



CORPORATION SERVICE COMPANY®

**THE 2010 AMENDMENTS
TO
UCC ARTICLE 9
*FAQs***

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INTRODUCTION

The 2010 Amendments to Article 9 (the “2010 Amendments”) represent the first significant change to the official text since 1998. However, the drafting committee did not intend to entirely rewrite Article 9 with these amendments. Instead, the committee’s objective was to address a limited number of specific ongoing issues that have arisen since Revised Article 9 took effect in 2001. Consequently, most of the 2010 Amendments merely clarify existing law.

Nevertheless, the most significant changes in the 2010 Amendments will impact critical aspects of the UCC search and filing process and related due diligence. The following is a list of common questions that lenders and legal counsel may have about the 2010 Amendments.

PART 1 GENERAL

What changes do the 2010 Amendments make to UCC Article 9?

The 2010 Amendments mostly clarify, but do not change, the existing law. The changes that will have the most significant impact are those that affect the filing and search process. These include new debtor name sufficiency requirements in § 9-503(a), new forms, and an expanded definition of “registered organization” that brings more types of entities within the scope of that term.

When do the 2010 Amendments take effect?

The official text of the 2010 Amendments provided a uniform effective date of July 1, 2013. Several states did not get the 2010 Amendments enacted or decided to delay the effective date. Puerto Rico enacted the Revised Article 9 and the 2010 Amendments as one package. The new law took effect in Puerto Rico on January 17, 2013. There is a reference chart showing which states have the 2010 Amendments in effect and upcoming effective dates posted to <http://csctransactionwatch.com/amendments/>.

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What happens if some states fail to enact the 2010 Amendments by the uniform effective date?

The 2010 Amendments are mostly just clarifications of existing law, so it will not be a crisis if all states fail to adopt the legislation by the uniform effective date. The most significant complications would arise only in a small number of cases, those where a business trust debtor is not a registered organization under current law, but becomes a registered organization after the 2010 Amendments take effect. In such cases, the change in status could result in a change in the governing law after the new law takes effect. Fortunately, interested parties can protect themselves simply by filing or searching in any state where the debtor would be located under current law and where it would be located when the 2010 Amendments take effect.

Where can I get a copy of the 2010 Amendments to UCC Article 9?

The text, prior drafts and other supporting material are available from the Uniform Law Commission web site: <http://uniformlaws.org/>.

Will the 2010 Amendments change the location where financing statements must be filed?

Generally no. There are very narrow circumstances where the debtor's location may change once the 2010 Amendments take effect. Generally, only some business trusts may be affected. This issue is addressed more fully in the portion of Part 5 below that deals with In Lieu financing statements and other transition provisions.

PART 2 DEBTOR NAMES

Can we now use the states' business entity databases for the correct name of a registered organization debtor?

State business entity databases remain a risky source of organization names. The only sufficient source of a registered organization name is the "public organic record." A state's business entity database is not a public organic record as defined by the 2010 Amendments. The business entity databases were not designed to provide correct registered organization names. They exist to provide the status of an entity formed or qualified to do business in the jurisdiction. State business entity databases often have abbreviations, omissions and other errors in organization names. Many of these deviations were intentional due to business entity indexing practices. A filer must only use the business entity database as the source of a registered organization name if it is prepared to accept the risk of incorrect debtor names in the database that will render its financing statement seriously misleading.

What do we use as the source of the name for a registered organization that is a trust?

The public organic record for a trust that is a registered organization is the organic record of the trust required to be filed of public record under state law. Typically, the trust's organic record

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must be filed with the secretary of state, or equivalent agency in some states, in the same manner that a corporation would file its articles of incorporation. Likewise, the organic record can be retrieved from the state in the same manner as records related to an LLC or corporation. Simply contact your CSC customer service representative or submit an online document retrieval request to obtain a copy of the organic record.

What is the “public organic record” for a registered organization that is a trust?

In most cases, the public organic record is captioned as “Declaration of Trust” or “Trust Agreement.”

What do we use as the source of the name for a registered organization that was created through legislation?

If the registered organization was created by legislation, the source of the name is the statute that created the entity.

What if the public organic record for a registered organization does not clearly indicate a name for the entity?

