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AMENDMENTS TO ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE RELATING TO SECURED TRANSACTIONS

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I. INTRODUCTION

During the 2013 general legislative session, Wyoming lawmakers amended Article 9 of Wyoming's version of the Uniform Commercial Code (UCC).¹ Article 9 governs secured transactions in personal property and fixtures.² This new legislation became effective in Wyoming on July 1, 2013.³ Legislators in at least forty-six other states have enacted similar amendments to Article 9.⁴ While

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¹ 2013 Wyo. Sess. Laws 30–43.

² U.C.C. § 9-101 cmt. 1 (amended 2010) (describing the purpose of Article 9). The text of Article 9 prior to the most recent amendments is set forth in 3 U.L.A. 37–784 (2010). In this article, references to the text of Article 9 prior to the most recent amendments are indicated by a parenthetical reference to the year 2000 to indicate that the citation is to the prior version of Article 9. The most recent amendments to Article 9 are set forth in 3 U.L.A. 9–182 (Supp. 2013). References to the text of Article 9 that includes the new amendments are indicated by a parenthetical reference in the citation to the year 2010, the year the sponsoring organizations approved the amendments.

³ WYO. STAT. ANN. § 34.1-9-801(b) (2013).

⁴ As of April 29, 2014, forty-seven states and the District of Columbia, Puerto Rico, and the Virgin Islands have adopted the amendments. These states include Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Legislation to adopt the amendments has been introduced in several other states as well. The status of adoptions is available on the Uniform Law Commission website. *Legislative Fact*

these amendments do not radically alter secured transactions law,⁵ they include a number of important changes that will impact an attorney's practice and a party's rights.

Substantial revisions to Article 9 of the UCC became effective in all fifty states in 2001 or shortly thereafter.⁶ After nearly a decade of experience with the revised code, the National Conference of Commissioners on Uniform State Laws (NCCUSL)⁷ and the American Law Institute (ALI) approved amendments to Article 9 in 2010.⁸ Therefore, the amendments are often referred to as the "2010 amendments."⁹

These amendments are intended to address a number of issues that have emerged over time.¹⁰ The amendments are the product of extensive study and discussion by members of NCCUSL and the ALI.¹¹ In an effort to respond to problems that have arisen in practice and to clarify the law, the drafters created new rules relating to the sufficiency of debtor names,¹² revised filing procedures,¹³ and amended forms¹⁴ in addition to modifying other provisions.¹⁵ The revisions include important changes significantly impacting both the UCC search and filing process.

In addition, the Wyoming legislature enacted a non-uniform amendment to Article 9. The amendment extends the duration of financing statements and continuation statements.¹⁶ Wyoming also deleted the uniform filing forms from

Sheet - UCC Article 9 Amendments (2010), UNIF. LAW COMM'N, [http://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)) (last visited April 29, 2014).

⁵ LYNN M. LOPUCKI & ELIZABETH WARREN, SECURED CREDIT, A SYSTEMS APPROACH xxxiv (7th ed. 2012).

⁶ *See id.*

⁷ The National Conference of Commissioners on Uniform State Laws is also known as the "Uniform Law Commission." *See supra* note 4.

⁸ Edwin E. Smith, *A Summary of the 2010 Amendments to Article 9 of the Uniform Commercial Code*, 42 UCC L.J. 345, 346 (2010).

⁹ *See, e.g.*, Norman M. Powell, *The Proposed 2010 Revisions to UCC Article 9*, 26 PRAC. REAL EST. LAW., Nov. 2010, at 33, 33; Smith, *supra* note 8, at 346; *UCC Article 9 Amendments (2010) Summary*, UNIF. LAW COMM'N, [http://www.uniformlaws.org/ActSummary.aspx?title=UCC%20Article%209%20Amendments%20\(2010\)](http://www.uniformlaws.org/ActSummary.aspx?title=UCC%20Article%209%20Amendments%20(2010)) (last visited Apr. 29, 2014) [hereinafter *Amendments Summary*].

¹⁰ *See* Paul H. Shur, *A Practitioner's Perspective on the Proposed Article 9 Revisions*, 43 UCC L.J. 913, 914 (2011); Smith, *supra* note 8, at 346-48; *Amendments Summary*, *supra* note 9.

¹¹ *See* Smith, *supra* note 8, at 348-50.

¹² *See* U.C.C. § 9-503 (amended 2010).

¹³ *See, e.g.*, U.C.C. §§ 9-516, 9-518 (amended 2010).

¹⁴ *See, e.g.*, U.C.C. § 9-521 (amended 2010).

¹⁵ *See, e.g.*, U.C.C. §§ 9-316, 9-507 (amended 2010).

¹⁶ *Compare* WYO. STAT. ANN. § 34.1-9-515 (2011), *with* WYO. STAT. ANN. § 34.1-9-515 (2013).

the statutory text.¹⁷ In association with the implementation of these amendments, the Wyoming Secretary of State's office increased its filing fees as of July 1, 2013.¹⁸

These amendments have a material effect on loan documentation, due diligence procedures, and the filing process in Wyoming and elsewhere. Given that these amendments became effective in most jurisdictions on or before July 1, 2013,¹⁹ attorneys must take action, if they have not already done so, to insure that all transactions comply with the amendments.

This article provides a summary of the various amendments and offers practice tips relevant to those representing either debtors or creditors in loan or collection matters. While this article presents a general overview of the amended statutes and outlines certain practical implications, no effort has been made to catalog all changes. Many of the fine points, details, and exceptions to general rules are necessarily omitted. Consequently, practitioners are strongly urged to consult the statutory text, the drafters' Official Comments,²⁰ and secondary authority²¹ when answering questions that arise in practice.

II. OFFICIAL COMMENTS

The drafters of the 2010 amendments limited the scope of their revisions to addressing ambiguities and adding clarification only when needed to respond

¹⁷ Compare WYO. STAT. ANN. § 34.1-9-521 (2011), with WYO. STAT. ANN. § 34.1-9-521 (2013).

¹⁸ Wyo. Sec'y of State, *UCC Fees*, <http://soswy.state.wy.us/Business/docs/UCCFees.pdf> (last visited Apr. 29, 2014).

¹⁹ See Corp. Serv. Co., *2010 Amendments to UCC Article 9 Enactment Status* (Jul. 2, 2013), <http://csctransactionwatch.com/wp-content/uploads/2012/09/State-Legislative-Status-Summary-Chart-07022013.pdf> (last visited Apr. 30, 2014) (listing effective dates by state). The drafters of the 2010 amendments proposed a uniform effective date of July 1, 2013, to permit states time to enact the revisions so that the statutory changes would become effective simultaneously in all fifty states and other relevant jurisdictions. See U.C.C. § 9-801 (amended 2010); *Amendments Summary*, *supra* note 9.

²⁰ The official text of the amendments is accompanied by detailed section-by-section official comments. The 2010 Official Text with Comments of the Amendments to Uniform Commercial Code Article 9 are available for download from the ALI website. Nat'l Conference of Comm'rs on Unif. State Laws & The Am. Law Inst., *Amendments to Uniform Commercial Code Article 9*, <http://www.ali.org/00021333/UCC9%20amendments%202010%20-%20final%20text.pdf> (last visited Apr. 30, 2014).

²¹ Other commentaries that discuss the amendments to Article 9 include Alvin C. Harrell, *The 2010 Amendments to the Uniform Text of Article 9*, 65 CONSUMER FIN. L. Q. REP. 138 (2011); Russell A. Hakes & Stephen L. Sepinuck, *The Uniform Commercial Code Survey*, 65 BUS. LAW. 1205 (2010) (providing a brief and concise overview of the amendments authored by an American Bar Association advisor to the committee that drafted the amendments); Roshelle A. Nagar & Suhan Shim, *What's in a Name? Proposed Amendments to Article 9 of the Uniform Commercial Code*, 128 BANKING L.J. 733 (2011) (focusing primarily on determining the correct legal name of the debtor for UCC financing statements when the debtor is an individual); Powell, *supra* note 9; Shur, *supra* note 10; Smith, *supra* note 8 (offering a detailed analysis and discussion of the amendments authored by a drafter of the amendments).

to problems that had arisen in practice over time.²² The drafters indicated that their preference was to avoid changing the statutory text when possible.²³ If the drafters believed the statutory text was sufficient, they opted instead to handle such matters by adding language to the Official Comments.²⁴

The 2010 amendments, therefore, may be viewed as a package of two sets of amendments.²⁵ One set includes amendments to the statutory text of Article 9, accompanied by Official Comments explaining these new amendments. The second set includes amendments to the Official Comments of statutory provisions the drafters did not revise, but judicial decisions or experience suggested a need for clarification. Thus, to understand certain changes made to the statutory text, it may be necessary to consult the accompanying Official Comments. In other circumstances, an issue may be addressed only in the revisions to the Official Comments.

