

Is Your Lien Perfected? Recent Changes to the UCC Affect How to Determine the Correct Name of an Individual When Filing a UCC Financing Statement

On July 1, 2013, amendments to Article 9 of the Uniform Commercial Code (UCC) went into effect in Wisconsin. The bulk of the changes were clarifications and technical fixes; however, there was a significant change to the method of determining the name of an individual debtor for purposes of filing a UCC financing statement. As the filing of a financing statement is the most common way a lender's security interest in collateral is perfected, this change has the potential to have a serious impact on lenders.

Under the old version of Article 9, there was a great deal of confusion over how to determine the name of an individual debtor. For example, an individual may have a driver's license indicating that her name is Sarah K. Jones (her married name), a passport indicating that her name is Sarah Katherine Smith (her maiden name), and may be known professionally under the name Sarah Smith Jones. The prior version of Article 9 did not provide any guidance on how to determine an individual's name for purposes of filing a financing statement. As amended, Article 9 now states that a financing statement sufficiently provides the name of the debtor "if the debtor is an individual to whom this state has issued an operator's license under ch. 343 or identification card under s. 343.50 that has not expired, only if the financing statement provides the name of the individual which is indicated on the operator's license or identification card." This is referred to as the "only if" approach because, subject to the exceptions described below, the name on a valid driver's license is the only name that is sufficient for perfecting a security interest.

Although the "only if" approach adopted by Wisconsin should simplify the process of determining an individual debtor's name, it is not quite as simple as it first appears. Several steps need to be followed to confirm the correct name of an individual for purposes of filing a UCC financing statement or running a UCC search against that person.

The lender should first confirm that the individual has a Wisconsin driver's license or identification card and that it is not expired. If an individual has multiple Wisconsin driver's licenses or identification cards, the one issued most recently

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should be used for purposes of determining the name. If the individual does not have a driver's license or identification card, has a driver's license issued by another state, or the individual's Wisconsin driver's license or identification card has expired, then the rule stated above no longer applies. In these circumstances, the financing statement sufficiently provides the name of the debtor if it provides the individual name of the debtor or the surname and first personal name of the debtor. Under the example given above, if the individual had an unexpired Wisconsin driver's license, the UCC financing statement should use the name Sarah K. Jones for the name of the debtor. If the individual's driver's license was expired or issued by another state, it would be advisable to file the financing statement listing all three alternatives as additional debtors: Sarah K. Jones, Sarah Katherine Smith, and Sarah Smith Jones. In Wisconsin, there is no additional charge for listing multiple debtor names in the same financing statement, so when in doubt, a lender should consider filing against alternative formulations of a name.

The lender also needs to confirm the location of the principal residence of the individual. There has been no change to the rule that the financing statement must be filed in the jurisdiction of an individual debtor's principal residence. Therefore, if the individual's principal residence is in a state other than Wisconsin, the filing (or search) will need to be made in that other state even if the individual has a Wisconsin driver's license, and the law of the state of the individual's principal residence will govern determination of the appropriate name under which the UCC financing statement should be filed.

Note also that the new rule means that even if there is a clearly identifiable typographical error in the name on a driver's license, the name on the driver's license must still be listed on the financing statement. For example, if the Wisconsin debtor's name is Sarah Jones, but her unexpired Wisconsin driver's license lists her name as Sqrah Jones, the filing must be made under the name Sqrah Jones. In this circumstance, it would be advisable to list Sarah Jones as an additional debtor name on the same financing statement, to protect against the risk of becoming unperfected if Sarah Jones were to renew her driver's license and have the typo corrected. Lenders should also be aware that a change in an individual's name on their driver's license or expiration of the license could change the name under which a financing statement should be filed. Thus, lenders should verify at each renewal or extension of a credit facility that the name listed on the lender's financing statement remains the correct name.

The new rule applies to all financing statements filed on or after July 1, 2013. Any



financing statement that was filed prior to July 1, 2013 that complied with the law in effect at the time of filing will remain effective until such time as the financing statement must be continued or June 30, 2018 (whichever is earlier). This means that when continuing financing statements filed against an individual prior to July 1, 2013, a lender should obtain a copy of the individual's driver's license, and if the driver's license (or identification card) meets the requirements listed above and shows a name different than the name on the financing statement, the financing statement should be amended to list the name on the driver's license.

If you have questions about this update, the correct name of an individual debtor for UCC purposes or any of the other changes to Wisconsin's UCC Article 9, please contact your Reinhart attorney or any member of the Reinhart banking department.

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