There may be rare cases where the name of a registered organization cannot be determined from the public organic record it may be necessary to provide one or more possibly correct variations of a name or names that a court might later determine to be correct. This situation is most likely to arise when the public organic record consists of legislation or a charter issued by a government entity.

Does the “or issued by” language in new § 9-503(a)(1) mean that the public organic record for a corporation includes the certificate issued by the state after filing the articles of incorporation?

No. The definition of “public organic record” and other statutory references state it is the record filed with or “issued by” a state or the federal government. The “issued by” language refers to where the applicable statute provides the entity is not formed until the state or federal government issue a record, such as a charter. That would not be the case with a corporation, LLC or most other types of entities that are registered organizations under state law. The public organic record for corporations, LLCs, limited partnerships, etc., would be the formation record filed with the state.

How do we know when a registered organization was created by the issuance of a public organic record?

That must be determined through due diligence and review of the law governing formation of the organization. If under the applicable law the organization does not exist until a government authority issues a charter or other record, then that issued record is the public organic record for debtor name purposes.

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How do the 2010 Amendments change the debtor name requirements for a decedent's estate?

The 2010 Amendments merely clarify the name requirements for what was a “decedent's estate” prior to the effective date. One clarification is to change the focus from the identity of the debtor to the status of the collateral. When the 2010 Amendments take effect, § 9-503(a)(2) will apply when the collateral is being administered by a decedent's personal representative. The requirements are the same as before the effective date; the financing statement must provide the name of the decedent and provide an indication. The label of the indication will change from “decedent's estate” to “collateral is being administered by a decedent's personal representative.” The new text also provides that the indication must be made “in a separate part off the financing statement” to clarify that it must not be included in the name field. Finally, a new provision, § 9-503(f), offers a safe harbor if the financing statement provides the name of the decedent indicated on the order appointing the personal representative by a court having jurisdiction over the collateral.

How do the 2010 Amendments change the debtor name requirements for a trust or trustee acting with respect to property held in trust?

The 2010 Amendments merely clarify the name requirements for trust-related financing statements in § 9-503(a)(3). As a threshold issue, the new text shifts the focus from whether the debtor is a trust or trustee to whether the collateral is held in a trust. This avoids confusion between the identity of the debtor and the name of the debtor required for purposes of the financing statement, an issue that has resulted in a large number of filing errors. The name requirements are exactly the same after the 2010 Amendments take effect as the requirements prior to the effective date. If the collateral is held in a trust that is not a registered organization, then the financing statement must provide the name of the trust specified in its organic documents or, if no name is specified, the name of the settlor or testator. This language clarifies that the new provision does not apply to a trust that falls within the definition of “registered organization.” The sufficiency of a registered organization trust debtor name is governed by § 9-503(a)(1). Another clarification is that additional information to distinguish the trust from other trusts with the same settlors and an indication that the collateral is held in a trust must be provided in a separate part of the financing statement. New § 9-503(h) provides additional clarification regarding sufficiency of the name of the settlor.

If the collateral is held in an unnamed trust, do we provide the name of the trustee as the debtor name?

The name of the trustee is not sufficient as the name of the debtor when the collateral is held in a trust. That is the case both before and after the 2010 Amendments take effect. The only situation where the name of the trustee would be provided as the debtor is where the trustee is also the settlor of the trust. However, the name is provided in the person's capacity as settlor, not as trustee. Filers must also be careful never to add the capacity of the debtor to the name field, regardless of what name is provided.

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What name do we provide for the settlor of an unnamed trust if the settlor is a registered organization?

If the settlor is a registered organization, then § 9-503(h)(1) requires the financing statement to provide the name of the registered organization settlor following substantially the same rule as set forth in § 9-503(a)(1).

Where do we provide the additional information to distinguish the debtor from other trusts with the same settlors and the required indication?

The additional information can be provided on an attached schedule, as part of the financing statement collateral field, or in the additional collateral field in Section 12 of the new Addendum form UCC1AD. That information must never be inserted in the debtor name fields. The required indication is made by checking the appropriate box on the financing statement form or the electronic filing equivalent.

Do we provide the name of the trustee if the collateral is held in a trust that is not a registered organization?

No. The general rule for § 9-503(a)(3) does not change. The only sufficient names are the name of the trust or, if the trust has no name, the name of the settlor. The changes to § 9-503(a)(3) are merely clarify existing law. The name of the trustee is not sufficient either under current law or the 2010 Amendments, even though the trustee is usually the debtor. The name of the debtor for purposes of the financing statement under § 9-503(a)(3) is often different from the name of the actual debtor.