As is its custom and practice, when adopting revisions to the UCC, the Wyoming legislature enacts only the amended text of the statute²⁶ which may include non-uniform changes as well.²⁷ The Wyoming Legislative Service Office (LSO) works with the legislature to prepare any proposed revision for inclusion in the Wyoming statutes.²⁸ The LSO is charged with insuring that the enacted code conforms to Wyoming's own statutory conventions, which may require changing statutory designations, references, cross-reference, and language to comply with Wyoming's standards.²⁹

When the Wyoming legislature enacted revised Article 9 in 2001, the Official Comments were set forth in the published Wyoming statute books following the text of each statute.³⁰ These Official Comments assist practitioners and courts

²² See Smith, *supra* note 8, at 349.

²³ See *id.*

²⁴ *Id.*

²⁵ *Id.* at 349–50.

²⁶ See, e.g., 2013 Wyo. Sess. Laws 30–43. This approach does not appear unusual. See Harrell, *supra* note 21, at 138.

²⁷ Compare, e.g., U.C.C. § 9-515 (amended 2010), with WYO. STAT. ANN. § 34.1-9-515 (2013) (indicating Wyoming changed the duration of financing and continuation statements).

²⁸ State of Wyo. Legislature, *Legislative Service Office*, <http://legisweb.state.wy.us/LSOWeb/LegislativeServiceOffice.aspx> (follow Legal Services Division hyperlink; then follow “More Information” hyperlink) (last visited Apr. 30, 2014).

²⁹ Compare, e.g., U.C.C. § 9-316(h)-(i) (amended 2010), with WYO. STAT. ANN. § 34.1-9-316(h)-(j) (2013); compare U.C.C. §§ 9-801 to 9-809 (amended 2010), with WYO. STAT. ANN. §§ 34.1-9-801 to 34.1-9-809 (2013).

³⁰ See WYO. STAT. ANN. §§ 34.1-1-101 to 34.1-10-104 (2011); WYO. STAT. ANN. §§ 34.1-1-101 to 34.1-10-104 (West 2007).

in understanding and applying the text of the UCC.³¹ Not only do the Official Comments explain the various provisions, but they also provide helpful examples, place the provisions in historical context, discuss practical considerations, and offer practice pointers.³² Moreover, courts interpreting UCC provisions routinely cite to the Official Comments as persuasive authority,³³ thereby helping to promote a uniform understanding and construction of the code among jurisdictions.³⁴

The editor's notes to Wyoming's version of the Uniform Commercial Code state that "subsequent amendments to the Official Comments may not be reflected in some instances."³⁵ It should be noted that the revised Official Comments accompanying the 2010 amendments to Article 9 were not reprinted in the Wyoming statute books published in the summer of 2013.³⁶ Consequently, the Official Comments to Article 9 were not updated when the amendments and related changes were published in the 2013 editions of the Wyoming statute books.

As a result, the Wyoming legislature may have revised a statute, but the Official Comment following that statute has not been updated.³⁷ Moreover, in some situations, the drafters of the 2010 amendments may not have revised a statute, but the Official Comment may have been revised to clarify an issue that emerged over time.³⁸ However, the revised Official Comment is not reprinted

³¹ For example, the editor's notes to Wyoming's version of the Uniform Commercial Code states:

Uniformity throughout American jurisdictions is one of the main objectives of this Code; and that objective cannot be obtained without substantial conformity of construction. To aid in uniform construction these Comments set forth the purpose of various provisions of this Act to promote uniformity, to aid in viewing the Act as an integrated whole, and to safeguard against misconstruction.

WYO. STAT. ANN., tit. 34.1 ed.'s notes (2013) (citation omitted) (internal quotation marks omitted).

³² See, e.g., U.C.C. § 9-503 cmt. 2 (amended 2010).

³³ See, e.g., *Int'l Minerals & Chem. Corp. v. Llano, Inc.*, 770 F.2d 879, 885 n.2 (10th Cir. 1985); *Transamerica Commercial Fin. Corp. v. Naef*, 842 P.2d 539, 543 (Wyo. 1992); *B & W Glass, Inc. v. Weather Shield Mfg., Inc.*, 829 P.2d 809, 816 (Wyo. 1992).

³⁴ See *supra* note 31.

³⁵ WYO. STAT. ANN., tit. 34.1 ed.'s notes (2013).

³⁶ Compare, e.g., U.C.C. § 9-102 cmt. 11 (amended 2010), with WYO. STAT. ANN. § 34.1-9-102 cmt. 11 (2013); and WYO. STAT. ANN. § 34.1-9-102 cmt. 11 (West Supp. 2013); compare U.C.C. § 9-316 cmt. 7 (amended 2010), with WYO. STAT. ANN. § 34.1-9-316 cmt. 7 (2013); and WYO. STAT. ANN. § 34.1-9-316 cmt. 7 (West Supp. 2013). As of this writing, neither the Lexis or Westlaw online versions of Wyoming's Uniform Commercial Code set forth the revised Official Comments to the 2010 amendments.

³⁷ Compare, e.g., U.C.C. § 9-503 & cmt. 2 (amended 2010), with WYO. STAT. ANN. § 34.1-9-503 & cmt. 2 (2013), and WYO. STAT. ANN. § 34.1-9-503 & cmt. 2 (West Supp. 2013).

³⁸ See, e.g., U.C.C. § 9-104 cmt. 3 (amended 2010); U.C.C. § 9-109 cmt. 2 (amended 2010).

in the 2013 editions of the Wyoming statute books.³⁹ This situation will likely create confusion for those not aware that the Official Comments in the Wyoming statute books were not contemporaneously updated when the legislature amended Article 9.

The 2010 amendments contain extensive revisions and additions to the Official Comments intended to clarify the law, provide practitioners with numerous examples, and identify solutions to problems practitioners have encountered.⁴⁰ Wyoming attorneys are strongly urged to consult the Official Comments to the 2010 amendments, even though this will require consulting sources beyond the 2013 editions of the Wyoming statute books and related online versions.

As of this writing, the Official Comments to the 2010 amendments are available on the ALI website⁴¹ and on the NCCUSL website.⁴² Also, a number of states updated their Official Comments when they enacted the 2010 amendments to Article 9.⁴³ In addition, the most recent commercially available versions of the UCC contain the revised comments. Based on the time and effort the drafters expended revising these comments and the author's own extensive use of the comments, it is well worth the effort to seek out the Official Comments accompanying the amendments to better understand certain provisions, how they work in practice, their purpose, and their practical implications.

III. CHANGES RELATED TO DEBTOR NAME

Article 9 establishes a "notice filing" system.⁴⁴ For most types of collateral, a secured party perfects its interest by filing a financing statement.⁴⁵ Financing statements are indexed by the debtor's name.⁴⁶ Therefore, a financing statement is

³⁹ Compare, e.g., U.C.C. § 9-104 cmt. 3 (amended 2010), with WYO. STAT. ANN. § 34.1-9-104 cmt. 3 (2013), and WYO. STAT. ANN. § 34.1-9-104 cmt. 3 (West Supp. 2013); compare, U.C.C. § 9-109 cmt. 2 (amended 2010), with WYO. STAT. ANN. § 34.1-9-109 cmt. 2 (2013), and WYO. STAT. ANN. § 34.1-9-109 cmt. 2 (West Supp. 2013).

⁴⁰ See Smith, *supra* note 8, at 348–50, 365–68.

⁴¹ *Supra* note 20.

⁴² *Amendments to Uniform Commercial Code Article 9 (2010)*, UNIF. LAW COMM'N, <http://www.uniformlaws.org/Shared/Docs/UCC9/UCC9KitBundle.pdf> (last visited May 1, 2014) (providing the 2010 amendments as part of a Legislative Information Kit containing articles and other information relating to the amendments).

⁴³ For example, the online versions of Article 9 that incorporate the 2010 amendments available on Lexis or Westlaw for Colorado, Idaho, Nevada, and South Dakota include the revised Official Comments to the 2010 amendments. Compare, e.g., U.C.C. §§ 9-101 to 9-802 (amended 2010), with COLO. REV. STAT. §§ 4-9-101 to 4-9-802 (2013).

⁴⁴ U.C.C. § 9-502 cmt. 2 (2000).

⁴⁵ See U.C.C. § 9-310(a) (2000).

⁴⁶ U.C.C. § 9-503 cmt. 2 (amended 2010).

effective only if it “provides the name of the debtor.”⁴⁷ So, the question becomes what is the name of the debtor.

