

**JOINT REVIEW COMMITTEE ON
UNIFORM COMMERCIAL CODE ARTICLE 9**

PRELIMINARY DRAFT

of

Provisions Concerning Collateral Held in Trust
November 2, 2009

Reporter's Prefatory Note

A secured party that wishes to file a financing statement to perfect a security interest in collateral that is held in trust must answer three separate questions:

(1) Is the debtor the trust or the trustee? Article 9 currently defers to non-UCC law to answer this question.

(2) Where is the debtor located? Section 9-307 answers this question.

(3) How is the name of the debtor to be provided on the financing statement? Section 9-503 answers this question.

This draft contains amendments to Sections 9-307 and 9-503 as they affect collateral that is held in trust. As explained more fully below, the draft amendments to these sections would make the answer to the first question (who is the debtor?) irrelevant for perfection purposes.

The amendments to both sections are presented in the same document because they address the same general issue. However, the sections address analytically and functionally different aspects of the issue. Thus, the Joint Review Committee might consider approving changes to one, both, or neither of the sections.

SECTION 9-307. LOCATION OF DEBTOR.

(a) [**“Place of business.”**] In this section, “place of business” means a place where a debtor conducts its affairs.

(b) [**Debtor's location: general rules.**] Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) **[Limitation of applicability of subsection (b).]** Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) **[Continuation of location: cessation of existence, etc.]** A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) **[Location of registered organization organized under State law.]** ~~Except as~~ otherwise provided in subsection (k), a registered organization that is formed or organized under the law of a State is located in that State.

(f) **[Location of registered organization organized under federal law; bank branches and agencies.]** Except as otherwise provided in ~~subsection~~ subsections (i) and (k), a registered organization that is formed or organized under the law of the United States and a branch or agency of a bank that is not formed or organized under the law of the United States or a State are located:

(1) in the State that the law of the United States designates, if the law designates a State of location;

(2) in the State that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its State of location; or

(3) in the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) [Continuation of location: change in status of registered organization.] A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) the dissolution, winding up, or cancellation of the existence of the registered organization.

(h) [Location of United States.] The United States is located in the District of Columbia.

(i) [Location of foreign bank branch or agency if licensed in only one state.]

~~A~~Except as otherwise provided in subsection (k), a branch or agency of a bank that is not formed or organized under the law of the United States or a State is located in the State in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one State.

(j) [Location of foreign air carrier.] ~~A~~Except as otherwise provided in subsection (k), a foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the

designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) [Location of debtor acting with respect to collateral held in trust.] A debtor acting with respect to collateral that is held in a trust is located in the jurisdiction under whose law the trust was created, formed, or organized, except that:

(1) a debtor acting with respect to collateral that is held in a trust that is a registered organization that is formed or organized under the law of a State is located in that State; and

(2) a debtor acting with respect to collateral that is held in a trust that is a registered organization that is formed or organized under the law of the United States is located in the location specified in subsection (f).

(k) **[Section applies only to this part.]** This section applies only for purposes of this part.

Reporter's Note

New Section 9-307(k) would provide the location of a debtor that is acting with respect to collateral held in trust. The rules of this section are intended to eliminate the need, for perfection purposes, to determine whether the debtor with respect to the collateral is the trustee or the trust. If the *trust* is a registered organization, then the rules applicable to registered organizations would apply, regardless of whether the debtor is the trust or the trustee. More specifically, under subsection (k)(1), if the trust is a registered organization that is formed or organized under the law of a State, then the debtor is located in that State. This is the rule in subsection (e). Subsection (k)(2) would provide that if the trust is a registered organization that is formed or organized under the law of the United States, the debtor is located in the location specified in subsection (f), which applies generally to federal registered organizations. If the *trust* is not a registered organization, then the “general” rule in subsection (k) would provide that the debtor (whether it be the trust or the trustee) is located in the jurisdiction under whose law the *trust* was created, formed, or organized.

The Joint Review Committee may wish to consider whether the potential benefits of these changes justify the substantial transition costs that they are likely to engender. These changes would require a special transition rule to address filings that currently are effective but

would otherwise be rendered ineffective, as well as those filings that currently are ineffective but would be rendered effective. In addition, if these proposed amendments are enacted by some, but not all, Article 9 jurisdictions, a secured party may find itself engaged in costly litigation whose outcome is uncertain. Cf. Section 9-701, Comment (“If former Article 9 is in effect in some jurisdictions, and this Article is in effect in others, horrendous complications may arise. For example, the proper place in which to file to perfect a security interest (and thus the status of a particular security interest as perfected or unperfected) would depend on whether the matter was litigated in a State in which former Article 9 was in effect or a State in which this Article was in effect.”)

