



CORPORATE ADVISORY

Banks and other lenders who have outstanding loans secured by collateral (*e.g.*, inventory, equipment) need to ensure that their first-priority security interests in such collateral have not been affected by recent amendments to Article 9 (the Amendments) of the Uniform Commercial Code (UCC). Florida's Governor signed the House Bill adopting the Amendments in Florida on April 6, 2012, and they became effective in Florida and most other states on July 1, 2013. The following summarizes a couple of significant changes to Florida's version of Article 9 (codified at Chapter 679, Florida Statutes) as a result of the Amendments.

Perfecting a security interest in most types of collateral is done by filing a UCC-1 Financing Statement with the applicable state registry. One of the requirements for having an effectively filed financing statement is that the financing statement must sufficiently describe the debtor's name. This is a critical requirement because state registries index financing statements by the name of the debtor. Determining the correct name of an individual debtor is not as simple of a task as it may seem, especially in a place such as South Florida, with its rich cultural diversity.

Article 9 does not provide rules for determining the debtor's individual name, which generally consists of the person's first name and surname (family name). The placement of the surname can vary from culture to culture. In some cultures, the surname is neither the first name nor the last name. Other cultures have composite surnames. Additionally, some people go by more than one name. For example, what if the debtor's name listed on her passport is different than the name shown on her driver's license? How does a lender ensure that it is sufficiently describing the debtor's name on the financing statement? The Amendments offer a resolution to this uncertainty and give states a choice of two alternatives: Alternative A or Alternative B.

Alternative A (also known as the "only if" rule) distinguishes between two groups of debtors: debtors who hold a valid driver's license issued by the state in which the financing statement is to be filed and debtors who do not hold a valid driver's license issued by the relevant state. If a state adopts Alternative A, and if the debtor holds an unexpired driver's license that has been issued by that same state—the state of the debtor's residency and the state in which the financing statement is to be filed—then the name of the debtor to be provided on the financing statement must be the debtor's name as it appears on her driver's license. If, on the other hand, the debtor does not hold a valid driver's license (or if she has a driver's license issued in a state other than her residency), then the name of the debtor to be provided on the financing statement is either the individual name of the debtor or the surname and first personal name of the debtor.

Alternative B allows a secured party to use any one of the following three options in providing the name of the debtor on the financing statement: (1) the debtor's individual name, (2) the surname and first personal name of the debtor, or (3) the name of the debtor listed on her unexpired driver's license from the state in which the financing statement is to be filed.



Florida adopted Alternative A but with a slight modification. If a debtor residing in Florida does not have a valid Florida driver's license, but she does have a valid identification card issued by the Florida Department of Highway Safety and Motor Vehicles, then the name of the debtor to be provided on the financing statement must be the debtor's name as it appears on her identification card.

The Amendments also resolve any potential ambiguity with respect to the names of debtors who are registered organizations. Examples of "registered organizations" include corporations, limited partnerships, or limited liability companies organized in one of the States. Ambiguities could arise, for example, if a state maintains a searchable database of the names of registered organizations in that state but uses abbreviations in lieu of listing their full corporate names. Would a lender be able to provide on a financing statement the name of the corporation-debtor as it is listed on that searchable database? After July 1st, use of an abbreviated name on a financing statement is an insufficient description of the debtor's name and will render the financing statement to be ineffective. The Amendments provide that if the debtor is a registered organization, the name to be provided on any financing statement must be the name shown on the Articles of Incorporation or equivalent charter documents filed with the state in which that business entity was formed (the Amendments define these charter documents as "public organic records"). As a consequence, going forward prudent lenders will require a certified copy of any corporate borrower's "public organic records" as a precondition to the extension of any credit facility.

All of this raises the question as to what happens if a lender filed a UCC-1 Financing Statement with the Florida Secured Transaction Registry prior to July 1, 2013 naming, for example, Jim Smith as the debtor, but Mr. Smith's Florida driver's license shows his name to be James Smith. Under Florida's version of Article 9 (post July 1, 2013) that financing statement would not sufficiently describe the debtor's name. Fortunately, the Amendments do not cause that previously filed financing statement to become ineffective. If the lender subsequently decides to file a continuation statement to continue the effectiveness of that previously filed financing statement, however, then at that time the lender must also correct the debtor's name on the financing statement in order to comply with the Amendments.

In conclusion, it is critical that lenders fully understand the Amendments to ensure they have, and that they will continue to have, valid and perfected security interests.

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If you would like to discuss the Amendments, please contact Mark Hobson at DEVINE GOODMAN RASCO WATZ-FITZGERALD & WELLS, P.A.