement indicates the debtor's name as "Robert Allen Zimmerman." Is the debtor's name sufficiently indicated on the financing statement?<sup>175</sup> No, but the financing statement is partially effective regardless of the insufficient name.

Section 9-503(a)(4) governs the sufficiency of the debtor's name because "this State" has issued an unexpired driver's license.<sup>176</sup> Section 9-503(a)(4) requires that the financing statement provide the name on the unexpired driver's license, "Bob Dylan."<sup>177</sup> The financing statement does not sufficiently provide the name of the debtor because it indicates the name of the debtor as "Robert Allen Zimmerman." That error in the deb-

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<sup>171</sup> A financing statement that does not indicate sufficiently the name of the debtor is not seriously misleading if a search under the debtor's correct name using the filing office's standard search logic would disclose the financing statement. *See supra* Part II.A (discussing section 9-506(c)).

<sup>172</sup> *See supra* Part II.B (discussing section 9-507(c)).

<sup>173</sup> U.C.C. § 9-507(c)(1) (Approved Amendments 2010).

<sup>174</sup> *Id.* § 9-507(c)(2). A financing statement is amended in accordance with section 9-512.

<sup>175</sup> This issue arises if the current driver's license provides a name different from that of the expired license, regardless of the reason. Note that a filed financing statement remains sufficient under section 9-503(a)(4), Alternative A, regardless of the name change, until a new driver's license is issued. *See infra* Question 15.

<sup>176</sup> U.C.C. § 9-503(a)(4) (Alt. A).

<sup>177</sup> *Id.*

tor's name makes the financing statement seriously misleading, and that affects perfection of the security interest.<sup>178</sup>

Happily, section 9-507(c) again performs a partial rescue.<sup>179</sup> The financing statement continues to be effective and the security interest remains perfected for all collateral acquired by the debtor until four months after the financing statement becomes seriously misleading.<sup>180</sup> To perfect the security interest in collateral the debtor acquires thereafter, the secured party must amend the financing statement to provide a sufficient name for the debtor.<sup>181</sup>

*15. What if the Debtor Changes Her Name, and "this State" Does Not Issue Her a New Driver's License?*

Suppose the debtor, Stefani Germanotta, legally changes her name to "Lady Gaga." She does not, however, apply for a new driver's license and her driver's license provides her name as "Stefani Germanotta." The filed financing statement likewise indicates the debtor as "Stefani Germanotta." Must the secured party take action to preserve perfection of the security interest? No, the security interest remains perfected until the license expires or a new license is issued.<sup>182</sup>

Section 9-503(a)(4) controls the debtor's name because "this State" has issued an unexpired driver's license.<sup>183</sup> Sufficiency of the debtor's name requires that the financing statement provide the name as indicated on the unexpired license.<sup>184</sup> The name on the driver's license is "Stefani Germanotta." The name provided on the filed financing statement is "Stefani Germanotta." Therefore, the financing statement sufficiently provides the name of the debtor and the security interest remains perfected. Even if this were a new security interest, perfection by filing a financing statement would require that the financing statement provide "Stefani Germanotta" for the debtor's name.<sup>185</sup>

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<sup>178</sup> *Id.* § 9-506(b). The search logic rule of section 9-506(c) does not validate the financing statement because a search under the debtor's correct name, "Bob Dylan," would not produce a financing statement indexed under "Zimmerman." *Id.* § 9-506(c).

<sup>179</sup> Section 9-507(c) is discussed more fully *supra* Part II.B.

<sup>180</sup> U.C.C. § 9-507(c).

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* § 9-503(a)(4) (Alt. A).

