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ARTICLE 9 AMENDMENTS AFFECTING DEBTOR NAME SUFFICIENCY STANDARDS

While most filers know that under Revised Article 9, it is extremely important to get the debtor's name right, there continues to be debate on what getting the name right really means, especially regarding individual debtors. A few states have attempted to clarify this legislatively by amending their Article 9 statutes.

Section 9-503(a) of the **model act** addresses debtor name sufficiency:

- For registered organization debtors, the name is sufficient *"only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized"*. It is the phrase **"public record"** that has caused some confusion as some secured parties have argued that the name in a state's database could be considered the "public record", even if different than the name on the formation documents and subsequent amendments (*see NCR's memo "Revised Article 9 Court Cases of Interest"*.)
- For individual debtor name sufficiency, there is very little guidance in the statute. Section 9-503(a)(4)(A) simply says that a financing statement is sufficient, *"if the debtor has a name, only if it provides the individual or organizational name of the debtor"*.

The Texas Approach:

In June of 2007, Texas enacted amendments to its Article 9 statute to address the sufficiency of debtor names. Section 9-503 was amended to clarify that the correct name of a registered entity debtor is the name indicated on the **formation documents** in the debtor's jurisdiction of organization, including any amendments to those documents. The amendatory legislation also clarifies that an individual's name on a financing statement is sufficient *"...if the financing statement provides the individual's name shown on the individual's driver's license or identification certificate issued by the individual's state of residence."*

Tennessee's Attempt to Clarify Name Sufficiency Standards:

In March of 2008, Tennessee enacted amendments to its Article 9 statute in Senate Bill 3732 that became effective on May 1, 2008. Following Texas' lead, Tennessee amended Section 47-9-503 to clarify that to be sufficient, a financing statement must provide the name of a registered organization debtor as it is *"indicated on the debtor's formation documents that are filed of public record in the debtor's jurisdiction of organization...including any amendments to those documents for the express purpose of amending the debtor's name"*.

Senate Bill 3732 also changed/clarified the requirements for an individual debtor's name. It indicates that the name provided on the financing statement will be sufficient only if it provides the individual's name shown *"on one (1) of the following"*: a state-issued driver's license, a birth certificate, a passport, a social security card or a government-issued military identification card. While attempting to ensure filers would name the debtor sufficiently on filings, this amendment caused concern because it created a burdensome duty on searchers to search all variations of an individual name that appear on any of these documents.

To address this concern, on June 13, 2008, Tennessee enacted new amendatory legislation to Article 9 (HB 2086/SB 372) which became effective immediately. This legislation replaces the previous individual name sufficiency requirements and follows the Texas approach by indicating that an individual's name on a financing statement is sufficient if it *"provides the individual's name shown on the individual driver's license or identification license issued by the individual's state of residence"* or if it *"is otherwise sufficient as determined in accordance with any other method permitted by law, excluding 47-9-503(a)(4) as it existed pursuant to Public Chapter 648, Acts of 2008."*

This legislation also provided a 60 day grace period for filers to amend any filings made under the previous amendment on or after May 1, 2008. A filing complying with the previous amendatory legislation made between May 1 and June 13, 2008, that was properly amended within the 60 day period ending August 13, 2008, *"shall be deemed to have sufficiently provided the name of the debtor from and after its original filing date."*

Virginia Clarifies Correct Name of Individual Debtors

On March 27, 2009, Virginia's governor signed HB 2454 and SB 1100 into law with an effective date of July 1, 2009. This legislation amends Section 8.9A-503 of the Code of Virginia to indicate that a financing statement sufficiently provides the name of an individual debtor if it provides the individual's name *"shown on the individual's driver's license or identification card issued by the individual's state of residence..."* It also clarifies that for the purposes of this provision, an "identification card issued by the individual's state of residence" means: *"(1) for a Virginia resident, an identification card issued by the Department of Motor Vehicles pursuant to Title 46.2; or (2) for an individual who is not a resident of Virginia, an equivalent identification card issued by the state of the individual's residence in lieu of a driver's license."*

Nebraska's Non-Uniform Approach: Delayed Twice and Now Repealed

On March 3, 2010, Nebraska's governor signed Legislative Bill 751 into law repealing 2008 amendments to section 9-506(c).

In 2008, Legislative Bill 851 became law amending Nebraska's 9-506(c) to say [new language is underlined]:

"If a search of the records of the filing office under the debtor's correct name, or, in the case of a debtor who is an individual, the debtor's correct last 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."

This provision would have become effective on July 18, 2008 but was delayed by subsequent amendments. While it would provide a very broad safe harbor for secured lenders in getting the individual debtor's name right on financing statements, it would create a tremendous burden on searchers, since potentially any filing against an individual containing the same last name could be deemed sufficient.

To address these concerns, on April 21, 2008, Nebraska Legislative Bill 308A was signed into law delaying the effective date to September 2, 2009. Subsequently, on February 26, 2009, Nebraska LB87 was signed into law delaying the effective date further to September 2, 2010.

Per the bill summary prepared by the Nebraska legislature's Banking, Commerce and Insurance Committee, LB 751 (*the latest amendment that became law in March of 2010*) **returns Nebraska's UCC Section 9-506 to its original uniform text** "pending completion by the Uniform Law Commissioners of their work" to address this issue in a uniform way.

WHAT'S AHEAD:

NCCUSL and the American Law Institute (ALI) are concerned about states enacting their own non-uniform solutions to unresolved Article 9 issues, such as debtor name sufficiency. NCCUSL and ALI have appointed a Joint Review Committee charged with identifying and recommending specific amendments or corrections to UCC Article 9.

NCR will continue to keep clients aware of developments as they unfold.

Please note that this memo has been provided for informational purposes only and is not to be taken as legal advice. For legal advice related to Article 9 issues, competent legal counsel should be consulted.