

MEMORANDUM

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

FROM: Steven L. Harris, Reporter

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

DATE: February 1, 2010

The participants in a conference call held on January 14, 2010, were in general agreement that the Joint Review Committee should prepare draft amendments that offer each State the option of enacting statutory provisions that reflect either the “only if” approach or the “safe harbor” approach. The Appendix to this memorandum, which will be discussed in a conference call to be held on February 16, 2010, presents a draft of these amendments for consideration.

Alternative A reflects the “only if” approach. The first two levels of the cascade are the same as in Alternatives A1 and A2 of the previous draft, which is appended to my Memorandum of December 30, 2009: (1) The name on the debtor’s current driver’s license issued by the relevant State and (2) if the debtor has no such driver’s license, the name on the debtor’s current identification card issued by the relevant State. For the third level, which would apply to individual debtors lacking both a qualifying driver’s license and a qualifying identification card, the appended draft follows Alternative A1 of the previous draft and would require that the debtor’s name be provided in a required format. The draft presents alternative formats, reflected by bracketed language in Sections 9-503(a)(4)(c), 9-507(d)(3)(b), and 9-506(e)(2) of Alternative A, for consideration.

Alternative B reflects the “safe harbor” approach of Alternative B1 of the previous draft. It provides, in effect, that the “debtor-name” requirement can be satisfied either by providing “the individual name . . . of the debtor,” or by providing the name indicated on the debtor’s current driver’s license issued by the relevant State (or, if the debtor has no such license, the name on the identification card issued by the relevant State).

A draft Legislative Note follows the Alternatives. It is meant to assist each State in deciding whether to enact Alternative A or B.

Of course, Section 9-503, Comment 2, which deals with the name of the debtor, will be revised to reflect the Alternatives.

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:

(A) to whom this State has issued a [driver's license] that, at the time the financing statement is filed, appears not to have expired, only if it provides the name of the individual which is indicated on the [driver's license];

(B) as to whom subparagraph (A) does not apply, and to whom this State has issued an [identification card] that, at the time the financing statement is filed, appears not to have expired, only if it provides the name of the individual which is indicated on the [identification card];

(C) as to whom neither of the preceding subparagraphs applies, only if it provides the surname, first personal name, and [initial letter of the] second personal name, if any, of the individual; and

(4)(5) 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 or cards.] If this State has issued to an individual more than one [driver's license] or [identification card] of a kind described in the applicable subparagraph of subsection (a)(4), the one that was issued most recently [as of the filing of the financing statement] is the one to which the subparagraph refers.

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

* * *

(c) **[Change in debtor's name.]** If a debtor so changes its name 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.

(d) [Name sufficient under Section 9-503(a)(4).] A debtor who is an individual changes the debtor's name for purposes of subsection (c) if:

(1) after the filing of a financing statement that provides a name that was sufficient under Section 9-503(a)(4)(A), this State issues to the debtor a [driver's license] that indicates a name different from the name provided;

(2) after the filing of a financing statement that provides a name that was sufficient under Section 9-503(a)(4)(B), this State issues to the debtor a [driver's license] or [identification card] that indicates a name different from the name provided; or

(3) after the filing of a financing statement that provides a name that was sufficient under Section 9-503(a)(4)(C):

(A) this State issues to the debtor a [driver's license] or [identification card] that indicates a name different from the name provided; or

(B) the debtor changes the debtor's surname, first personal name, or [initial letter of the debtor's] second personal name, if any.

SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.

* * *

(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.

(e) [**Individual “debtor’s correct name.”**] If a debtor who is an individual changes the debtor’s name under Section 9-507(d), the “debtor’s correct name” in subsection (c) means:

(1) in the case of a change under Section 9-507(d)(1), 9-507(d)(2), or 9-507(d)(3)(A), the name of the debtor indicated on the [driver’s license] or [identification card], as the case may be, that indicates a name different from the name provided in the financing statement; and

(2) in the case of a change under Section 9-507(d)(3)(B), the debtor’s surname, first personal name, or [initial letter of the debtor’s] second personal name, if any, that is different from the name provided in the financing statement.

[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.] Subject to subsection (h), a financing statement that does not provide the individual name of the debtor nevertheless does sufficiently provide the name of a debtor who is an individual:

(1) 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, at the time the financing statement is filed, appears not to have expired; and

(2) if paragraph (2) does not apply, if it provides the name of the individual which is indicated on an [identification card] that this State has issued and that, at the time the financing statement is filed, appears not to have expired.

(h) [Multiple licenses or cards.] If this State has issued to an individual more than one [driver's license] or [identification card] of a kind described in subsection (g), the one that was issued most recently [as of the filing of the financing statement] 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 debtor so changes its name 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.

(d) [Name sufficient solely under Section 9-503(g).] A debtor who is an individual changes the debtor's name for purposes of subsection (c) if:

(1) after the filing of a financing statement that provides a name that was sufficient solely under Section 9-503(g)(1), this State issues to the debtor a [driver's license] that indicates a name different from the name provided and from the name that, immediately upon the issuance, would be sufficient under Section 9-503(a)(4); or

(2) after the filing of a financing statement that provides a name that was sufficient solely under Section 9-503(g)(2), this State issues to the debtor a [driver's license] or [identification card] that indicates a name different from the name provided and from the name that, immediately upon the issuance, would be sufficient under Section 9-503(a)(4).

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.

(e) **[Individual “debtor’s correct name.”]** If a debtor who is an individual changes the debtor’s name under Section 9-507(d), the “debtor’s correct name” in subsection (c) means the name of the debtor which, immediately after the change, would be sufficient under Section 9-503(a)(4) or (g).

[End of Alternative B]

[End of Alternatives]

Legislative Notes:

1. The Legislature should replace the italicized terms with the analogous terms 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 and identification cards 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 and identification cards, may be necessary to achieve this result.

S. L. H.