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

If the driver's license expires without issuance of a new license, section 9-503(a)(5) governs sufficiency.<sup>186</sup> That scenario is fully discussed in Question 13.<sup>187</sup> If the driver's license expires and a license is issued that provides the new name, section 9-503(a)(4) controls sufficiency of the debtor's name and section 9-507(c) preserves perfection for some of the collateral.<sup>188</sup> That scenario is fully discussed in Question 14.<sup>189</sup> If "this State" issues a new license before expiration of the current license, sections 9-503(a)(4) and 9-503(g) combine to require use of the name on the new license for sufficiency.<sup>190</sup> That scenario is fully discussed in Question 16.<sup>191</sup>

*16. What if the Debtor Changes Her Name, and "this State" Issues Her a New Driver's License?*

Stefani Germanotta, the debtor from Question 15, after legally changing her name to "Lady Gaga," obtains a new driver's license that provides her new name. Assuming that her previous license does not automatically expire on the issuance of a new license, she now has two unexpired driver's licenses. Because "this State" has issued an unexpired driver's license, section 9-503(a)(4) provides the sufficiency rule.<sup>192</sup> When a state has issued multiple unexpired driver's licenses, section 9-503(g) mandates that the most recently issued license is the license used for purposes of 9-503(a)(4).<sup>193</sup>

A name change followed by a new license can produce two scenarios. In one scenario, the name change creates no problem, because the filed financing statement providing the debtor's previous name is disclosed by a standard search logic search under the name on the current license.<sup>194</sup> In that case, the name change does not make the financing statement seriously misleading and the security interest remains perfected in all collateral-

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<sup>186</sup> Section 9-503(a)(5) governs because "this State" has not issued an unexpired driver's license. U.C.C. § 9-503(a)(5) (Alt. A).

<sup>187</sup> See *supra* Question 13.

<sup>188</sup> See *supra* Part II.B (discussing section 9-507(c) more fully).

<sup>189</sup> See *supra* Question 14.

<sup>190</sup> U.C.C. § 9-503(a)(4), (g) (Alt. A).

<sup>191</sup> See *infra* Question 16.

<sup>192</sup> U.C.C. § 9-503(a)(4) (Alt. A).

<sup>193</sup> *Id.* § 9-503(a)(4), (g) (Alt. A).

<sup>194</sup> The filing records are searched using the current license debtor's name because section 9-506(c) requires a search under the debtor's "correct name" and section 9-503(g), Alternative A directs that the name on the most recently issued license is the correct name. *Id.* § 9-506(c); *id.* § 9-503(g) (Alt. A).

al.<sup>195</sup> That outcome is not possible with our hypothetical since the two names are significantly different.

The other scenario creates a problem because a search under the debtor's current license name does not produce the filed financing statement. That means the financing statement is seriously misleading.<sup>196</sup> Once again, section 9-507(c)(1) continues the effectiveness of the filed financing statement for all collateral the debtor acquires before the financing statement becomes seriously misleading or within four months after that event.<sup>197</sup> To perfect the security interest in collateral the debtor acquires after the four-month period, the secured party must amend the financing statement so it provides the name of the debtor indicated on the current license.<sup>198</sup> In our hypothetical, the secured party must therefore amend the financing statement to indicate the name of the debtor as "Lady Gaga."

*17. What if the Debtor Marries and Takes the Name of the Spouse?*

Assume that a filed financing statement provides the name of the debtor as indicated on the debtor's current driver's license. If the debtor marries, takes the name of the spouse, and does not obtain a new driver's license, this presents the same issue as discussed in detail in Question 15. Section 9-503(a)(4) provides the rule for sufficiency of name because the facts present an unexpired driver's license.<sup>199</sup> Regardless of the new name, the name on the driver's license is required for sufficiency of a financing statement.<sup>200</sup>

If the debtor marries, takes the name of the spouse, and obtains a new driver's license providing the married name, this presents the same issue as discussed in detail in Question 16. Assuming the debtor possesses two unexpired licenses,<sup>201</sup> section 9-503(g) designates the most recently issued license as the license used for establishing the name of the debtor under

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<sup>195</sup> See *supra* Part II.A (discussing section 9-506(c)).

<sup>196</sup> U.C.C. § 9-506(b).

<sup>197</sup> *Id.* § 9-507(c)(1).

