2010 Amendments to UCC Article 9
Summary of Alternative Sections in 9-503(a)

Name to be Provided on a Financing Statement When the Debtor is an Individual

Some courts have struggled with the question of what name a financing statement must provide for an individual debtor in order for the debtor's name on the financing statement to be sufficient.[1] The problem arises because an individual does not typically have a single name.[2] The individual's name on his or her birth certificate, driver's license, passport, tax return or bankruptcy petition may all be different.[3] Moreover, the debtor may be known in his or her community by a name that is not reflected on any official document.[4] It would appear that most cases decided under the 1998 revisions to Article 9 and finding the individual debtor's name provided on the financing statement to be insufficient have involved the secured party making a filing error rather than being uncertain as to the debtor's actual name.[5] Nevertheless, the cases have created a level of uncertainty that has led secured parties to search and file financing statements under multiple names.

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[1] *E.g.*, "Although [KAN. STAT. ANN.] § 84-9-503 specifically sets parameters for listing a debtor's name in a financing statement when the debtor is an entity, it does not provide any detail as to the name that must be provided for an individual debtor-it simply states that the 'name of the debtor should be used.'" Clark v. Deere & Co. (*In re* Kinderknecht), 308 B.R. 71, 75 (B.A.P. 10th Cir. 2004); "[I]n the case of an individual debtor, no specific rule or guidance is given concerning what constitutes a sufficient debtor 'name'…revised Article 9 makes no attempt to resolve the many issues that can arise with respect to human names." Nazar v. Bucklin Nat'l Bank *(In re* Erwin*)*, 50 U.C.C. Rep. Serv. 2d 933, 2003 WL 21513158, at *7 (Bankr. D. Kan. June 27, 2003).

[2] *See* Morris v. Snap-on Credit, LLC *(In re* Jones*)*, 2006 WL 3590097, at *3 (Bankr. D. Kan. Dec. 7, 2006) (finding the secured party's financing statement filed under the debtor's nickname, Chris Jones, instead of the debtor's full legal name, Christopher Gary Jones, to be ineffective); Morris v. Snap On Credit, L.L.C. (*In re* Stewart*)*, 2006 WL 3193374, at *2 (Bankr. D. Kan. Nov. 1, 2006) (holding that the financing statement should have provided the debtor's full legal name, Richard Morgan Stewart, IV, as it appeared on his birth certificate and other public records, even though the debtor signed an application for credit as "Richard M. Stewart," a security agreement as "Rick Stewart," and authorized the financing statement to provide his name as "Richard Stewart"); Parks v. Berry *(In re* Berry*)*, 61 U.C.C. Rep. Serv. 2d 952006 WL 2795507, at *4(Bankr. D. Kan. Sept. 26, 2006) (holding that the debtor's legal name, Michael R. Berry, Jr., should have been the name provided on the financing statement, even though the debtor used other names including Mike Berry and Mike Berry, Jr.).

[3] *See* Genoa Nat'l Bank v. Sw. Implement, Inc. *(In re* Borden), 353 B.R. 886, 887-88 (Bankr. D. Neb. 2006) (stating that the debtor's legal name was Michael Ray Borden, as it appeared on legal documents, such as his birth certificate, driver's license, and real estate conveyancing documents, even though the debtor signed some legal documents, such as tax forms, as "Mike Borden"); *In re* Erwin, 2003 WL 21513158, at *11-12 (giving effect to the secured party's financing statement providing the debtor's colloquial name, "Mike Erwin," rather than his legal name, "Michael J. Erwin," since "Mike Erwin" was the name used by the debtor on the documents in the secured party's file, including a W-9 tax form request).

[4] *See* Peoples Bank v. Bryan Bros. Cattle Co., 504 F.3d 549, 559 (5th Cir. 2007) (finding that a financing statement filed under the debtor's nickname was not seriously misleading because the debtor frequently held himself out to the community under his nickname and frequently used his nickname in business affairs).

[5] *See, e.g.*, Hopkins v. NMTC Inc. *(In re Fuell)*, 2007 WL 4404643, *3 (Bankr. D. Idaho Dec. 13, 2007) (finding the secured party's financing statement to be seriously misleading because the financing statement provided the debtor's name as "Andrew Fuel" instead of "Andrew Fuell"); Pankratz Implement Co. v. Citizens Nat'l Bank, 130 P.3d 57, 62 (Kan. 2006) (finding the secured party's financing statement to be seriously misleading when the financing statement provided "Roger House" as the debtor's name but the debtor's name was "Rodger House").

To provide greater guidance, the amendments offer to each state one of two alternatives for the name of an individual debtor provided on a financing statement to be sufficient.[6] If Alternative A is in effect in the state in which the financing statement is filed, and if the debtor holds a driver's license that has not expired and that has been issued by the state, then the name of the debtor that must be provided on the financing statement is the name of the debtor as it appears on the driver's license.[7] This is the so-called "only if" rule, i.e., the debtor's name on the financing statement will be sufficient "only if" the name provided is the name on the driver's license.[8]

Of course, the name on the driver's license cannot be followed slavishly. The financing statement written form or electronic template will require that the financing statement set forth the surname and first personal name of the debtor.[9] The secured party will need to determine which name on the driver's license is the debtor's surname and which is the debtor's first personal name.[10] This would normally be an easy task. For example, if the name on the driver's license is Lester Henry Smith, it would appear obvious that the debtor's surname is Smith and that the debtor's first personal name is Lester. Henry would then be inserted in the financing statement block for "additional names."[11] In other cases, determining from the driver's license which name is the debtor's surname and which name is the debtor's first personal name may not be as easy and may require the secured party to perform additional investigation.