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:

(1) if the debtor is a registered organization and is not a trustee acting with respect to property held in a trust, only if the financing statement provides the name of the debtor indicated on the public organic record of filed with or issued or enacted by the debtor’s jurisdiction of organization ~~which shows the debtor to have been organized~~;

(2) if the debtor is a decedent’s estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

(3) if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

(A) ~~provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and~~

(B) ~~indicates, in the debtor’s name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust;~~

collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) provides, as the name of the debtor:

(i) if the organic record of the trust specifies the name of the trust, the name so specified; or

(ii) if the organic record of the trust does not specify a name for the trust, the name of the settlor; and

(B) in a field separate from that in which the name is provided:

(i) if the name is provided in accordance with subparagraph (A)(i), indicates that the debtor is a trust or is a trustee acting with respect to property held in a trust; or

(ii) if the name is provided in accordance with subparagraph (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors and indicates that the debtor is a trust or is a trustee acting with respect to property held in a trust, unless the additional information so indicates;

(4) if the debtor is a trustee acting with respect to property held in a trust that is a registered organization, only if the financing statement provides the name of the trust indicated on the public organic record filed with or issued or enacted by the debtor's jurisdiction of organization; and

~~(4)~~ * * *

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Reporter's Note

1. To be sufficient under Section 9-502(a)(1), a financing statement must provide the name of the debtor. The revisions to Section 9-503(a) would give additional guidance for satisfying the requirement with respect to collateral that is held in trust. The revisions contain rules, described below, that address the variety of situations that may arise. The specific rule that applies may depend on one or more of the following three factors:

(1) whether, under the applicable law, the debtor with respect to the collateral is the trustee or the trust;

(2) regardless of who the debtor is, whether the trust is a registered organization, and

(3) if the trust is not a registered organization, whether the trust's organic record specifies a name for the trust.

The draft rules are designed to accomplish two purposes. First, they are designed to make the first factor irrelevant for purposes of providing the name of the debtor on a financing statement. As a practical matter, the name that must be provided would depend solely on the other two factors, i.e., whether the *trust* is a registered organization and, if it is not, on whether the trust's organic record specifies a name for the trust. Second, the revisions are designed to clarify the manner in which the required data must be formatted in the financing statement. The Joint Review Committee may wish to adopt the changes that accomplish one of the purposes and not the changes that accomplish the other.

2. The potential situations that may arise, and the rules applicable to them, are as follows:

Trust that is a registered organization. When the collateral is held in a trust that is a registered organization, a financing statement must provide, as the name of the debtor, the name for the trust indicated on the trust's public organic record. This rule appears in subsection (a)(1), which applies when the debtor with respect to the collateral is the registered-organization trust itself, and subsection (a)(4), which applies then the debtor is a trustee acting with respect to property held in a trust that is a registered organization.

Trust that is not a registered organization. If collateral is held in a trust that is not a registered organization, and if the trust's organic record specifies a name for the trust, the financing statement must provide, as the name of the debtor, the name specified in the organic record. In addition, the financing statement must indicate that the debtor is a trust or is a trustee acting with respect to property held in trust. This indication must be provided in a field separate from the debtor-name field. See subsection (a)(3). This rule would apply regardless of whether the debtor is the trust itself or is a trustee acting with respect to property held in the trust.

If collateral is held in a trust that is not a registered organization, and if the trust's organic record does not specify a name for the trust, the financing statement must provide, as the name of the debtor, the name of the settlor. In addition, the financing statement must provide sufficient additional information to distinguish the trust from other trusts having one or more of the same settlors and must indicate that the debtor is a trust or is a trustee acting with respect to property held in trust. Although required for the sufficiency of the financing statement, this additional information and indication must be provided in a field separate from the debtor-name field. See subsection (a)(3). This rule would apply regardless of whether the debtor is the trust itself or is a trustee acting with respect to property held in the trust.

3. Certain of these statutory changes clarify existing law and so will not require a transition rule. However, other changes would change existing law and so would require a transition rule. The Joint Review Committee may wish to consider whether these changes are of sufficient benefit as to justify the added complexity in the statutory text and the transition costs.

In particular, the Joint Review Committee may wish to consider whether the provisions concerning the additional information and indications (subsection (a)(3)) reflect a change in the law and, if they do not, whether their substance might instead be addressed in a Comment.

4. The Joint Review Committee also may wish to consider whether, when subsection (a)(3)(B) applies and the financing statement provides the name of the settlor, the other paragraphs of subsection (a) should determine the sufficiency of the name. For example, if the settlor is an individual, should the provisions applicable to individual debtors determine whether the financing statement sufficiently provides the name of the settlor? Should the answer be expressed in the statute, or would a Comment be sufficient?