Over the last decade, practitioners and courts have struggled with the question of what name must be provided on a financing statement for a financing statement to be deemed effective.⁴⁸ Unfortunately, Article 9 provided little guidance.⁴⁹ The 2010 amendments attempt to provide greater guidance as to what name should be provided on a financing statement for individuals, business entities, and trusts.⁵⁰

A. *Individual Debtors*

Individuals often have more than one name. For example, the name on a person’s birth certificate, social security card, driver’s license, passport, tax return, college degree, and other official documents may differ. In addition, the name on these official documents may also vary from the name by which the individual is known in his or her community.⁵¹ To complicate matters further, a person may legally change his or her name.

Prior to the 2010 amendments, Article 9 did not define what constitutes an individual debtor’s name.⁵² The 2010 amendments attempt to address the uncertainty the statute created by offering states two alternative provisions to choose from which are designed to provide greater guidance and increase certainty.⁵³

⁴⁷ U.C.C. § 9-502(a)(1) (amended 2010).

⁴⁸ See Hakes & Sepinuck, *supra* note 21, at 1205–07 & nn.6–7; Smith, *supra* note 8, at 350–51 & nn.6–10.

⁴⁹ See, e.g., Smith *supra* note 8, 350 n.6.

⁵⁰ See U.C.C. § 9-503 & cmt. 2 (amended 2010).

⁵¹ For example, the name stated on an individual’s birth certificate may be “Kathleen Marie Smith.” However, she does not use her middle name unless a form, such as a tax return, expressly requests it. Her friends call her “Katie Smith.” Her family calls her “Kat.” She signs all official documents “Kathleen M. Smith.” The listing in the telephone directory for work and for home is under “K. M. Smith.” At work, she is known as “Kathy Smith.” She recently became engaged and is considering legally changing her name upon marriage to “Kathleen Smith Jones.” See LOPUCKI & WARREN, *supra* note 5, at 301 (providing illustrations upon which this example is based).

⁵² Article 9 provided only a tautology for guidance by stating “[a] 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) (2000).

⁵³ See U.C.C. § 9-503(a)(4)-(b)(2) (amended 2010) (setting forth Alternative A and Alternative B).

Alternative A is known as the “only-if” rule.⁵⁴ It requires filers to use the name on the debtor’s driver’s license⁵⁵ if the license has not expired and the license is issued by the state where the financing statement is filed.⁵⁶ If the debtor does not have such a driver’s license, the name requirement may be satisfied in one of two ways.⁵⁷ A financing statement will be sufficient if it provides the “individual name”⁵⁸ of the debtor or if it provides the debtor’s surname⁵⁹ and first personal name.⁶⁰ Thus, Alternative A provides that the name on an unexpired driver’s license issued by the state where the financing statement is filed is the only option, if such a driver’s license exists.

Alternative B is known as the “safe-harbor” rule.⁶¹ It provides that if the debtor is an individual, the financing statement will be sufficient if it: (i) uses the debtor’s “individual name;”⁶² (ii) uses the debtor’s surname⁶³ and first personal name;⁶⁴ or (iii) uses the name on the debtor’s driver’s license if the license has not expired and the license is issued by the state where the financing statement is filed.⁶⁵ Alternative B, therefore, retains the Article 9 approach prior to the 2010 amendments, but provides that the name on the debtor’s driver’s license will also be sufficient, as well as the debtor’s surname and first personal name. As a result, under Alternative B, the name on a driver’s license is only one of several options.

⁵⁴ Alternative A became known as the “only-if” rule because “the debtor’s name on the financing statement will be sufficient ‘only if’ the name provided is the name on the driver’s license.” Smith, *supra* note 8, at 352.

⁵⁵ A state may also provide that the filer may use the name that appears on a non-driver identification card provided certain issuance criteria are met. See U.C.C. § 9-503 legis. note 3 (amended 2010).

⁵⁶ See U.C.C. § 9-503(a)(4) [Alternative A] & cmt. 2d (amended 2010). The state where the financing statement is filed usually is the state where the individual debtor maintains his or her principal residence. U.C.C. § 9-503 cmt. 2d (amended 2010).

⁵⁷ See U.C.C. § 9-503(a)(5) [Alternative A] (amended 2010).

⁵⁸ The “individual name” of a debtor is not defined in Article 9 or the 2010 amendments. U.C.C. § 9-503 cmt. 2d (amended 2010). The reference, therefore, represents a default to the pre-2010 amendment approach. See *supra* note 52. As a result, the “individual name” of the debtor is whatever name would be sufficient under Article 9 and related case law prior to the 2010 amendments and later case law as it develops. However, the Official Comments to the 2010 amendments provide both practitioners and courts greater guidance as to what constitutes an individual debtor’s name. Compare U.C.C. § 9-503 cmt. 2 (2000), with U.C.C. § 9-503 cmt. 2d (amended 2010) (discussing the issue at length following “*Individual name of the debtor*” subheading in Official Comment 2d).

⁵⁹ “Surname” means “family name.” U.C.C. § 9-503 cmt. 2d (amended 2010).

⁶⁰ “First personal name” means “first name other than the surname.” U.C.C. § 9-503 cmt. 2d (amended 2010).

⁶¹ See, e.g., Hakes & Sepinuck, *supra* note 21, at 1206; Smith *supra* note 8, 353; *Amendments Summary*, *supra* note 9.

⁶² See *supra* note 58.

⁶³ See *supra* note 59.

⁶⁴ See *supra* note 60.

⁶⁵ See U.C.C. § 9-503(a)(4) [Alternative B] & cmt. 2d (amended 2010).

In some states, like Wyoming, the same agency that issues driver's licenses also issues identification cards to individuals who do not hold driver's licenses.⁶⁶ The drafters of the 2010 amendments encouraged states to permit filers to use the name that appears on a non-driver identification card.⁶⁷ In response, the Wyoming legislature adopted statutory language permitting filers to use the name stated on an unexpired Wyoming identification card.⁶⁸

While Wyoming enacted Alternative B,⁶⁹ the “safe-harbor” rule, the majority of states enacted Alternative A,⁷⁰ the “only-if” rule. Regardless, most attorneys will find that they will be required to file and search in other jurisdictions. So, it is important to become familiar with both alternatives.

Neither alternative is a panacea. Both alternatives represent tradeoffs. Each allocates risks and protections between filers and searchers differently. While the “only-if” rule may provide greater certainty, it increases the burden on filers. On the other hand, while the “safe-harbor” approach provides more flexibility, it increases the burden on searchers.

At first glance, the “only-if” approach appears quick and efficient—simply identify the name that appears on the debtor's driver's license. Filers file and searchers search under that name. Unfortunately, reliance on a driver's license or other identification card brings with it its own set of complications. Among other things, the driver's license may expire, the debtor may obtain a new driver's license issued under another name, the debtor may change his or her place of residence, or the debtor may obtain a new driver's license issued by another state.⁷¹ To maintain perfection, the secured party must monitor the debtor or bear the risk of becoming unperfected.

For a large national or regional banking system, this risk can be treated as a cost of doing business. In such situations, the overall risk of loss may be small in proportion to the cost savings associated with the simplicity, certainty, and efficiency of the “only-if” approach. For those lenders unable to easily spread

⁶⁶ See, e.g., *Driver License and Records*, WYO. DEPT. OF TRANSP., http://www.dot.state.wy.us/home/driver_license_records.html (last visited May 1, 2014).

⁶⁷ See U.C.C. § 9-503 legis. note 3 (amended 2010).

⁶⁸ See WYO. STAT. ANN. § 34.1-9-503(a)(iv)(C) (2013).

⁶⁹ Compare U.C.C. § 9-503(a)(4) [Alternative B] (amended 2010), with WYO. STAT. ANN. § 34.1-9-503(a)(iv) (2013).

⁷⁰ See Corp. Serv. Co., *supra* note 19 (listing § 9-503 option chosen by state). As of July 2, 2013, thirty-eight states had adopted Alternative A. Only Wyoming and six other states had adopted Alternative B. See *id.*

⁷¹ Under both Alternative A and Alternative B, the name on the driver's license is sufficient to perfect only if the driver's license is unexpired and issued by the state where the financing statement is filed. See U.C.C. § 9-503(a)(4)-(b)(2) (amended 2010) (setting forth Alternative A and Alternative B).

the costs associated with such losses, monitoring at least certain debtors may be prudent. Under the “only-if” approach, the question becomes whether secured parties will monitor debtors or decide to bear the risk of becoming unperfected as a cost of doing business.