How do we know whether a particular state has enacted Alternative A or Alternative B for the sufficiency of individual debtor names?

CSC has prepared a quick reference that explains which legislative alternative has been enacted by each state and any text variations that may affect debtor name due diligence.

Can we provide just the surname and first personal name of an individual debtor in a § 9-503(a)(4) Alternative A state if the debtor has a driver's license?

Not unless that is exactly how the name is displayed on the individual's driver's license. If the debtor has a driver's license or, if § 9-503(a)(4) so provides, the alternative ID, then the name indicated on that license or ID is the only sufficient name for purposes of the financing statement. The surname and first personal name of an individual debtor are only sufficient if the debtor lacks the document(s) specified in § 9-503(a)(4) Alternative A.

Do we need to use the name indicated on the debtor's driver's license in a § 9-503(a)(4) Alternative B state?

The driver's license name is sufficient, but not required. Alternative B is a safe harbor. The

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name on the debtor's driver's license or, if § 9-503(a)(4) so provides, the alternative ID, is only one name sufficient under the safe harbor. Other names may be sufficient as well, including any name sufficient for the individual before the 2010 Amendments take effect and just the surname and first personal name. The secured party can select the name option that provides the greatest certainty.

Should we provide the full middle name of an individual debtor in a § 9-503(a)(4) Alternative A state if the debtor's driver's license only provides a middle initial?

No. The name should be provided on the financing statement filed in a § 9-503(a)(4) Alternative A state exactly as it appears on the source driver's license.

If the debtor is an individual who has a driver's license issued by a different state than the debtor's state of residence, do we file in the state that issued the driver's license?

No. Assuming the collateral is not fixture, timber to be cut or minerals to be extracted, the law that governs perfection and priority remains the state of an individual debtor's principal residence. The driver's license must be issued by "this state" (the state of filing) to meet the requirement of § 9-503(a)(4) Alternative A. A driver's license issued by any other state is not sufficient as the source of the debtor name. If the debtor does not have a driver's license issued by the state where the record will be filed, then the financing statement must either provide the "individual name of the debtor," the same standard as under prior law, or the surname and first personal name of the debtor.

How will CSC change its systems to deal with the new individual name requirements?

CSC's online systems are already fully compliant with the new debtor name requirements.

How do we access the state's driver's license data to verify the name and expiration?

That may be very difficult. Driver's license data are protected by both federal and state privacy laws. The authorities often place hurdles on access to this data, even for those who have a legitimate purpose that fits within an exception to the statutory access limitations. Secured parties may find that access to the data is prohibitively costly and time consuming.

Access to the state driver's license data, however, will not necessarily benefit the secured party. The sufficiency of the individual debtor name will depend on how it is displayed on the license, not how it is stored in the database. There are often differences. If there is a difference, the name on the license will be the only sufficient name for purposes of the financing statement in Alternative A states and one of the sufficient safe harbor options in an Alternative B state. Moreover, driver's license data generally does not include change history. That makes it very difficult for secured parties to use the data for name change tracking or to prove what the name on the license was at a particular point in time. Secured parties should always rely on the physical driver's license, not the data maintained by the issuing jurisdiction.

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If an individual debtor does not have a qualifying driver's license, what other government ID is sufficient?

If the state enacted either Alternative A or Alternative B for § 9-503(a)(4) to include a qualifying state-issued non-driver's ID as an alternative to the driver's license, then the most recent non-driver's ID may be a sufficient source of the name if it is unexpired and issued by the state of filing. Otherwise, different types of government-issued ID may provide evidence of what the correct name should be, but there is no safe harbor.

When filing in an Alternative A state, what if it is not exactly clear which components of the debtor name correspond to the designated name fields on the financing statement?

There will be cases where a UCC filer may have trouble determining how to correctly extract the driver's license name and map it to the financing statement. In such a case, it may still be necessary to provide one or more name variations as separate debtors, even in an Alternative A state. If the debtor ever defaults, the courts will decide what name is correct after it's too late to fix, so the secured party must make sure whatever name could be correct is listed on the record.

What name do we put on the financing statement if an individual debtor who is located in a § 9-503(a)(4) Alternative A state does not have a driver's license?

