

New Amendments to Article 9 of the Uniform Commercial Code

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This summer the NC General Assembly adopted, and the Governor signed into law, important new amendments to Article 9 of the Uniform Commercial Code ("UCC"), the Article governing secured transactions in personal property and fixtures. The amendments, recommended by the American Law Institute and the Uniform Law Commission, have been enacted by over half the states and are designed to go into effect simultaneously on July 1, 2013.

The most notable amendment to Article 9 clarifies what name should be specified on a UCC financing statement in order to properly perfect a security interest in an individual borrower's accounts, inventory, equipment, or other collateral. Starting July 1, 2013, the name on a financing statement filed against an individual debtor will only be sufficient if it provides the name indicated on the debtor's most recent unexpired driver's license or identification card issued by the state of the debtor's residence. If the debtor does not have an unexpired driver's license or identification card, then the financing statement is to provide the debtor's individual name, or surname and first personal name.

The amendments to Article 9 arise out of the uncertainty surrounding the requirement that filing statements sufficiently provide the debtor's "individual name." Courts have struggled to define the term "individual name" because an individual does not typically have a single name – is the debtor's "individual name" under Article 9 the one reflected on his or her birth certificate, driver's license, passport, tax return, bankruptcy petition, or something else? The answer to this question is important, because financing statements are indexed under the name of the debtor. The incorrect name could result in a financing statement being deemed seriously misleading to those conducting a lien search, and ultimately, insufficient to perfect a security interest. Supporters of the new law believe it provides a cost-effective, simple, and certain method for the filing and search process.

A substantial majority of states that have considered the proposed amendments, including Virginia, have adopted the approach followed by North Carolina (known as the "only if" approach). Several states have adopted the alternative "safe harbor" approach, which allows more than one name of an individual debtor to be used on a financing statement. Under the "safe harbor" approach, one of the allowable names is that shown on the debtor's most recent unexpired driver's license or state-issued identification card. A few states' legislatures, including South Carolina's, have yet to entertain the amendments. The hope is that all states will have introduced into legislation, and adopted as law, one of the two alternatives so as to ensure uniform enactment of the amendments by July 1, 2013.

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In addition to the individual debtor's name, the amendments address filing issues that have arisen in practice since Article 9 was last revised in 1998. For example, the amendments provide more detailed guidance for the debtor's name on a financing statement when the debtor is a corporation, limited liability company, or limited partnership, and when the collateral is held in a statutory or common law trust or in a decedent's estate. This year's edition of the North Carolina Secured Transactions Under Revised Article 9 of the Uniform Commercial Code: Forms and Practices Manual (authored and updated annually by Brooks Pierce attorneys), to be released this fall, goes into more detail about these changes as well as others less connected to the filing rules. It also summarizes the amendments' own set of transition rules that address the treatment of transactions entered into before the amendments' effective date of July 1, 2013.

In the meantime, affected parties should bear in mind that these amendments, while not yet effective, signal new best practices for filers. Parties who engage in high volume loans should begin working to establish procedures to easily search the records of the filing office under the driver's license name and file a financing statement providing that name as the name of the individual debtor.

For more information, please contact Brooks Pierce at 919.839.0300 or 336.373.8850.