In contrast, the “safe-harbor” approach offers filers flexibility. Filers may file under the debtor’s “individual name,” the name that appears on the debtor’s driver’s license, or use the debtor’s first personal name and surname.⁷² If the financing statement is properly filed under any of these options, the filer is assured perfection. However, the “safe-harbor” approach increases the burden on searchers. A diligent secured party must search under all three debtor name options. Thus, the “safe-harbor” approach requires broader searches under more possible names to uncover any filings against the debtor. Moreover, the uncertainty both practitioners and courts faced in determining what constitutes the “individual name” of the debtor continues even under the amendments.⁷³

Additionally, both alternatives provide that a filing is sufficient if the filer uses the name set forth on the driver’s license issued by the state where the financing statement is filed.⁷⁴ This approach is fraught with risks as well. A financing statement must be filed at the location of the debtor,⁷⁵ which ordinarily means the state of the debtor’s principal residence.⁷⁶ Therefore, the driver’s license must be issued by the state of the debtor’s principal residence to qualify for the protections afforded under the driver’s license name rules. For that reason, filers must conduct due diligence to determine the debtor’s principal residence and include appropriate representations in the loan documents before relying on the name stated on a debtor’s driver’s license for perfection purposes.⁷⁷

Determining the name to use on a financing statement cannot be done mechanically.⁷⁸ Both alternatives contain trips and traps for the unwary practitioner.

⁷² See U.C.C. § 9-503(a)(4) [Alternative B] (amended 2010).

⁷³ See Hakes & Sepinuck, *supra* note 21, at 1205–07 & nn.6–7; Smith, *supra* note 8, at 350–51 & nn.6–10.

⁷⁴ See U.C.C. § 9-503(a)(4)-(b)(2) (amended 2010) (setting forth Alternative A and Alternative B).

⁷⁵ See U.C.C. § 9-301(1) (2000).

⁷⁶ See U.C.C. § 9-307(b)(1) (2000).

⁷⁷ For example, a wealthy individual who has retired may have homes in several states and reside at each location for a few months each year. The individual’s principal residence will not be determined solely by the state that issued the person a driver’s license. See U.C.C. § 9-307 cmt. 2 (amended 2010) (stating that “the term ‘principal residence’ is not defined”); LOPUCKI & WARREN, *supra* note 5, at 411 (discussing the issues related to determining a debtor’s principal residence).

⁷⁸ U.C.C. § 9-503 cmt. 2d (amended 2010).

1. *Possible Name Variations*

Determining the debtor's name from a driver's license and then correctly filling out the required UCC filing forms is not always easy. The order in which an individual's name appears on a driver's license differs among states.⁷⁹ Some states simply provide a string of words.⁸⁰ Therefore, if the driver's license states the debtor's name as "Mary Ellen Kaye Johnson"⁸¹ is her first name "Mary" or "Mary Ellen"? Is her middle name "Ellen," "Ellen Kaye," or "Kaye"? Is her last name "Johnson" or "Kaye Johnson"? For the financing statement to be effective, the debtor's first name, any additional name, and surname must be correctly provided on the UCC filing form in the boxes so designated.⁸² To avoid risk, the filer should set forth all possible name variations on the UCC financing statement and the UCC additional party form.⁸³ Likewise, a searcher should search under all possible variations.

2. *Errors on Driver's Licenses*

If the filer is relying on the name indicated on a driver's license, the name on the UCC financing statement must mirror the name set forth on the driver's license, even if the debtor's driver's license contains an error or is incorrect.⁸⁴ Therefore, a paralegal's good faith effort to correct the name or spelling set forth on an incorrect driver's license could render the filing insufficient.⁸⁵ Similarly, if the debtor's driver's license sets forth a person's full middle name, failing to provide the middle name or simply providing an initial is not sufficient for perfection if

⁷⁹ U.C.C. § 9-503 cmt. 2d (amended 2010).

⁸⁰ LoPUCKI & WARREN, *supra* note 5, at 302.

⁸¹ This example was used in a Continuing Legal Education (CLE) seminar presented by Paul Hodnefield, Norman M. Powell, and Steven O. Weise titled "What's in a Name (and More): The Proposed 2010 Revisions to UCC Article 9," sponsored by the ALI and conducted on May 29, 2013 (copies of slides from this presentation are on file with the author) [hereinafter ALI CLE].

⁸² See U.C.C. § 9-521(a) (amended 2010) (requesting "individual's surname," "first personal name," and "additional name(s)" on line 1b); see also U.C.C. § 9-503 cmt. 2d (amended 2010) ("Regardless of the order on the driver's license, the debtor's surname must be provided in the part of the financing statement designated for surname.").

⁸³ The UCC Financing Statement Additional Party form is designated as "Form UCC1AP" by the International Association of Corporate Administrators (IACA). The form may be found on the IACA website at <http://www.iaca.org/wp-content/uploads/UCC1APFinancingStatementAdditionalParty-2.pdf> (last visited May 1, 2014).

⁸⁴ See U.C.C. § 9-503 cmt. 2d (amended 2010).

⁸⁵ For example, if the driver's license contained a typographical error (e.g., "Mqry" instead of "Mary") or an incorrect name (e.g., "Alan" instead of "Allan"), to be sufficient the financing statement must set forth the name printed on the driver's license despite the error. See U.C.C. § 9-503 cmt. 2d, example 1 (amended 2010); ALI CLE, *supra* note 81.

relying on the driver's license rules.⁸⁶ To complicate matters further, what if the debtor later decides to request a new driver's license with the correct name? Once corrected, the filer is no longer perfected if the filer mirrored the name on the former driver's license. The most prudent course in such a situation is for filers to file and searchers to search under both the incorrect and correct names.

3. *Ethnic Naming Conventions, Special Characters, and Technological Inconsistencies*

With a more culturally diverse population, attorneys are learning that ethnic naming practices do not follow the traditional American model of first, middle, and last name.⁸⁷ For example, in the Chinese culture, family names come first.⁸⁸ In other cultures, the surname may appear in the middle of the name, as neither the first nor last name.⁸⁹ The problem is further complicated by the fact that the order in which an individual's name appears on a driver's license differs among states.⁹⁰ Moreover, there is no guaranty that the agency issuing a driver's license correctly identified the elements of an individual's name or correctly designated the surname. Regardless of the order on the driver's license, for the financing statement to be effective, the debtor's surname must be correctly provided on the UCC filing form in the box so designated.⁹¹ If there is any doubt, the safest course is always to file and search under all possible variations.⁹²

Ethnic names may also include special characters. For example, if a person's surname is Peña, a special character may be inserted over the letter "n."⁹³ The computer systems in some states permit inclusion of these special characters on driver's licenses. Unfortunately, not all state online UCC filing systems allow filers to input special characters,⁹⁴ creating a problem for filers required by statute to mirror the name set forth on the debtor's driver's license.⁹⁵ In such cases, it has

⁸⁶ For example, if the name printed on the driver's license is "Joseph Allan Jones," then a filing against "Joseph A. Jones" or "Joseph Jones" would not be sufficient to perfect under the driver's license rules. U.C.C. § 9-503 cmt. 2d, example 1 (amended 2010).

⁸⁷ See *LOPUCKI & WARREN*, *supra* note 5, at 301–02.

⁸⁸ See *id.* at 301. As authors Lynn LoPucki and Elizabeth Warren so astutely observe "Should a searcher looking for Li Wan search Wan, Li or Li, Wan? And even if the searcher is sure that she understands the correct identification of Li Wan, can the searcher be sure that the filer and the recorder shared that same understanding?" *Id.*

⁸⁹ U.C.C. § 9-503 cmt. 2d (amended 2010). See *LOPUCKI & WARREN*, *supra* note 5, at 301–02 (providing an example of Hispanic naming conventions).

⁹⁰ See U.C.C. § 9-503 cmt. 2d (amended 2010).

⁹¹ See *id.*

⁹² See *id.*

⁹³ See *ALI CLE*, *supra* note 81.

⁹⁴ See U.C.C. § 9-503 legis. note 2 (amended 2010).

⁹⁵ See U.C.C. § 9-503(a)(4) [Alternative A] & cmt. 2d (amended 2010).

been suggested that to insure perfection, the filer should file a paper financing statement that includes the special character set forth on the driver's license.⁹⁶ In addition, the filer should retain a copy of the paper filing and any filing receipt in the event the filer must later prove compliance with the driver's license name rule.

Other technological inconsistencies between agency systems, such as maximum field length for a surname, may create analogous problems.⁹⁷ For example, an individual's surname may exceed the number of characters that may be entered into an agency's database.⁹⁸ The computer system used by the agency issuing driver's licenses may truncate an individual's surname. Or an online UCC filing system may not allow a filer to input all the letters and characters that compose an individual's surname. If the driver's license truncates the debtor's name, under the driver's license rule, the name on the financing statement must mirror the truncated name on the driver's license, even if it is incorrect.⁹⁹ If the online UCC filing system does not allow one to enter all characters of a name, as discussed above, it has been suggested that a secured party file a paper financing statement that includes all characters and retain a copy of the associated filing and receipt as proof of filing in accordance with the statute.¹⁰⁰

4. *Multiple Surnames or Individuals with a Single Name*

In the Official Comments, the drafters warn that some surnames may be "composed of multiple elements that, taken together, constitute a single surname."¹⁰¹ Such elements may be linked by a hyphen, separated by a space, or connected by another character.¹⁰² For example, a married couple may join their surnames to form one surname, such as "Smith-Jones" or "Smith Jones." However, the drafters caution that in some cases the combination of such elements may not form one surname.¹⁰³ For instance, in the case of "Mary Smith Jones," Smith" may be her middle name and not part of her surname.