It depends on the particular state law. Some states require use of the individual's name indicated on the identification card issued to non-drivers in lieu of a driver's license. The first step is to check § 9-503(a)(4) to verify whether the state requires the name on the driver's license or alternative ID. If and only if the debtor does not have a driver's license or, if § 9-503(a)(4) so provides, the alternative ID, then the secured party may provide the "individual name of the debtor" or just the debtor's surname (last name) and first personal name (first name) in the appropriate form fields.

The individual debtor just moved into a § 9-503(a)(4) Alternative A state but still has a driver's license issued by the former state of residence. Do we still use that driver's license name for debtor name when filing a UCC in the new state?

No. Under Alternative A, the driver's license must be unexpired and issued by the state where the financing statement will be filed. Usually, that will be the state of the debtor's principal residence, unless the record is to be filed as a fixture filing. In that case, the driver's license must be issued by the state where the affected real property is located. If the driver's license was issued by any other state, then the financing statement must provide either the "individual name of the debtor" or the surname and first personal name of the debtor.

How do we provide the individual debtor name when the debtor's driver's license includes characters not found on my keyboard, such as the Ñ character?

Most state driver's licenses can only provide A-Z capital characters. However, some states may issue driver's licenses or alternative ID with some characters that do not appear on a standard keyboard. In that case, it is necessary to provide the name exactly as it appears on the driver's

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license, including the special character. That may require generating the symbol using a word processor or some other method. You will need to contact your IT support to determine how to produce the correct character in the UCC record.

Do we need to amend the individual debtor name on a filed financing statement if there is a change to the debtor's driver's license name?

It depends on a couple of factors, including whether the change makes the filed financing statement seriously misleading and whether the state has enacted Alternative A or B. If the debtor is located in a § 9-503(a)(4) Alternative A state, then a change to the name on the driver's license is normally a name change event for purposes of § 9-507(c). The secured party should file the amendment within 4 months of the name change event or it may become unperfected in the debtor's after-acquired collateral, such as accounts or inventory. The same rule may apply if the debtor is located in a § 9-503(a)(4) Alternative B state and provided the driver's license name on the financing statement.

An individual debtor in a § 9-503(a)(4) Alternative A state inadvertently allowed his or her driver's license to expire. Is our financing statement still effective?

Yes, but there is some additional risk. The expiration of a driver's license in an Alternative A state ordinarily will cause a name change event for purposes of § 9-507(c). In some cases, the secured party could become unperfected in after-acquired property unless it files an amendment within 4 months of the driver's license expiration.

How do we learn when an individual's driver's license name changes?

Unfortunately, the driver's license is not a public record. There is no easy way to identify changes to the driver's license. The secured party can check with the debtor periodically to ask whether there have been any changes and include a provision in the loan documents that requires the debtor to immediately notify the secured party of any changes to the driver's license. Otherwise, the only way to know for sure is to require the debtor to periodically produce his or her driver's license for inspection.

Will CSC Debtor Tracking pick up changes to an individual's name or driver's license?

No. Information on individuals and driver's licenses are not part of the public record.

PART 3 FORMS

When do we need to start using the new forms?

Use only the new forms in those states where the 2010 Amendments are in effect. The correct forms for use in those states are those with versions dated 04/20/2011. In all other states, continue to use the older versions of the forms until the 2010 Amendments take effect.

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When will CSC's online systems begin support for the new forms?

All CSC systems support the new forms for those states where the 2010 Amendments are in effect.

How do I get a copy of the new forms in Word or WordPerfect format?

Like older versions of the forms, the new forms were created exclusively in PDF format. The forms are not available in common word processing formats. It is possible to design the forms from scratch in a word processor format, but that can be extremely time consuming and such "homemade" forms will frequently be rejected by some filing offices if they deviate even slightly from the approved IACA forms.

Are fillable PDF versions of the forms available?

Yes. They are available at <http://csctransactionwatch.com/amendments/>.

Will filing offices continue to accept earlier versions of the UCC forms after the effective date?

It depends. Many filing offices will continue to accept prior versions of the forms for a limited time after the 2010 Amendments take effect. However, that will be a decision left to each state and county filing office. The best practice will be to use the new forms (rev 04/20/2011) for all filing after the effective date in those states that have enacted the 2010 Amendments. If submitting a prior version of the form after the effective date, be sure to check with the filing office to determine whether they will accept it.