<sup>198</sup> *Id.* § 9-507(c). Filing the amendment during the four-month grace period provides continuous perfection for collateral acquired after four months. Filing after the four-month period provides perfection for that collateral from the time of filing. See *supra* Part II.B.

<sup>199</sup> U.C.C. § 9-503(a)(4) (Alt. A).

<sup>200</sup> *Id.*

<sup>201</sup> Whether the debtor has two unexpired driver's licenses depends on whether the laws and regulations of the state provide for the automatic expiration of a previous license on the issuance of a new license.

section 9-503(a)(4).<sup>202</sup> If the name change makes the financing statement seriously misleading, section 9-507(c)(1) maintains perfection for existing and four months of after-acquired collateral regardless whether the secured party amends the financing statement to provide the correct name.<sup>203</sup> Amending the financing statement is necessary to perfect the security interest in collateral acquired more than four months after the financing statement becomes seriously misleading.<sup>204</sup> Because of the likely difference in the debtor's married and unmarried names, it is doubtful the search logic rule of section 9-506(c) would make the financing statement not seriously misleading.

*18. What if the Jurisdiction Governing the Security Interest Changes?*

Suppose an individual debtor who resides in a jurisdiction that adopted Alternative A to section 9-503(a)(3) changes her principal residence to a jurisdiction that adopted Alternative B. A secured party previously perfected its security interest in the Alternative A jurisdiction by filing a financing statement that provided the name of the debtor as indicated on the debtor's driver's license issued by the Alternative A jurisdiction.

The change in principal residence causes an immediate shift in the law that governs perfection of the existing security interest.<sup>205</sup> In accordance with sections 9-301(1) and 9-307(b)(1), perfection of the security interest is governed by the law of the jurisdiction where the debtor is located: his principal residence.<sup>206</sup> Section 9-316 controls the effect that a change in governing law has on perfection of a security interest.<sup>207</sup> Perfection of the security interest is in question because the Alternative B jurisdiction has become the proper jurisdiction in which to file a financing statement. The following explanation of section 9-316 is pertinent also if the governing law changes from Alternative B to Alternative A or if the debtor changes her principal residence to another Alternative A jurisdiction.

The security interest perfected under the law of the Alternative A jurisdiction remains perfected in the Alternative B jurisdiction until the earlier of four months after the change in governing law or the time per-

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<sup>202</sup> U.C.C. § 9-503(g) (Alt. A).

<sup>203</sup> See *supra* at Part II.B (discussing section 9-507(c)).

<sup>204</sup> U.C.C. § 9-507(c)(2).

<sup>205</sup> *Id.* § 9-503 cmt. 2d.

<sup>206</sup> Section 9-301(1) provides that the law of the jurisdiction where the debtor is located governs perfection of a security interest. *Id.* § 9-301(1). Section 9-307(b)(1) provides that an individual debtor is located in the jurisdiction of the debtor's principal residence. *Id.* § 9-307(b)(1).

<sup>207</sup> *Id.* § 9-316.

fection would have ceased under the law of the Alternative A jurisdiction.<sup>208</sup> This continuing perfection is not contingent on the filing of a financing statement in the Alternative B jurisdiction.<sup>209</sup> For example, suppose the perfection of a security interest perfected under the law of an Alternative A jurisdiction would lapse on December 30, 2013.<sup>210</sup> The debtor changes her residence to an Alternative B jurisdiction on July 15, 2013. Section 9-316(a) continues perfection of the security interest until November 15, 2013.<sup>211</sup> If the secured party perfects the security interest in the new jurisdiction before November 15, 2013, the security interest remains perfected thereafter.<sup>212</sup> In essence, section 9-316(a) creates a grace period for the secured party to discover the change in location of the debtor and perfect under the law of the new jurisdiction.<sup>213</sup> The grace period lasts until the earlier of four months after the governing law changes or the remaining period of perfection under the previous governing law.<sup>214</sup> Although this grace period is a maximum of four months, it is less than four months in the situation where perfection of the security interest would cease under the law of the previous jurisdiction before the expiration of four months after the change in governing law.<sup>215</sup>