⁹⁶ See ALI CLE, *supra* note 81.

⁹⁷ See U.C.C. § 9-503 legis. note 2 (amended 2010).

⁹⁸ This is most likely to occur if an individual has a long, hyphenated name that blends two formerly separate surnames or under certain ethnic naming conventions that may produce unusually long names.

⁹⁹ See *supra* Part III.A.2.

¹⁰⁰ See *supra* notes 94–99 and accompanying text.

¹⁰¹ U.C.C. § 9-503 cmt. 2d (amended 2010).

¹⁰² *Id.*

¹⁰³ *Id.*

The drafters also suggest that there may be some situations where the debtor's name is comprised of only one element¹⁰⁴ or possibly only a symbol.¹⁰⁵ In such circumstances, the single element should be set forth in the part of the financing statement designated "surname."¹⁰⁶

5. *Two Driver's Licenses Problem*

What if the debtor holds two driver's licenses issued by the state where the debtor is located? For example, the debtor may have lost a driver's license that was not found before the state issued her a new driver's license. In that case, only the debtor's name on the most recently issued license is sufficient under the driver's license rules.¹⁰⁷

6. *State of Driver's License Issue*

If a debtor's principal residence is Wyoming, the debtor will be considered to be located in Wyoming.¹⁰⁸ In most cases, to perfect a security interest in the debtor's personal property, a financing statement must be filed in Wyoming.¹⁰⁹ To qualify for the safe-harbor protections afforded under the driver's license name rules, the driver's license must be issued by the state where the financing statement is filed.¹¹⁰ So, for example, if the debtor holds a Colorado driver's license, rather than a Wyoming driver's license, the name stated on the Colorado driver's license will not afford the filer protection under the driver's license name rule if the financing statement is required to be filed in Wyoming.¹¹¹

¹⁰⁴ *Id.*

¹⁰⁵ A Google search of "strange legal names" or "unusual personal names" produces lists of bizarre legal names that range from simply symbols, such as "@", to numbers, and even includes long strings of unpronounceable letters.

¹⁰⁶ U.C.C. § 9-503 cmt. 2d (amended 2010).

¹⁰⁷ U.C.C. § 9-503(g) [Alternative A] [Alternative B] (amended 2010).

¹⁰⁸ *See* U.C.C. § 9-307(b)(1) (amended 2010).

¹⁰⁹ *See* U.C.C. §§ 9-301(1), 9-310(a), 9-501(a) (2000). Exceptions to this general rule are set forth in U.C.C. §§ 9-301(3), 9-301(4) (2000) (providing exceptions for certain types of collateral).

¹¹⁰ *See* U.C.C. § 9-503(a)(4) [Alternative A] (amended 2010) (limiting the driver's license rule to situations where "the debtor is an individual to whom this State has issued a [driver's license]"); U.C.C. § 9-503(a)(4)(C) [Alternative B] (amended 2010) (limiting the driver's license rule to situations where the financing statement "provides the name of the individual which is indicated on a [driver's license] that this State has issued to the individual"); Smith, *supra* note 8, at 354 (stating that a driver's license from another state "will be irrelevant for purposes of perfecting a security interest").

¹¹¹ This situation can arise when a debtor moves to a new state. It may be months, or even years, before the debtor gets a driver's license in his new state of residence.

7. *Post-Closing Events Impacting Perfection*

Post-closing events may require the secured party to refile to remain perfected. For instance, the driver's license may expire. If expired, it is no longer a proper source for identifying the debtor's name.¹¹² This means that a financing statement, once sufficient, could cease to be effective upon expiration of the license.¹¹³

A debtor may obtain a new driver's license for a variety of reasons, including expiration, marriage, divorce, a legal name change, or because the license is lost or stolen. If a different name appears on the newly issued driver's license, the previously filed financing statement is no longer effective. Either expiration or an exchange of licenses could result in a name change that may require refiling to remain perfected.¹¹⁴ Therefore, filers must monitor expiration and name changes or assume the risk.

In addition, a debtor's personal residence may change after closing. A financing statement filed in the debtor's former location ceases to be effective to perfect a security interest unless the secured party properly files in the new location within the time period specified by statute.¹¹⁵ Again, the filer must monitor the debtor's location and file in the state of the debtor's new location under the naming rules of that state or assume the risk of becoming unperfected.

8. *Effect on Searches*

Financing statements generally remain effective for five years.¹¹⁶ Under the transition rules, a financing statement filed prior to the enactment of the 2010 amendments remains effective until it would have ceased to be effective had the amendments not taken effect.¹¹⁷ This means that previously filed financing statements may continue to be effective for the next five years, even in states that adopt Alternative A, the "only-if" rule, which requires filers to use the name set forth on the debtor's driver's license.

As a result, searchers must continue to search under the former debtor's name rules for the next five years even in states that have adopted Alternative A since financing statements using such names may continue to be effective for the next

¹¹² See U.C.C. § 9-503(a)(4) [Alternative A] [Alternative B] (amended 2010).

¹¹³ See Powell, *supra* note 9, at 39; Smith, *supra* note 8, at 353–54.

¹¹⁴ “[T]he 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.” *Amendments Summary*, *supra* note 9.

¹¹⁵ See U.C.C. § 9-316 & cmt. 2 (amended 2010); see also U.C.C. § 9-503 cmt. 2d (amended 2010).

¹¹⁶ U.C.C. § 9-515(a) (amended 2010).

¹¹⁷ U.C.C. §§ 9-801 cmt., 9-805(b)(1) (amended 2010).

five years. Therefore, the burden on searchers will not be reduced in states opting for Alternative A for five years. Until then, searchers are cautioned not to rely on searches using only the name on the debtor's driver's license.

B. Registered Organization Debtors

Over the years, there has been some concern regarding what name to use on a financing statement when the debtor is a registered organization. To address the confusion, the drafters added the term "public organic record"¹¹⁸ and revised the provision relating to the name of a registered organization.¹¹⁹ The amendments clarify that the proper name for perfection purposes is the name set forth on the organization's charter or other constitutive document filed with the state.¹²⁰

As a result, the name of the business entity on the organizational charter, articles of incorporation, or other formation document filed with the state controls. If there is more than one such document, the most recent governs.¹²¹ Therefore, a filer must check the formation documents filed with the state for amendments to determine if the name has changed over time. If there are multiple references to the entity's name in the formation documents, the reference setting forth the name of the debtor controls.¹²²

The 2010 amendments make clear that the name of the entity as indicated in other public records or electronic databases maintained by the state are not sufficient. There are no short cuts. For example, a filer cannot rely on the name set forth on a good standing certificate or on a state index of domestic business entities.¹²³ To find the proper name, the filer must go to the source—the organizational documents and any amendments filed by the entity with the state.

C. Trust Debtors and Decedents and Their Estates

Under Article 9, the ministerial task of filling out and filing a financing statement became an endeavor fraught with peril when property was held in trust

¹¹⁸ "Public organic record" is defined as "a record that is available to the public for inspection and is . . . the record initially filed with or issued by a State . . . to form or organize an organization and any record filed with or issued by the State . . . which amends or restates the initial record." U.C.C. § 9-102(a)(68)(A) (amended 2010).

¹¹⁹ See U.C.C. § 9-503(a)(1) (amended 2010).

¹²⁰ See U.C.C. §§ 9-102(a)(68)(A), 9-503(a)(1) (amended 2010).

¹²¹ See U.C.C. § 9-503(a)(1) (amended 2010) (stating that a filing sufficiently provides the name of the debtor if it provides the "name on the public organic record most recently filed . . . which purports to state, amend, or restate the registered organization's name").

¹²² See U.C.C. § 9-503(a)(1) (amended 2010) (providing that "[a] financing statement sufficiently provides the name of the debtor . . . only if [it] provides the name that is stated to be the registered organization's name on the public organic record").