Under Alternative A, if the debtor does not hold a driver's license issued by the state in which the financing statement is filed, then either of the following names for the debtor would be sufficient as the debtor's name on the financing statement: (1) the individual name of the debtor, as under current Article 9, or (2) the debtor's surname and first personal name.[12]

Under Alternative B, any of the following names for the debtor would be sufficient as the debtor's name on the financing statement: (1) the debtor's name as shown on the debtor's driver's license if the debtor holds an unexpired driver's license issued by the state, (2) the individual name of the debtor, as under current Article 9, or (3) the debtor's surname and first personal name.[13] Alternative B has been called the "safe harbor" approach, in contrast to the "only if" approach reflected in Alternative A.

Under either Alternative A or Alternative B, if the debtor holds two driver's licenses issued by the state, the most recently issued driver's license is the one to which reference should be made to determine the debtor's name to be provided on the financing statement.[14]

In some states, the same office of the state that issues a driver's license also issues an identification card for an individual who does not hold a driver's license, and the state or office

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[6] Proposed ("Prop.") U.C.C. § 9-503(a), [Alternative A] & [Alternative B] (2010).
[7] Prop. U.C.C. § 9-503(a)[Alternative A](4) (2010).
[8] *Id.*
[9] *See* Prop. U.C.C. § 9-521 (2010), which includes an amended national form of financing statement.
[10] *Id.*
[11] *Id.*
[12] Prop. U.C.C. § 9-503(a)[Alternative A](5) (2010); U.C.C. § 9-503 (2009).
[13] Prop. U.C.C. § 9-503(a)[Alternative B](4) (2010).
[14] Prop. U.C.C. § 9-503(g) (2010).

does not permit an individual to hold both a driver's license and a non-driver's license identification card at the same time. A Legislative Note to amended section 9-503 suggests that, regardless of which alternative is adopted, these states should refer to the non-driver's license identification card as an alternative of equal dignity with the driver's license.[15]

The rationale for choosing the driver's license name as the name of the debtor to be provided in order for the debtor's name on the financing statement to be sufficient is that in most cases an individual debtor holds a driver's license that is offered as a form of identification when the debtor seeks to obtain secured financing. For lenders that extend credit on a volume basis, procedures can easily be established for the lender to search the records of the filing office under the driver's license name and to file in the filing office a financing statement providing that name as the name of the debtor.

To be sure, a rule that contemplates use of the debtor's driver's license name is not without risk. The driver's license may expire, or the debtor may exchange the current driver's license for a new driver's license. Either event could constitute a change in the name that Article 9 requires to be provided for the debtor. This may be the case if the debtor's name on an expired driver's license is different from a name that would be sufficient for the name of the debtor to be provided on a financing statement in the absence of a driver's license name or if the name of the debtor on the new driver's license is different than the name of the debtor as it appeared on the old driver's license.

If a search under the new name required to be provided for the debtor, following the filing office's standard search logic, does not disclose the financing statement filed under the expired or original driver's license name, the financing statement would become seriously misleading.[16] In that case, the normal rules for a name change under section 9-507(c) would apply. The financing statement would remain effective for collateral in existence on the date of the name change and for collateral acquired by the debtor during the four-month period after the date of the name change.[17] For the financing statement to be effective for collateral acquired by the debtor after the end of the four-month period, the secured party would need to amend the financing statement within the four-month period to provide the debtor's new name.[18]

The observers from the lending community felt that, under either the "only if" rule of Alternative A or the "safe harbor" rule of Alternative B, the risk that debtor name changes may be more likely to occur than under current law was more than offset by the greater certainty of being able to look to the debtor's driver's license name.

It is important to emphasize that the driver's license name is relevant for a particular state only if Article 9's choice of law rules in the forum state point to the law of that particular state to determine perfection and the effect of perfection and non-perfection of a security interest that must or may be perfected by filing.[19] For example, if an individual debtor's principal residence

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[15] Prop. U.C.C. § 9-503, *Legislative Note 3* (2010).
[16] U.C.C. §§ 9-506(b)-(c) (2009).
[17] Prop. U.C.C. § 9-507(c)(1) (2010).
[18] Prop. U.C.C. § 9-507(c)(2) (2010).
[19] *See* U.C.C. § 9-301 (2009).

is in Illinois, the debtor will be considered to be located in Illinois under section 9-307.[20] A financing statement must be filed in Illinois to perfect by filing a security interest in collateral in which a security interest is perfected by filing in the state of the debtor's location.[21] If the debtor holds an Ohio driver's license rather than an Illinois driver's license, the Ohio driver's license will be irrelevant for purposes of perfecting a security interest that must be perfected by a filling in Illinois.

From the views expressed by observers from the American Bankers Association working group it is expected that a number of states will be encouraged by them to adopt Alternative A. But a Legislative Note suggests that a state considering adopting Alternative A should verify that its Uniform Commercial Code data base is compatible with the state's driver's license data base as to characters, field length and the like.[22] Alternative A would not be workable in a state if a significant number of names reflected on driver's licenses issued by the state could not be entered in the Uniform Commercial Code data base of the state, resulting in secured parties not being able to comply with the "only if" rule. If there is lack of compatibility, the lack of compatibility could still be rectified by a change in computer systems that established compatibility or a filing office regulation that explains how a driver's license name should be modified to be entered into the Uniform Commercial Code data basis of the filing office.

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[20] U.C.C. § 9-307(b)(1) (2009).
[21] U.C.C. § 9-301 (2009).
[22] Prop. U.C.C. § 9-503, *Legislative Note 2* (2010).