

MEMORANDUM

TO: Joint Review Committee for UCC Article 9

FROM: Steven L. Harris, Reporter

RE: Issues concerning “priority” approach to name of individual debtor

DATE: March 23, 2009

The March 23, 2009, interim draft contains proposed alternative rules for the sufficiency of the name of an individual debtor provided on a financing statement. The first alternative, Alternative A, follows what has been referred to as the “only if” approach. The second alternative, Alternative B, follows what has been referred to as the “safe harbor” approach. As indicated in the Reporter's Notes, additional issues need to be resolved by the Joint Review Committee if either Alternative A or Alternative B is recommended.

The unofficial draft does not contain proposed rules under a third alternative discussed by the Joint Review Committee and referred to as the “priority” approach. This memorandum describes the priority approach and the additional issues that would need to be resolved by the Joint Review Committee if the priority approach were to be recommended in lieu of Alternative A or Alternative B.

The basic “priority” approach to the name of an individual debtor contemplates that a filing that provides either the safe harbor-name (as specified) or, if different, the debtor’s actual name would be effective to perfect a security interest. However, a financing statement providing the safe-harbor name would have priority over a financing statement providing a non-safe-harbor name.

Following is an outline of issues arising under the “priority” approach that the Joint Review Committee may wish to resolve.

- I. Qualifying for priority:
 - A. For these purposes, which document potentially qualifies for the safe harbor (i.e., indicates a name that, if used in the financing statement, is entitled to priority)? Driver’s licence? State ID? US Passport? Matricular consular? Other?
 - B. If more than one document potentially qualifies, will there be multiple safe harbors (e.g., most recent version of any eligible document) or a single one (e.g., a waterfall approach)?

- C. Does a financing statement that provides a name that is not itself the safe-harbor but is disclosed under a standard-search-logic search using the safe-harbor name qualify for priority?
- II. Assuming no subsequent name change, to whom is a non-safe-harbor filing (“NSF”) subordinate?
- A. NSF would have priority over Lien Creditor
 - B. As between competing NSFs, the normal rules would apply:
 - 1. If both NSF’s are non-PSMI, the first to file or perfect would have priority
 - 2. If one NSF qualifies for PMSI priority, it would have priority
 - C. As between an NSF and a competing safe-harbor filing:
 - 1. If the NSF is a non-PSMI, the NSF would be junior.
 - 2. What result if the NSF otherwise qualifies for PMSI priority?
 - D. What result as against a non-ordinary course buyer?
 - E. What result as against a non-ordinary course lessee?
 - F. What result as against a non-ordinary course licensee?
- III. Subsequent name changes
- A. What events qualify as potential name change of the safe-harbor (priority) name? Expiration of identity document? Issuance of new document?
 - B. After a change in the priority name, a priority filing may show what has become a non-safe-harbor name, an NSF may show what has become the priority name, or both. Under either circumstance:
 - 1. Does a change of the priority name affect priority status going forward?
 - 2. Does a change of the priority name affect priority status retroactively?

S. L. H.