¹²³ U.C.C. § 9-102 cmt. 11 (amended 2010).

or involved decedents and their estates.¹²⁴ The amendments include a number of changes intended to clarify the filing requirements for decedents, estates, and trusts.¹²⁵

1. *Statutory or Massachusetts Type Common Law Trusts*

A sentence was added to the definition of “registered organization” to clarify that statutory trusts, as well as Massachusetts type common law trusts, which are required to file an organic record with the state are registered organizations.¹²⁶ If the collateral is held in a trust that is a registered organization, the debtor’s name is the name of the registered organization.¹²⁷

For example, the Wyoming Statutory Trust Act¹²⁸ requires statutory trusts to file a certificate of trust with the Wyoming Secretary of State’s Office.¹²⁹ Therefore, an organic record must be filed with the state. Such trusts are now considered “registered organizations.” Consequently, the name of the trust on the document filed with the Wyoming Secretary of State is the name that must appear as the name of the debtor on any filed financing statement.¹³⁰

2. *Other Trusts*

If the trust is not a registered organization, the financing statement must provide (i) the name of the trust as identified in the trust’s organic record, if a name is specified,¹³¹ or (ii) if no name is specified, the name of the settlor or testator¹³² and sufficient additional information to distinguish a particular trust from other trusts held by the same settlor or testator.¹³³ The Official Comments note that in many cases the date on which the trust was settled may be sufficient to fulfill the additional information requirement.¹³⁴ In addition, the financing

¹²⁴ Powell, *supra* note 9, at 38.

¹²⁵ Norman M. Powell, *Filings Against Trusts and Trustees under the Proposed 2010 Revisions to Current Article 9—Thirteen Variations*, 42 UCC L.J. 375, 376 (2010).

¹²⁶ See U.C.C. § 9-102(a)(71) & cmt. 11 (amended 2010).

¹²⁷ U.C.C. § 9-503(a)(1) (amended 2010); see *supra* Part III.B (describing how to determine the name of a registered organization).

¹²⁸ WYO. STAT. ANN. §§ 17-23-101 to 17-23-121 (2013).

¹²⁹ WYO. STAT. ANN. § 17-23-114 (2013).

¹³⁰ See *supra* Part III.B.

¹³¹ U.C.C. § 9-503(a)(3)(A)(i) (amended 2010).

¹³² U.C.C. § 9-503(a)(3)(A)(ii) (amended 2010).

¹³³ U.C.C. § 9-503(a)(3)(B)(ii) (amended 2010).

¹³⁴ U.C.C. § 9-503 cmt. 2b (amended 2010).

statement must indicate that the collateral is held in trust.¹³⁵ The statute requires the filer to include such additional information in a separate part of the form. This requirement is intended to avoid errors that arose in some states when the information was included in the debtor's name block of the financing statement.¹³⁶ Examples of Wyoming trusts that are not registered organizations and would fall under this category of other trusts include Wyoming asset protection trusts and Wyoming dynastic trusts.

3. *Decedents and Their Estates*

When collateral is administered by an executor, administrator, or other personal representative of a decedent, the financing statement must provide the name of the decedent as the name of the debtor.¹³⁷ The amendments state that the name of the deceased indicated on the court order appointing the personal representative is sufficient as the name of the decedent.¹³⁸ In addition, the filer must indicate in a separate part of the financing statement that the collateral is being administered by a personal representative.¹³⁹

Despite the drafters' intent to simplify the code, questions will continue to arise when collateral is held in a trust or involves decedents and their estates, such as where to file, the name of the debtor, other debtor-related information requirements, and the impact of non-uniform amendments. When such issues arise, practitioners are urged to consult other sources containing more in-depth analysis and discussion.¹⁴⁰

IV. REVISED UCC FILING FORMS

When the drafters revised Article 9 over a decade ago, they included model filing forms in the text of the code.¹⁴¹ The drafters' intent was to provide a "safe

¹³⁵ U.C.C. § 9-503(a)(3)(B) (amended 2010). The amendments make it clear that the indication the collateral is held in trust and the additional information to distinguish trusts must be included in a part of the financing statement separate and apart from the entry for the debtor's name. *See* U.C.C. § 9-503(a)(3)(B)(i)-(ii) & cmt. 2b (amended 2010). A filer may check the appropriate box on the financing statement form to indicate that the collateral is held in trust. *See* U.C.C. § 9-521 (amended 2010) (setting forth the UCC Financing Statement, see box 5). The additional information may be set forth on the financing statement addendum form. *See* U.C.C. § 9-521 (amended 2010) (setting forth UCC Financing Statement Addendum, see box 17).

¹³⁶ Smith, *supra* note 8, at 358.

¹³⁷ U.C.C. § 9-503(a)(2) & cmt. 2c (amended 2010).

¹³⁸ U.C.C. § 9-503(f) & cmt. 2c (amended 2010).

¹³⁹ U.C.C. § 9-503(a)(2) & cmt. 2c (amended 2010). A filer may check the appropriate box on the financing statement form to indicate that the collateral is being administered by the decedent's personal representative. *See* U.C.C. § 9-521 (amended 2010) (setting forth UCC Financing Statement, see box 5).

¹⁴⁰ *See, e.g.,* Powell, *supra* note 125; Smith, *supra* note 8, at 355–58.

¹⁴¹ *See* U.C.C. § 9-521 (2000).

harbor” for filers who use the uniform forms set forth in the statute.¹⁴² The drafters included these forms in the text of the act to encourage national uniformity, reduce errors by prompting filers for the information required by act, and lessen the risk of rejection on the basis of filing format.¹⁴³

The 2010 amendments promulgated by NCCUSL and the ALI contain revised UCC filing forms.¹⁴⁴ The amendments modified all of the uniform filing forms to some extent. Substantive changes to the code necessitated some of the revisions. Other amendments are designed to respond to issues that arose in practice over time. The new uniform filing forms reflect changes in terminology, eliminate certain information requirements, and incorporate redesigned formatting to avoid inadvertent errors.

A. *Financing Statements*

The uniform financing statements set forth in the 2010 amendments promulgated by NCCUSL and the ALI are revised to conform with the changes to the debtor’s name requirements. For example, the references on the forms to an individual’s “last name” are changed to references to “surname” on the new forms.¹⁴⁵ Boxes are added to the new form to indicate collateral is held in trust or being administered by a decedent’s personal representative.¹⁴⁶ Also, in an attempt to modernize the forms and aid communication, the forms now permit filers to provide e-mail contact information.¹⁴⁷

Additionally, the 2010 amendments no longer require financing statements to state the debtor’s type of organization, jurisdiction of organization, or organizational identification number.¹⁴⁸ Therefore, the forms no longer request such information.¹⁴⁹ The drafters concluded that the cost of obtaining this information outweighed the benefits of including it on the forms, so the drafters

¹⁴² See U.C.C. § 9-521 cmt. 2 (2000).

¹⁴³ See *id.*

¹⁴⁴ Compare U.C.C. § 9-521 (2000), with U.C.C. § 9-521 (amended 2010).

¹⁴⁵ See, e.g., U.C.C. § 9-503(a)(5) [Alternative A] (amended 2010) (requiring the financing statement to set forth “the surname and first personal name of the debtor”). Compare U.C.C. § 9-521 (2000), with U.C.C. § 9-521 (amended 2010) (changing “last name” to “surname,” “first name” to “first personal name,” and “middle name” to “additional name(s)/initial(s)”).

¹⁴⁶ See, e.g., U.C.C. §§ 9-503(a)(2), 9-503(a)(3)(B)(i) (amended 2010) (requiring the financing statement to indicate that the “collateral is being administered by a personal representative” or “the collateral is held in a trust”). Compare U.C.C. § 9-521 (2000), with U.C.C. § 9-521 (amended 2010).

¹⁴⁷ Compare U.C.C. § 9-521 (2000), with U.C.C. § 9-521 (amended 2010).

¹⁴⁸ Compare U.C.C. § 9-516(b)(5) (2000), with U.C.C. § 9-516(b)(5) (amended 2010).

¹⁴⁹ Compare U.C.C. § 9-521 (2000), with U.C.C. § 9-521 (amended 2010) (eliminating the parts of the forms that required the filer to set forth the debtor’s type of organization, jurisdiction of organization, or organizational identification number).

eliminated these requirements¹⁵⁰ and deleted references to such information on the forms.¹⁵¹ Moreover, in response to privacy concerns, the new forms delete the space that previously allowed filers to include the debtor's tax identification number, social security number, or employer identification number.¹⁵²

B. Financing Statement Amendment Form

In addition to the changes to the financing statement forms noted above, the new financing statement amendment form includes formatting changes designed to reduce risk of inadvertent error. Over the years, it appears that some filers attempting to file continuation statements have accidentally checked the termination box instead¹⁵³ due to the close proximity of these boxes on the prior form.¹⁵⁴ To attempt to reduce such inadvertent errors, the amendment form has been reformatted so that the continuation box is no longer directly below the termination box.¹⁵⁵

C. "Correction Statement" Renamed "Information Statement"

The drafters of Article 9 adopted a statute analogous to the Fair Credit Reporting Act that allows a debtor to file a "correction statement" to indicate that a financing statement or other filing against the debtor is unauthorized or inaccurate.¹⁵⁶ The label "correction statement" proved to be an unfortunate choice of words. A correction statement did not "correct" anything. It had no legal effect.¹⁵⁷ Its only purpose was to provide public notice of a dispute.¹⁵⁸

To clarify the proper use and effect of such a statement, the 2010 amendments change the name of the filing to "information statement."¹⁵⁹ In addition, the 2010 amendments now allow secured parties of record to file information

¹⁵⁰ See, e.g., Powell, *supra* note 9, at 41; Smith, *supra* note 8, at 362.