Because the governing law is an Alternative B jurisdiction, a financing statement sufficiently provides the debtor's name if it indicates the debtor's individual name, the surname and first personal name, or the name from an unexpired driver's license issued by the new jurisdiction.<sup>216</sup> If the change in governing law is from an Alternative B jurisdiction to an Alternative A jurisdiction, the financing statement sufficiently shows the debtor's name only if provides the name on the expired driver's license.<sup>217</sup> However, if the new jurisdiction has not issued a license, then either the

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<sup>208</sup> *Id.* § 9-316(a)(1)–(2). An amendment to section 9-316 adds a similar rule for collateral the debtor acquires pursuant to an after-acquired property clause of a security agreement after a change in governing law. U.C.C. § 9-316(h).

<sup>209</sup> *Id.* § 9-316(a); *see also id.* § 9-503.

<sup>210</sup> Most financing statements are effective for five years from the date of their filing. *Id.* § 9-515(a). When the effectiveness of the financing statement ends, a security interest perfected by filing becomes unperfected unless a continuation statement is filed. *Id.* § 9-515(c).

<sup>211</sup> *Id.* § 9-316(a).

<sup>212</sup> U.C.C. § 9-316(b); *see also id.* § 9-316(h).

<sup>213</sup> The secured party can increase the odds it will discover the change in location by including a term in the security agreement that requires the debtor to notify it of any change of residence.

<sup>214</sup> U.C.C. § 9-316(a).

<sup>215</sup> *Id.*

<sup>216</sup> *Id.* § 9-503(a)(4) (Alt. B).

<sup>217</sup> *Id.* § 9-503(a)(4) (Alt. A).

debtor's individual name or the surname and first personal name is sufficient.<sup>218</sup>

An important aspect of the change in governing law is the change in place of filing a financing statement. Because each jurisdiction's section 9-501 will designate an office in that jurisdiction as the place of filing a financing statement, a change in governing law will require a new filing if the security interest is perfected by filing a financing statement.<sup>219</sup> Thus, even if the debtor's name is the same in both jurisdictions, perfection of the security interest requires a filing in the new jurisdiction.<sup>220</sup> The grace periods of section 9-316(a) grant the secured party time to make that filing.<sup>221</sup>

Section 9-316(b) implements grave consequences if the secured party fails to perfect in the new jurisdiction before the expiration of the earlier of four months after the change or the remaining period of perfection in the old jurisdiction.<sup>222</sup> First, the security interest becomes unperfected.<sup>223</sup> Second, it is deemed never to have been perfected against a purchaser of the collateral.<sup>224</sup> "Purchaser" includes a person who takes a security interest.<sup>225</sup> The second consequence is a "retroactive unperfection" rule.<sup>226</sup> If a purchaser has an interest in the collateral and the secured party does not timely perfect in the new jurisdiction, the rule of section 9-316(b) is that the security interest never was perfected as against the purchaser.<sup>227</sup> The purchaser will have priority over the security interest regardless whether the security interest was perfected before the purchaser acquired its interest.<sup>228</sup> For example, Bank perfects its security interest by filing a financing statement in State A. Later, Lender perfects a security interest in the same collateral by filing a financing statement in State A. Bank's security interest has priority over Lender's security interest under the first-to-file-or-

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<sup>218</sup> *Id.* § 9-503(a)(5) (Alt. A).

<sup>219</sup> *Id.* § 9-501(a).

<sup>220</sup> U.C.C. § 9-316(b).

<sup>221</sup> *Id.* § 9-316(a).

<sup>222</sup> *Id.* § 9-316(b).

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> The definitions of "purchaser" and "purchase" are found in sections 1-201(b)(30) and (29) respectively. U.C.C. § 1-201(b)(29)–(30) (2002). A secured party is a purchaser under those definitions. *Id.*

<sup>226</sup> U.C.C. § 9-316(b) cmt. 3 (Approved Amendments 2010).

