

MEMORANDUM

TO: Joint Review Committee on UCC Article 9
American Bankers Association Working Group on UCC Article 9

FROM: Steven L. Harris, Reporter

RE: Revised Draft Provisions Governing the Name of a Debtor Who Is an Individual

DATE: March 12, 2010

Attached is an Appendix that includes alternative provisions governing the name of an individual debtor. Alternative A reflects the approach to the “only if” rule that was discussed in today’s teleconference: The “second tier” is deleted; the “third tier” adopts the existing requirement for the name of an individual debtor and adds, as a safe-harbor form of name, the debtor’s surname and first personal name.

I have taken the liberty of adjusting the safe-harbor provisions of Alternative B. This Alternative now provides for two safe harbors: (1) the name on the debtor’s driver’s license, if any, and (2) the debtor’s surname and first personal name.

The draft Legislative Note in the Appendix to my memorandum of February 1, 2010, has been revised to reflect the deletion of the identification card as a source document.

S. L. H.

Appendix

*Alternative Provisions Governing the Name of an Individual Debtor
Each State May Select One Alternative*

*Alternative A
Sections 9-503, 9-507, 9-506*

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:

* * *

(3) * * *

* * *

(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; ~~and~~

(4) subject to subsection (g), if the debtor is an individual to whom this State has issued a [driver's license] that appears not to have expired, only if it provides the name of the individual which is indicated on the [driver's license];

(5) except as provided in subsection (h), if the debtor is an individual as to whom paragraph (4) does not apply, only if it provides the individual name of the debtor; and

~~(4)~~(6) in other cases:

(A) if the debtor has a name, only if it provides the ~~individual~~ or organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

* * *

(g) [Multiple licenses.] If this State has issued to an individual more than one [driver's license] of a kind described in subsection (a)(4), the one that was issued most recently is the one to which the subparagraph refers.

(h) [Exception for individual debtor's name.] A financing statement that does not provide the name of the debtor in accordance with subsection (a)(5) nevertheless sufficiently provides the name of a debtor who is an individual if it provides the surname and first personal name of the debtor.

Reporter's Note

1. Some have questioned whether the formulation “appears not to have expired” might be read to include a driver’s license whose expiration date has been extended by a fraudulent alteration. The Joint Review Committee may wish to consider whether statutory language along the following lines would be an improvement: “if the debtor is an individual to whom this State has issued a [driver's license] whose stated expiration date has not passed.” Alternatively, this point could be clarified in the Official Comments.

2. As the Joint Review Committee suggested, the term “surname” has been used to refer to the family or last name. The term “first personal name” refers to the first given name. In some cultures (e.g., China) this name normally is presented after the surname. The national form should be changed to reflect the use of these terms. The Drafting Committee may wish to consider whether an Official Comment should give guidance for the use of names that include both a matronymic and patronymic.

3. The Reporter’s Note to Section 9-506 presents an alternative approach to the “safe harbor” in subsection (h).

SECTION 9-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF FINANCING STATEMENT.

* * *

(c) **[Change in debtor's name.]** If a name of a debtor which is sufficient under Section 9-503~~so~~ changes its name such that a filed financing statement becomes seriously misleading under Section 9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

Reporter's Note

Section 9-507(c) is designed to limit the search burden for secured parties. It addresses cases where a filed financing statement provides a name that, at the time of filing, satisfies the requirements of Section 9-503 but, at a later time, no longer does so. The existing emphasis on the debtor's behavior ("If a debtor so changes its name") might lead a court to read the statute, erroneously, as applying only to cases where the debtor actively changes his name and not to cases where the debtor passively permits an event to occur that results in a change of the debtor's name for purposes of Article 9. The proposed amendment would change the emphasis of the chapeau from the debtor's having made a name change ("If a debtor so changes its name") to the fact that a name required for an effective financing statement has changed ("If a name of a debtor . . . changes"). The reference to "a name" rather than "the name" is meant to reflect the fact that, more than one name may satisfy the requirements of Section 9-503 for a given individual.

The Joint Review Committee may wish to consider whether a statutory amendment is necessary or whether a Comment would be sufficient.

SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.