Where do we provide the organization information for the debtor on the new forms?

The type, jurisdiction and organizational ID number information for an entity are no longer a filing requirement because the 2010 Amendments eliminated § 9-516(b)(5)(C). The new forms eliminated these fields because they are not necessary after the 2010 Amendments take effect.

What do we do if the individual debtor name on the driver's license is too long to fit in one or more fields of 1b or 2b of the financing statement?

The new Addendum form, UCC1AD, has extended individual name fields to accommodate names that do not fit on the financing statement. If that occurs, simply check the box on the financing statement that indicates the name was too long to fit and provide it in Item 10b fields of the Addendum form. The filer should also check the corresponding box in Item 9 to cross reference the Addendum with the Financing Statement. In some cases, that process may result in no debtor names provided on the Financing Statement form, just on the Addendum form. Although that may seem unusual, that was how the forms were intended to interact for long individual debtor names.

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What if an organization debtor name is too long to fit in the 1a or 2a debtor name fields on the financing statement?

In the vast majority of cases, an organization debtor name that does not easily fit in the space provided on the Financing Statement form is incorrect. The length is often due to the filer adding information that is not required as part of the debtor name or providing the name in a format commonly used for purposes of other law, such as in a real estate transaction. If the name is too long for the name field, the filer's first step should be to go back and confirm that it is exactly the correct name required by § 9-503(a). If the correct name truly is too long to fit in the organization name field, the filer should consider submitting the record electronically. Electronic filing systems generally allow much longer debtor names than the paper forms can accommodate. If electronic filing is not an option, the filer should wrap the name to two lines in the name field. Do not continue the name in another part of the record. The filing office generally will only index what is contained in a name field and separate name fields are indexed as separate debtors.

Do we still need to provide the individual debtor's Social Security Number when filing in South Dakota? If so, where does it go on the new forms?

Yes, the Social Security Number (SSN) of an individual debtor is still required in South Dakota. South Dakota retained its non-uniform SSN requirement in the 2010 Amendments legislation. However, the new forms do not have designated fields for this information. The filer should provide it in the collateral field or in the Optional Filer Reference Data field. The SSN must never be added to the debtor name field. South Dakota is the only state with the SSN requirement. Never provide an individual debtor's SSN when filing in any other state.

Who can file the new "information statement" described in § 9-518?

The official text provides that the record may be filed only by a person under whose name the record is indexed (the debtor) or a secured party of record. However, most filing offices will accept information statements regardless of who files the record.

What form do we use for the new "information statement" described in § 9-518?

The new text of § 9-518 changes the name of the record from "correction statement" to "information statement." The new term better reflects the purpose of the record. No particular form is prescribed by statute. However, IACA designed a new UCC5 form for this purpose. You can find the correct form at the CSC Transaction Watch web site or in the forms library.

Where can I get copies of the new forms?

The new forms, including fillable PDF versions and full instructions, are available at <http://csctransactionwatch.com/amendments/>. The forms are also available in the CSC Forms Library.

PART 4 MISCELLANEOUS QUESTIONS

Will the 2010 Amendments finally make UCC Article 9 fully uniform in all states?

Not a chance. The good news is that the 2010 Amendments may prevent further non-uniformity between state enactments. However, most of the current state non-uniform statutory provisions will remain after the 2010 Amendments take effect.

Will the 2010 Amendments change filing office fees for UCC services?

Not directly. The 2010 Amendments do not affect the fees charged by filing offices. Generally, any filing office fee increases will be unrelated to the 2010 Amendments. However, some jurisdictions may slightly increase fees to cover implementation costs.

Do the 2010 Amendments affect statutory liens that are commingled with UCC records?

No. The 2010 Amendments only affect UCC records, even if the filing office files tax liens, judgment liens or other statutory liens in the same index. The exception will be if a particular state law requires that the statutory lien must be filed in compliance with UCC Article 9 Part 5. In that case, the record will likely need to comply with the UCC debtor name and form rules.

Do we need to provide the debtor's address on the UCC-1 exactly as it appears on the driver's license?