<sup>227</sup> *Id.* § 9-316(b).

<sup>228</sup> A perfected security interest has priority over an unperfected security interest. *Id.* § 9-322(a)(2).

perfect rule of section 9-322(a)(1).<sup>229</sup> Debtor changes his principal residence to State B and Lender files a financing statement in State B. Bank is unaware of the change in governing law so it does not file in State B. When Bank's perfection ceases (the earlier of four months after the change to State B or the remaining period of perfection in State A), Lender's security interest gains priority over Bank under the rules of sections 9-316(b) and 9-322(a)(2).<sup>230</sup>

### *19. What Priority Issues Might Arise?*

Two or more security interests can exist in the same collateral.<sup>231</sup> A debtor can use different names on her driver's licenses issued at different times.<sup>232</sup> The collision of those circumstances raises an interesting priority question. Suppose Bank perfects a security interest by filing a financing statement that provides the name of the debtor as "Richard Wilson," the name indicated on the debtor's current driver's license. The license expires, and the debt remains unpaid. Debtor obtains a new license that indicates his name as "Dick Wilson." Six months later, Lender makes a secured loan to debtor and perfects its security interest by filing a financing statement that provides the name of the debtor as "Dick Wilson," the correct name under section 9-503(a)(4) Alternative A because it is the name on the only unexpired driver's license.<sup>233</sup>

Regardless of the difference in the name provided on each financing statement, both are effective and—assuming all other perfection requirements are satisfied—both security interests are perfected. Lender's financing statement is effective because it satisfies the debtor's name requirement of section 9-503(a)(4) by providing the name of the debtor as indicated on the unexpired driver's license.<sup>234</sup> Bank's financing statement is effective under section 9-507(c) notwithstanding that the insufficiency of the debtor's name makes it seriously misleading.<sup>235</sup> The effectiveness of

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<sup>229</sup> *Id.* § 9-322(a)(1).

<sup>230</sup> *Id.* §§ 9-316(b), 9-322(a)(2).

<sup>231</sup> *Id.* § 9-322.

<sup>232</sup> *See supra* Part II.B.

<sup>233</sup> The same problem could arise if the debtor possesses two unexpired driver's licenses. The most recently issued license controls. U.C.C. § 9-503(g) (Alt. A).

<sup>234</sup> *Id.* § 9-503(a)(4) (Alt. A).

<sup>235</sup> *Id.* § 9-507(c). Bank's financing statement does not sufficiently provide the name of the debtor because it indicates the name on the expired driver's license and the correct name is the name indicated on the unexpired driver's license. *Id.* § 9-503(a)(4) (Alt. A). Thus, the financing statement is seriously misleading regarding the debtor's name. *Id.* § 9-506(b), (c).



Bank's financing statement, however, is only for collateral the debtor acquired before the financing statement became seriously misleading and within four months thereafter.<sup>236</sup> To perfect the security interest in collateral the debtor acquires more than four months after the financing statement became seriously misleading, Bank must amend the financing statement to provide the correct name.<sup>237</sup> Bank has not amended its financing statement. The result is that there are conflicting perfected security interests in collateral the debtor acquired before the financing statement became seriously misleading and within four months thereafter.

Section 9-322(a) determines the priority of conflicting security interests if no specific rule of Article 9 is applicable to the situation.<sup>238</sup> It awards priority to the security interest that has the earlier date of filing or perfection.<sup>239</sup> Bank's financing statement remains effective and it was filed before Lender's financing statement. Thus, Bank has priority in collateral the debtor acquired before the financing statement became seriously misleading and within four months thereafter. That Lender's financing statement is the only financing statement that is sufficient as to the debtor's name does not change the priority between the security interests.