* * *

(b) **[Financing statement seriously misleading.]** Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a) or (h) is seriously misleading.

(c) **[Financing statement not seriously misleading.]** If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a), the name provided does not make the financing statement seriously misleading.

(d) **[“Debtor's correct name.”]** For purposes of Section 9-508(b), the “debtor's correct name” in subsection (c) means the correct name of the new debtor.

Reporter's Note

As currently drafted, the “safe harbor” form of name in Section 9-503(h) is an exception to the rule in Section 9-503(a)(5) that, if the debtor does not hold a driver's license of the kind described in Section 9-503(a)(4), then the required name is “the individual name of the debtor.” The implication is that, for purposes of Section 9-506(c), the debtor's “correct name” is the individual name of the debtor. Under this approach, a financing statement that provides neither the individual name of the debtor nor the debtor's first name and surname is insufficient unless the financing statement would be disclosed by a search of the records of the filing office under the individual name of the debtor (using the filing office's standard search logic).

For example, assume that the debtor does not hold a relevant driver's license. The court finds that the debtor's individual name is “James Earl Jones.” Lender files under “James Robert Jones,” and a standard-search-logic search under “James Earl Jones” would not disclose the filing. The financing statement would be ineffective, even if a search under the safe-harbor name, “James Jones,” would disclose the filing.

If the Joint Review Committee approves of this approach, it may wish to amend Section 9-507 to provide expressly that the “individual name of the debtor” is the “correct name” of a debtor whose name is determined under Section 9-503(a)(5).

The Joint Review Committee may prefer a different outcome, i.e., that a financing statement that fails to provide both the debtor's individual name and the safe-harbor name is

effective it is disclosed by a search under the safe-harbor name. (In the example, the financing statement naming “James Robert Jones” would be effective against a debtor named “James Earl Jones.”) Perhaps the easiest way to reach this outcome would be to amend Section 9-503(a)(5) to refer to the “individual name, or surname and first personal name, of the debtor” or the like.

[End of Alternative A]

Alternative B
Sections 9-503, 9-507, 9-506

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:

* * *

(4) in other cases:

(A) except as otherwise provided in subsection (g), if the debtor has a name, only if it provides the individual or organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

* * *

(g) [Exception for individual debtor’s name.] A financing statement that does not provide the individual name of the debtor nevertheless sufficiently provides the name of a debtor who is an individual:

(1) subject to subsection (h), if it provides the name of the individual which is indicated on a [driver’s license] that this State has issued to the individual and that appears not to have expired; or

(2) if it provides the surname and first personal name of the debtor.

(h) [Multiple licenses.] If this State has issued to an individual more than one [driver's license] of a kind described in subsection (g)(1), the one that was issued most recently is the one to which the subsection refers.

SECTION 9-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF FINANCING STATEMENT.

* * *

(c) [Change in debtor's name.] If a name of a debtor which is sufficient under Section 9-503~~so~~ changes its name such that a filed financing statement becomes seriously misleading under Section 9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

Reporter's Note

See the Reporter's Note to Section 9-507, Alternative A.

SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.

* * *

(b) **[Financing statement seriously misleading.]** Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a) or (g) is seriously misleading.

(c) **[Financing statement not seriously misleading.]** If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a) or (g), the name provided does not make the financing statement seriously misleading.

(d) **[“Debtor's correct name.”]** For purposes of Section 9-508(b), the “debtor's correct name” in subsection (c) means the correct name of the new debtor.

Reporter's Note

See the Reporter's Note to Section 9-506, Alternative A, regarding whether the “safe harbor” name in Section 9-503(g) should be considered the “debtor's correct name” within the meaning of Section 9-506(c).

[End of Alternative B]

[End of Alternatives]

Legislative Notes:

1. The Legislature should replace the italicized terms with the analogous term used in the enacting State.

2. Before enacting Alternative A, the legislature should insure that the protocols, field sizes, and character sets used to indicate names on the State's driver's licenses are such that the filing office will accept, index, and disclose financing statements providing those names. Adoption and publication of rules pursuant to Section 9-526, or changes to the protocols, field sizes, and character sets used for driver's licenses may be necessary to achieve this result.

S. L. H.