¹⁵¹ Compare U.C.C. § 9-521 (2000), with U.C.C. § 9-521 (amended 2010).

¹⁵² Compare U.C.C. § 9-521 (2000), with U.C.C. § 9-521 (amended 2010).

¹⁵³ See, e.g., Powell, *supra* note 9, at 41 (discussing a case where a lender inadvertently checked the wrong box on the form thereby terminating its financing statement rather than continuing it which resulted in a "potentially \$58 million dollar filing mistake").

¹⁵⁴ See U.C.C. § 9-521 (2000) (placing the termination box (line 2) on the amendment form directly above the continuation box (line 3)).

¹⁵⁵ See U.C.C. § 9-521 (amended 2010) (placing the continuation box (line 4) so that it is not immediately below the termination box (line 2)).

¹⁵⁶ See U.C.C. § 9-518(a) & cmt. 2 (2000).

¹⁵⁷ See U.C.C. § 9-518(c) & cmt. 2 (2000).

¹⁵⁸ The filed correction statement became "part of the 'financing statement,'" meaning that the correction statement would show up on searches that produced the disputed financing statement as a related record. See U.C.C. § 9-518 cmt. 2 (2000).

¹⁵⁹ Compare U.C.C. § 9-518 (2000), with U.C.C. § 9-518 (amended 2010).

statements as well.¹⁶⁰ For example, a secured party may wish to inform others that an amendment or termination statement was not authorized. However, the comments make it clear that a secured party has no duty to file an information statement even if the secured party is aware of an unauthorized filing.¹⁶¹

No particular form is prescribed by statute. Nevertheless, the International Association of Commercial Administrators (IACA) designed a new uniform form for filing information statements.¹⁶² Many states, including Wyoming, accept IACA's UCC5 form for such filings.¹⁶³

D. Challenges to National Uniformity

As previously discussed, the drafters of Article 9 and the 2010 amendments included uniform filing forms in the text of the act to promote national uniformity, decrease costs, reduce possible errors, and lessen the risk of rejection on the basis of filing format.¹⁶⁴ Many states adopted the new forms set forth in the 2010 amendments promulgated by NCCUSL and the ALI into their state statutes by incorporating images of the new forms, providing the text of the new form fields, or incorporating the new forms by reference.¹⁶⁵ However, some states made no changes to their forms.¹⁶⁶ Other states, like Wyoming, adopted non-uniform amendments.¹⁶⁷

For example, prior to the 2010 amendments, Wyoming included the uniform filing forms in the text of the act and stated it would not refuse to accept filings in such form and format.¹⁶⁸ When adopting the amendments, the Wyoming legislature deleted the uniform filing forms from the act.¹⁶⁹ Wyoming's Article 9 now states "[a] filing office . . . may not refuse to accept a written record in the form and format prescribed by the state"¹⁷⁰ The statute then provides

¹⁶⁰ Compare U.C.C. § 9-518 (2000), with U.C.C. § 9-518(c) (amended 2010).

¹⁶¹ See U.C.C. § 9-518 cmt. 2 (amended 2010).

¹⁶² See Int'l Ass'n of Commercial Adm'rs, *UCC Forms*, <http://www.iaca.org/secured-transactions/forms/> (last visited May 2, 2014) (providing links to UCC forms, including form UCC5 for information statements).

¹⁶³ See, e.g., Wyo. Sec'y of State, *Forms*, <http://soswy.state.wy.us/Forms/FormsFiling.aspx?startwith=UCC> (last visited Mar. 1, 2014) (providing a link to a UCC5 form for information statements in the format designed by IACA).

¹⁶⁴ See *supra* notes 141–44 and accompanying text.

¹⁶⁵ See Corp. Serv. Co., *supra* note 19.

¹⁶⁶ Corp. Serv. Co., *supra* note 19.

¹⁶⁷ Corp. Serv. Co., *supra* note 19.

¹⁶⁸ See WYO. STAT. ANN. § 34.1-9-521 (2011).

¹⁶⁹ Compare WYO. STAT. ANN. § 34.1-9-521 (2011), with WYO. STAT. ANN. § 34.1-9-521 (2013).

¹⁷⁰ WYO. STAT. ANN. § 34.1-9-521(d) (2013).

that “[t]he [Wyoming] secretary of state is authorized to prescribe forms and formats . . . by rule and regulation.”¹⁷¹ By this action, the legislature deleted the statutory safe harbor that insured the filing office’s acceptance of filings on the uniform forms promulgated by the ALI and NCCUSL.¹⁷²

Many of the states that refused to adopt the revised uniform filing forms may be willing to accept the revised uniform forms despite their unwillingness to include the forms in their statutes.¹⁷³ Nevertheless, the refusal of such states to legislatively adopt the revised uniform forms undermines the ability of filers to rely on national uniformity.

The practical effect is that in states like Wyoming, the filing office may refuse to accept a filing submitted on a uniform form that is otherwise accepted in most other states. A legislature’s decision not to adopt the statutory provision that requires filing offices to accept uniform forms means filers can no longer rely on the safe harbor that uniform forms provided. In those states declining to incorporate the uniform filing forms into their statutes, the most prudent course is to check with the state UCC filing office prior to filing to determine if uniform filing forms are accepted by that office or whether other filing forms must be used.

V. WYOMING’S NON-UNIFORM AMENDMENT EXTENDING THE DURATION OF FINANCING STATEMENTS

Under Article 9 and the 2010 amendments promulgated by NCCUSL and the ALI, generally financing statements are effective for only five years.¹⁷⁴ Unless the secured party files a continuation statement during the last six months of the five-year period, the financing statement lapses and ceases to be effective.¹⁷⁵

The Wyoming legislature enacted a non-uniform amendment extending the duration of financing statements and continuation statements filed on or after July 1, 2013, from five years to ten years.¹⁷⁶ One reason given by those who

¹⁷¹ WYO. STAT. ANN. § 34.1-9-521(e) (2013).

¹⁷² See U.C.C. § 9-521 cmt. 2 (2000).

¹⁷³ For example, the new uniform forms designed to enact the 2010 amendments and disseminated by IACA state “Rev. 04/20/2011” at the bottom of each revised form. See Int’l Ass’n of Commercial Adm’rs, *supra* note 162 (providing links to the revised UCC uniform filing forms). While Wyoming did not statutorily adopt the uniform filing forms, the Wyoming Secretary of State’s website indicates that the UCC filing office will accept the revised uniform filing forms at this time. See Wyo. Sec’y of State, *supra* note 163 (providing links to uniform filing forms disseminated by IACA dated “Rev. 04/20/2011,” thereby indicating that such forms are currently accepted by the Wyoming Secretary of State’s Office).

¹⁷⁴ U.C.C. § 9-515(a) (2000); U.C.C. § 9-515(a) (amended 2010).

¹⁷⁵ U.C.C. § 9-515(c)-(d) (2000); U.C.C. § 9-515(c)-(d) (amended 2010).

¹⁷⁶ Compare WYO. STAT. ANN. § 34.1-9-515 (2011), with WYO. STAT. ANN. § 34.1-9-515 (2013).

lobbied for this change is that many loans, such as car loans, may now have a term greater than five years.

On the one hand, the increased duration may benefit filers. It reduces the risk that a secured party will fail to file a continuation statement when required. On the other hand, more debtors are apt to demand that secured creditors terminate their financing statements once the debt is repaid so that collateral no longer appears encumbered.¹⁷⁷ Many outside Wyoming view this non-uniform amendment as yet another unwelcomed, unnecessary, and costly blow to national uniformity.¹⁷⁸

VI. ADDITIONAL AMENDMENTS

The 2010 amendments cover a broad range of disparate topics. The details of many of these amendments will probably be of interest to secured parties, debtors, or practitioners only when the issue arises in practice. The brief summaries that follow are designed only to alert the reader to the adoption of such amendments so he or she can locate the statutory text, the drafters' Official Comments, and secondary authority when such issues arise.