Lender can gain knowledge of Bank's filing by requiring Debtor to disclose all names he uses and has used and searching through those names.<sup>240</sup> With that knowledge, Lender can decide whether to extend credit.<sup>241</sup> However, a debtor might forget a previously used name or knowingly fail to disclose a name. Those events could cause the debtor to be in default under the security agreement with Lender, but they do not change the priority between the security interests.

*20. What if the Financing Statement Is Sufficient under Pre-Amendment Article 9 but Not under Amended Article 9?*

Suppose the debtor's individual name is Stephen Lynn Wilms. Secured party perfects its security interest in December 2012 by filing a financing statement providing that name. That financing statement sufficiently pro-

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<sup>236</sup> See *supra* Part II.B (discussing section 9-507(c)(1)).

<sup>237</sup> U.C.C. § 9-507(c)(2). If a secured party amends the filed financing statement within the four-month period, the security interest is continuously perfected in all collateral without any gap in perfection. See *supra* notes 78–82 and accompanying text.

<sup>238</sup> U.C.C. § 9-322(f).

<sup>239</sup> *Id.* § 9-322(a)(1).

<sup>240</sup> Lender could even obtain the debtor's promise that he has disclosed all current and previous names.

<sup>241</sup> Lender could request that Bank subordinate its priority and, if Bank agrees, section 9-339 recognizes the validity of the agreement. U.C.C. § 9-339 (2002).

vides the debtor's name under pre-amendment Article 9 section 9-503(a)(4)(A).<sup>242</sup> The governing jurisdiction enacts section 9-503(a)(4) Alternative A, effective July 1, 2013. Although the security interest attached and was perfected under pre-amendment Article 9, section 9-802(a) makes amended Article 9 applicable to pre-amendment security interests upon the effective date of the amendments.<sup>243</sup> Consequently, the debtor's name requirements of amended section 9-503(a)(4) apply to secured party's filed financing statement. On July 1, 2013, debtor's unexpired driver's license indicates his name as "Steve Wilms." Assuming that a standard search logic search<sup>244</sup> under "Steve Wilms" would not produce the filed financing statement, the financing statement does not sufficiently provide the name of the debtor under amended Article 9 section 9-503(a)(4). Does the security interest remain perfected nevertheless? The short answer is yes, although the duration and extent of perfection vary depending on which section of Article 9 governs this issue and where the financing statement was filed.

There are two possible solutions to this question. First, the effect of the transition to amended Article 9 could engage section 9-507(c)—"the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under Section 9-503(a) so that the filed financing statement becomes seriously misleading."<sup>245</sup> A secured party could assert that because amended Article 9 changes the requirements for sufficiency of the debtor's name, the filed financing statement becomes insufficient, thus seriously misleading, and results in the applicability of section 9-507(c).<sup>246</sup> If section 9-507(c) applies, it makes the financing statement effective for collateral the debtor acquired before the financing statement became seriously misleading, and within four months thereafter.<sup>247</sup> Be-

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<sup>242</sup> *Id.* § 9-503(a)(4)(A) ("A financing statement sufficiently provides the name of the debtor ... only if it ... provides the individual ... name of the debtor ....").

<sup>243</sup> U.C.C. § 9-802(a) (Approved Amendments 2010) ("Except as otherwise provided in this part, this [Act] applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this [Act] takes effect."). The brackets around "Act" allow a jurisdiction to insert the title it assigns the Article 9 amendments.

<sup>244</sup> Section 9-506(c) renders the error on a financing statement not seriously misleading if a search under the debtor's correct name using the filing office's standard search logic would reveal the financing statement. *Id.* § 9-506(c). See *supra* part II.A.

<sup>245</sup> U.C.C. § 9-507(c).

<sup>246</sup> *Id.*

<sup>247</sup> *Id.* § 9-507(c)(1). An amendment that renders the financing statement not seriously misleading must be filed to perfect the security interest in collateral the debtor acquires more than four months after the financing statement became seriously misleading. *Id.* § 9-507(c)(2).

cause the financing statement is effective for that collateral, the security interest in that collateral remains perfected, although the secured party has not amended the financing statement to provide the name on the current driver's license. Under this solution, the extent of perfection is limited to time-specific collateral.

