2010 AMENDMENTS TO ARTICLE 9 of the UNIFORM COMMERICAL CODE

A 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 is 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.

For more information about the 2010 Amendments to UCC-9, please contact Nicole Julal (nicole.julal@nccusl.org) at the Uniform Law Commission.