Greater Protection for Security Interests in After-Acquired Property When the Debtor Relocates to Another Jurisdiction or Merges with Another Entity. The 2010 amendments provide greater protection for existing secured parties when a debtor relocates to another jurisdiction or merges with another entity. The new rules grant certain filers perfection for four months in collateral acquired after the debtor moves.¹⁷⁹ Similarly, the new rules grant certain filers temporary perfection in collateral owned by a successor before a merger or collateral acquired by a successor within four months after the merger.¹⁸⁰ The rules related to maintaining attachment, perfection, and priority post-closing are both complex and challenging. Fortunately, helpful resources are available that

¹⁷⁷ See WYO. STAT. ANN. § 34.1-9-513(c) (2013). If a secured party fails to file a termination statement when statutorily required, the secured party becomes liable for damages and, in addition, a civil penalty of \$500. See WYO. STAT. ANN. §§ 34.1-9-625(b), 34.1-9-625(e)(iv) (2013).

¹⁷⁸ A query on a UCC listserv with an audience of commercial law academics, lawyers, secured creditors, and filing office administrators concerning Wyoming's plans to extend the duration of financing statements drew a quick, sharp, and unanimously negative response for both practical and policy reasons. The initial query and e-mail responses are on file with the author.

¹⁷⁹ See U.C.C. § 9-316(h) & cmt. 7 (amended 2010). Commentaries that discuss this provision in greater detail may be found in Nagar & Shim, *supra* note 21, at 736–37; Powell, *supra* note 9, at 36; Smith, *supra* note 8, at 359–61; Steven O. Weise & Susan R. Goldfarb, *The Fox in the Hen House—Maintaining Attachment, Perfection, and Priority Post-Closing*, 44 UCC L.J. 131, 137–38 (2012).

¹⁸⁰ See U.C.C. § 9-316(i) & cmt. 8 (amended 2010). Commentaries that discuss this provision in greater detail may be found in Nagar & Shim, *supra* note 21, at 737; Powell, *supra* note 9, at 36; Smith, *supra* note 8, at 361–62; Weise & Goldfarb, *supra* note 179, at 148–50.

walk practitioners through the details, examine the practical implications, and provide practice tips.¹⁸¹

New Test for Control of Electronic Chattel Paper. The 2010 amendments set forth a new test to determine if a secured party has control of electronic chattel paper. The new test is whether “a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.”¹⁸² This language, which is derived from the Uniform Electronic Transactions Act,¹⁸³ is broad enough to allow for the development of new control systems and encourage continued innovation.¹⁸⁴ The requirements for control of electronic chattel paper prior to the 2010 amendments¹⁸⁵ now constitute a safe-harbor test that secured parties may rely upon to establish perfection by control.¹⁸⁶

New Rule for Evergreen Filings Against Transmitting Utilities. Article 9 includes special rules for filings against transmitting utilities.¹⁸⁷ Among them, a financing statement filed against a transmitting utility remains effective indefinitely unless terminated.¹⁸⁸ For a secured creditor to avail itself of this special rule, the 2010 amendments require that the initial financing statement indicate that the debtor is a transmitting utility.¹⁸⁹ The new requirement that the filer indicate transmitting utility status on the initial financing statement is a response to operational problems faced by filing offices¹⁹⁰ and intended to create consistency with similar rules that extend the effectiveness of financing statements beyond five years.¹⁹¹

¹⁸¹ For an excellent article on maintaining attachment, perfection, and priority post-closing that not only describes these rules in detail but provides numerous practice tips that should be part of every secured creditor’s due diligence checklist, see Weise & Goldfarb, *supra* note 179.

¹⁸² U.C.C. § 9-105(a) (amended 2010).

¹⁸³ U.C.C. § 9-105 cmt. 2 (amended 2010).

¹⁸⁴ See U.C.C. § 9-105 cmt. 3 (amended 2010).

¹⁸⁵ Compare U.C.C. § 9-105 (2000), with U.C.C. § 9-105(b) (amended 2010).

¹⁸⁶ See U.C.C. § 9-105(b) & cmt. 2 (amended 2010).

¹⁸⁷ See, e.g., U.C.C. §§ 9-501(b) & cmt. 5, 9-515(f) (2000). See also LoPUCKI & WARREN, *supra* note 5, at 357–58. The term “transmitting utility” is defined U.C.C. § 9-102(a)(81) (amended 2010) and discussed in U.C.C. § 9-102 cmt. 8 (2000).

¹⁸⁸ U.C.C. § 9-515(f) (amended 2010).

¹⁸⁹ *Id.*

¹⁹⁰ See Powell, *supra* note 9, at 40–41; Smith, *supra* note 8, at 362.

¹⁹¹ See U.C.C. § 9-515(b) (amended 2010) (requiring status indicated on the initial financing statement for public-finance and manufactured-home transactions).

New and Revised Definitions.

Authenticate. The drafters modified the definition of “authenticate”¹⁹² to recognize, accommodate, and encourage the increased use of electronic records. The revised definition is designed to be medium neutral and now more closely resembles definitions found in the most recent revisions of other UCC Articles.¹⁹³

Certificate of Title. The 2010 amendments added new language to the definition of “certificate of title”¹⁹⁴ to acknowledge the emerging practice in many states to maintain certificate of title records in electronic form.¹⁹⁵ The revised definition eliminates the need for states to issue paper certificates of title.¹⁹⁶

Public Organic Record. The drafters created a new term, “public organic record,”¹⁹⁷ in connection with the revised rules designed to assist filers and searchers in determining a debtor’s name.¹⁹⁸ The definition specifies what constitutes the public organic record for organizations, business trusts, and entities created by legislation,¹⁹⁹ thereby describing where parties may find the names of such debtors.

Registered Organization. The revised definition of “registered organization” attempts to clarify what constitutes a registered organization under Article 9.²⁰⁰ New language added to the definition expressly includes within the scope of the definition certain business trusts and entities created by legislation.²⁰¹

VII. TRANSITION PROVISIONS

The 2010 amendments provide for a five-year transition period from the date of enactment.²⁰² The general rule is that filed records remain effective until the earlier of the time of lapse or the end of the transition period.²⁰³ Therefore, if a secured party was properly perfected in collateral before a state enacted the

¹⁹² U.C.C. § 9-102(a)(7) (amended 2010).

¹⁹³ See Powell, *supra* note 9, at 34; Smith, *supra* note 8, at 363.

¹⁹⁴ U.C.C. § 9-102(a)(10) (amended 2010).

¹⁹⁵ See U.C.C. § 9-102 cmt. 11 (amended 2010).

¹⁹⁶ U.C.C. § 9-102(a)(10) & cmt. 11 (amended 2010).

¹⁹⁷ U.C.C. § 9-102(a)(68) (amended 2010).

¹⁹⁸ See *supra* Part III.B. See, e.g., U.C.C. §§ 9-503(a)(1), 9-503(h)(1) (amended 2010) (employing the term “public organic record”).

¹⁹⁹ U.C.C. § 9-102(a)(68) (amended 2010).

²⁰⁰ See U.C.C. § 9-102(a)(71) (amended 2010).

²⁰¹ U.C.C. § 9-102(a)(71) (amended 2010).

²⁰² See U.C.C. §§ 9-801, 9-805(b)(2)(B) (amended 2010); see also Powell, *supra* note 9, at 43. The transition provisions are set forth in U.C.C. §§ 9-801 to 9-809 (amended 2010).

²⁰³ See U.C.C. §§ 9-801 cmt., 9-805(b) (amended 2010).

amendments, the general rule is that the secured party may continue to rely on its previous filing until such filing lapses or is terminated. However, if the filer is required to file a continuation statement during the transition period, the continuation statement must comply with the 2010 amendments.²⁰⁴

The amendments contain some very narrow exceptions to this general rule. If the 2010 amendments change the place to file, a new filing may be required. For example, the 2010 amendments change the place to file for certain debtors not previously classified as registered organizations, such as Massachusetts type business trusts.²⁰⁵ Fortunately, the exceptions are few and resources providing extensive and detailed descriptions of the transition rules are available, if needed.²⁰⁶

²⁰⁴ See U.C.C. §§ 9-801 cmt., 9-805(c), 9-805(e) (amended 2010).

²⁰⁵ U.C.C. § 9-801 cmt. (amended 2010). Edwin Smith, one of the drafters of the 2010 amendments, notes that “the law governing perfection may change under the amendments because the location of the debtor may change under the amendments.” Smith, *supra* note 8, at 364–65. He then goes on to indicate that the need for action “will likely be applicable only to a Massachusetts type business trust.” Smith, *supra* note 8, at 365.

²⁰⁶ For a detailed summary of the transition rules, see Smith, *supra* note 8, at 368–73.