Utilizing section 9-507(c), however, apparently does not align with the intent of the drafters of amended Article 9.<sup>248</sup> Their Comment to section 9-801 includes an example that is identical to the situation Question 20 presents.<sup>249</sup> They address the issue using section 9-805, without mentioning section 9-507.<sup>250</sup> Accordingly, the second solution comes from section 9-805(b).<sup>251</sup> However, a brief discussion of section 9-803(b) is warranted first because section 9-805(b) is an exception to it.<sup>252</sup>

A secured party concerned about whether the Article 9 amendments will affect perfection of its security interest might be alarmed after reading section 9-803(b). It provides that a security interest perfected under pre-amendment Article 9 that does not satisfy the perfection requirements of amended Article 9 remains perfected for only one year after amended Article 9 becomes effective.<sup>253</sup> The amendments to the debtor's name requirements can cause the financing statement to fail to satisfy the amended Article 9 perfection requirements.<sup>254</sup> But the secured party need not panic because the one-year rule is subject to section 9-805.<sup>255</sup>

Section 9-805(b) pertains to a financing statement that satisfies the perfection requirements of the applicable governing jurisdiction under pre-amendment Article 9.<sup>256</sup> The subheading for subsection (b) is: "When pre-

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<sup>248</sup> *Id.* § 9-801 cmt.

<sup>249</sup> Section 9-801 is part of the "Transition Provisions for 2010 Amendments," adopted in Article 9, Part 8. The difference between this situation and the comment is the name of the individual debtor.

<sup>250</sup> U.C.C. § 9-801 cmt.

<sup>251</sup> *Id.* § 9-805(b).

<sup>252</sup> *Id.* § 9-803(b); *id.* § 9-805(b).

<sup>253</sup> *Id.* § 9-803(b) ("Except as otherwise provided in Section 9-805, if, immediately before this [Act] takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under [Article 9 as amended by this [Act]] are not satisfied when this [Act] takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under [Article 9 as amended by this [Act]] are satisfied within one year after this [Act] takes effect.").

<sup>254</sup> Compare U.C.C. § 9-503(a)(4)(A) (2002), with U.C.C. § 9-503(a)(4) (Alt. A) (Approved Amendments 2010).

<sup>255</sup> U.C.C. § 9-803(b) (Approved Amendments 2010).

<sup>256</sup> *Id.* § 9-805(b).

effective-date filing becomes ineffective.”<sup>257</sup> Subsection (b) adopts two rules.<sup>258</sup> First, a filed financing statement that perfected a security interest under pre-amendment Article 9 is not rendered ineffective.<sup>259</sup> The implicit meaning is that a financing statement effective under pre-amendment Article 9 remains effective regardless of whether it satisfies the perfection requirements of amended Article 9.<sup>260</sup> The second rule establishes the duration of the effectiveness of the filed financing statement.<sup>261</sup> The duration of effectiveness depends on the jurisdiction where the financing statement is filed.<sup>262</sup>

If the financing statement was filed in the same jurisdiction that now governs perfection of the security interest, the effectiveness of the financing statement ceases when its effectiveness would have ceased under pre-amendment Article 9.<sup>263</sup> For example, if a security interest was perfected by filing a financing statement in Ohio on August 1, 2011, and Ohio law governs perfection of the security interest under amended Article 9, the financing statement remains effective until August 1, 2016, the length of its effectiveness under pre-amendment Article 9.<sup>264</sup> If the filed financing statement was filed in a jurisdiction other than the now governing jurisdiction, the effectiveness of the financing statement ceases at the earlier of when its effectiveness would have ceased under pre-amendment Article 9 or June 30, 2018.<sup>265</sup> Under this solution the extent of perfection is not limited to certain collateral, but the duration of perfection has a limited time period.<sup>266</sup>

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<sup>257</sup> *Id.* Although the section captions are part of the uniform act, U.C.C. § 1-107 (2002), the subheadings of Article 9 “are not a part of the official text itself and have not been approved by the sponsors.” *Id.* § 9-101 cmt. 3. Each jurisdiction can decide whether to adopt the subheadings. *Id.*

<sup>258</sup> U.C.C. § 9-805(b) (Approved Amendments 2010).

