

MEMORANDUM

To: Joint Review Committee on UCC Article 9

From: Jack Burton and Bill Henning

Date: March 22, 2010

Re: Decedent's Estates

During the conference call on March 15, 2010, the Joint Review Committee (JRC) decided to limit changes to Article 9 as it relates to decedents' estates to the debtor-name issue. The issue is addressed in current Section 9-503(a)(2), which begins with the proviso "if the debtor is a decedent's estate...." This formulation, according to David English, Executive Director of the Joint Editorial Board on Uniform Trust and Estate Acts, is always wrong since a decedent's estate is not an entity. In some states the decedent's personal property passes to the personal representative; in other states it passes directly to the heirs and devisees.¹ Based on our conversations with David, we propose that the phrase be changed to "if the collateral is being administered by the personal representative of a decedent."

We also considered the best source for determining the form of the decedent's name to be used on a financing statement, and there are a number of possibilities. We prefer the name as it appears on what are commonly referred to as letters testamentary,² but more than one court might issue such letters. In many instances, probably most, a petition asking the court to probate the estate will be filed in the jurisdiction of the debtor's domicile; however, there will be instances in which an ancillary proceeding is filed in a court having jurisdiction over the collateral and instances in which the only proceeding is in a court not located in the jurisdiction of domicile. David's recommendation was that we use the name as it appears in the earliest-issued letters but we concluded that this would be too burdensome for filers and recommend the name as it appears in the letters issued by the court having jurisdiction over the collateral.

We considered whether to recommend a safe-harbor or only-if rule and it's a close question, but we concluded that because of the risk of multiple court orders relating to the

¹ For the same reason, the formulation that appears in the March, 2010 Meeting Draft is inappropriate ("if the collateral is held in a decedent's estate...").

² We use "letters testamentary" for convenience in our memo but David indicated that it is archaic and our proposed draft uses a term that he suggested: "the [court] order appointing the personal representative." The suggested term can be explained in the comments. We need a term that is sufficient in all states since the debtor might be located in a jurisdiction that uses one term and the court that issues the order might be located in a jurisdiction that uses a different term. According to David, the suggested term is appropriate in all states.

collateral³ the best approach is a safe harbor. The provision that we propose (see draft below) includes in the safe harbor only the decedent's name as it appears in the letters but the JRC might want to consider as another safe harbor the decedent's surname and first personal name.

If the JRC accepts our recommendations, Section 9-503 might be amended to state as follows:

SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.

(a) [**Sufficiency of debtor's name.**] A financing statement sufficiently provides the name of the debtor:

(2) Subject to subsection (w), if the collateral is being administered by the personal representative of a decedent, if the financing statement provides the name of the decedent and, in a part of the financing statement separate from that in which the name is provided, indicates that the collateral is being administered by the personal representative of a decedent;

(w) [**Name of Decedent.**] The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (a)(2).

³ For example, the court in which the estate is being probated might have jurisdiction over intangible collateral and another court might have jurisdiction over fixtures and other tangible collateral.