

## MEMORANDUM

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

FROM: Steven L. Harris, Reporter

RE: Alternative Provisions Governing the Name of an Individual Debtor

DATE: December 30, 2009

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The participants in a conference call held on December 16, 2009, expressed divergent views about the most desirable approach towards the requirements for providing the name of an individual debtor in a financing statement. The Appendix to this memorandum, which will be discussed in a conference call to be held on January 14, 2010, contains four alternatives for consideration.

The first two alternatives (A1 and A2) reflect the “only if” approach. Both of these alternatives contain a cascade with three levels. The first two levels are the same in both: (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, Alternative A1 would require that the debtor’s name be provided in a required format (first name, first initial of the first middle name, and last name), whereas Alternative A2 would require that the financing statement provide “the individual name of the debtor” (a phrase that appears in existing § 9-503).

The second pair of alternatives (B1 and B2) reflect the “safe harbor” approach. In both, a safe harbor would qualify the existing rule in § 9-503(a)(4)(A), i.e., that a financing statement is sufficient “only if it provides the individual name . . . of the debtor,” with an exception (i.e., a safe harbor). The safe harbor in Alternative B1 would be 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). The safe harbor in Alternative B2 would be the debtor’s name set forth in a required format, i.e., first name, first initial of the first middle name, and last name.

The participants in the call will be invited to discuss both the overall approach to be taken as well as the specific way in which the approach is implemented in the draft. If the Joint Review Committee continues to express substantial disagreement over the overall approach, the participants will be invited to discuss whether the Official Text should include both approaches, with the legislature of each State deciding which approach to enact into law.

Finally, the participants will be invited to discuss whether the provisions generally applicable to individual debtors (“only if” or “safe harbor,” as the case may be) should apply to

either or both of the following scenarios: (1) when the debtor is a decedent's estate or (2) when the collateral is held in trust and the name required for the financing statement is that of an individual (as would be the case, e.g., if the settlor is an individual and the applicable rule requires that the name of the settlor be provided with respect to collateral held in trust).

S. L. H.

Appendix

*Alternative A1: "Only If" Approach with Form of Name  
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 first initial 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 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).] An individual debtor changes the debtor's name for purposes of subsection (c) if:

(1) after the filing of a financing statement that provides a name that is 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 is 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 is 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 first initial 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 first initial of the debtor's second personal name, if any, that is different from the name provided in the financing statement.

*[End of Alternative A1 ("Only If" Approach with Form of Name)]*

*Alternative A2: "Only If" Approach with Existing Name Rule  
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 individual name of the debtor; 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 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).] An individual debtor changes the debtor's name for purposes of subsection (c) if:

(1) after the filing of a financing statement that provides a name that is 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 is 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 is 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 individual name.



**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 individual name of the name of the debtor which, immediately after the change, would be sufficient under Section 9-503(a)(4)(C).

*[End of Alternative A2 (“Only If” Approach with Existing Name Rule)]*

*Alternative B1: "Safe Harbor" Approach with Name on Official Document  
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 if it provides the name of the individual which is indicated on a [driver's license] or [identification card] that was issued to the individual by this State, if at the time the financing statement is filed the [driver's license] or [identification card] 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 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).] An individual debtor changes the debtor's name for purposes of subsection (c) if, after the filing of a financing statement that provides a name that is sufficient solely under Section 9-503(g):

(1) the [driver's license] or [identification card] that indicates the name appears to expire and the name that, immediately upon the expiration, would be sufficient under Section 9-503(a)(4) is different from the name provided; or

(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 B1 (“Safe Harbor” with Name on Official Document)]*

*Alternative B2: “Safe Harbor” Approach with Form of Name  
Section 9-503*

#### **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 does sufficiently provide the name of a debtor who is an individual if it provides the surname, first given name, and first initial of the second given name, if any, of the individual.

*[End of Alternative B2 ("Safe Harbor" Approach with Form of Name)]*

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