<sup>259</sup> *Id.*

<sup>260</sup> A filed financing statement could fail to satisfy the amended Article 9 perfection requirements because of differences from pre-amendment Article 9 in the requirements for the debtor’s name or a change in governing law caused by differences from pre-amendment Article 9 in fixing the location of the debtor.

<sup>261</sup> U.C.C. § 9-805(b). The duration rules are qualified by: section 9-805(c) (effectiveness of a continuation statement), section 9-805(d) (effectiveness of financing statement when debtor is a transmitting utility), and section 9-806 (filing an “in lieu” statement to continue effectiveness of financing statement). *Id.* §§ 9-805(c)–(d), 9-806.

<sup>262</sup> *Id.* § 9-805(b)(2).

<sup>263</sup> *Id.* § 9-805(b)(1).

<sup>264</sup> This assumes the applicability of the five-year rule for duration of the effectiveness of a financing statement under section 9-515(a). *Id.* § 9-515(a).

<sup>265</sup> *Id.* § 9-805(b)(2).

<sup>266</sup> U.C.C. § 9-805(b)(2).

The good news for the secured party is that under either section 9-805(b)(1) or (b)(2), the financing statement remains effective when Article 9 becomes effective and thus the security interest continues perfected without immediate action by the secured party.<sup>267</sup> Consequently, it is not necessary that a secured party review all pre-amendment filings before the effective date of amended Article 9 to determine if they will satisfy the requirements of amended Article 9. That review is necessary when it is time to continue the effectiveness of a pre-amendment financing statement.<sup>268</sup> Returning to the situation Question 20 poses, although the filed financing statement does not sufficiently provide the debtor's name under amended Article 9, it remains effective to perfect the security interest because it was sufficient under pre-amendment Article 9 to perfect the security interest.

#### CONCLUSION

It is of utmost importance that the secured party correctly provides the name of the debtor on the financing statement. Failure to do so can result in the security interest being unperfected. It seems as if compliance would be uncomplicated but, in the case of individual debtors, ascertaining the correct name can require choosing among alternatives. Choosing the wrong name can prove a fatal error.

The Article 9 drafters have attempted to remedy this problem through amendments to the Article 9 requirement for sufficiency of an individual debtor's name. They have adopted rules that specify what name or names are sufficient. These rules seem well-designed to facilitate a secured party's compliance with the requirement. As with all rules of law, however, applying the rule to the facts of the situation raises questions.

A secured party attempting to comply with the driver's-license-name-only rule of section 9-503(a)(4) Alternative A will encounter many situations, including multiple driver's licenses, no driver's license, unexpired driver's license, multiple names, and changed names. The questions I ask and answer in this Article address these issues. They give the secured

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<sup>267</sup> See *id.* § 9-805(b)(1)–(2).

<sup>268</sup> When the effectiveness of the financing statement ceases after the effective date of the Article 9 amendments, the secured party must file either: (1) if the amendments have not changed the office for filing a financing statement, a continuation statement that satisfies the requirements of amended Article 9, U.C.C. § 9-805(c), (e); or (2) if the initial financing statement was filed in a different jurisdiction, an “in lieu” statement that satisfies the financing statement requirements of amended Article 9, identifies the pre-effective-date financing statement by filing office, date and file numbers, and indicates that the financing statement remains effective. *Id.* § 9-806.

party a start on sufficiently providing the name of an individual debtor on a financing statement. These twenty questions came to my mind early in my study of section 9-503(a)(4) Alternative A, but I can predict with near certainty that other questions involving the debtor's name will confound secured parties in the future. Secured parties must stay vigilant to protect perfection of their security interests.