No. The driver's license was intended to serve only as the source of the debtor name for purposes of the financing statement. All Article 9 requires for the debtor's address is a mailing address for the debtor. That address can be a P.O. Box or a physical location. It can be one of multiple mailing addresses. Nothing in Article 9 or the 2010 Amendments limits the secured party to providing the address on the driver's license.

What happens if we fail to indicate the debtor is a transmitting utility on the initial financing statement?

New § 9-515(a) clarifies that only an initial financing statement can indicate the debtor is a transmitting utility. If the filer omits to make the required indication, the financing statement cannot be amended to change the effectiveness beyond the initial five-year period.

Will the filing offices adopt new administrative rules to implement the 2010 Amendments?

Most filing offices will likely need to adopt new rules, primarily due to the form changes. IACA has already given preliminary approval to a new draft of the Model Administrative Rules for Article 9. The rule changes are minimal and should have little effect on the filing process. However, states are free to modify the Model Rules so it is important to check with each filing office to determine what rules are in effect.

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How will the 2010 Amendments affect electronic UCC filing?

In general, state electronic UCC filing systems will require only minor modifications to accommodate the changes to debtor name requirements and the form revisions. Consequently, the 2010 Amendments will have little, if any impact on electronic UCC filing in most jurisdictions.

Are there any changes to the rules for fixture filings?

All of the debtor name and form changes apply to fixture filings. The checkbox to indicate that a record is to be filed as a fixture filing has been moved, so filers must be careful not to overlook it when required. There is also a change to the individual debtor name requirements for a record of mortgage that is filed as a fixture filing in states that adopt Alternative A for § 9-503(a)(4). Under new § 9-502(c)(3)(B), a record of mortgage sufficiently provides the name of an individual debtor name if it provides the “individual name of the debtor” or the surname and first personal name of the debtor.

Will U.S. Territories and Indian tribes enact the 2010 Amendments?

That remains to be seen. Puerto Rico has already enacted Revised Article 9 with the 2010 Amendments and the U.S. Virgin Islands are likely to enact the 2010 Amendments as well. Legislative tracking systems generally cannot pick up bills in U.S. territories or changes to tribal code. Whenever a transaction potentially involves one of those locations, the parties involved will have to review the applicable law to determine the status of Article 9 in the jurisdiction.

PART 5 TRANSITION PERIOD

Is there a transition period to implement the 2010 Amendments like there was with Revised Article 9?

Yes. The transition rules are similar, but somewhat simpler than the transition rules for Revised Article 9. A transition period was necessary due to the expanded definition of “registered organization” that now includes some business trusts so filed records could be brought into compliance with the new rules.

We filed financing statements that have the box checked to indicate the debtor is a trust, trustee acting with respect to property held in trust, or that the debtor is a decedent’s estate – do we need to amend these to reflect the collateral is held in a trust or is being administered by a decedent’s personal representative?

There is no need to amend a financing statement that currently indicates the debtor is a trust, trustee acting with respect to property held in trust, or that the debtor is a decedent’s estate. The transition rules provide that these indications are sufficient to satisfy the corresponding indication requirement under the 2010 Amendments.

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When do we need to file a financing statement in lieu of continuation (“In Lieu”)?

Unlike during the Revised Article 9 transition period from 2001 to 2006, the filing of an In Lieu financing statement will rarely be necessary. The In Lieu financing statement is only used when there has been a change in the governing law. The 2010 Amendments will cause a change in the governing law only in a very rare situation. That will occur when the debtor is not a registered organization before the effective date, but will become a registered organization under the 2010 Amendments. That may, in rare cases, change the debtor’s location under § 9-307 and, therefore, the governing law under § 9-301. The In Lieu financing statement is only necessary when there is a change in the governing law. These circumstances are likely to arise so infrequently that many secured parties will never need to file an In Lieu financing statement.

Can we file an In Lieu financing statement through CSC’s online systems?

Yes. An In Lieu financing statement is simply a new initial financing statement with some additional required information that can be entered into the collateral field. CSC can file In Lieu records and automatically track the new lapse dates through its online systems.

Do we need to amend financing statements filed on individual debtors in § 9-503(a)(4) Alternative A states after the 2010 Amendments take effect?

It depends. If the secured party plans to let the record lapse, then no amendment is necessary. Only if the secured party intends to continue the effectiveness of a pre-effective date financing statement may an amendment be required. In that case, the secured party will need to file an amendment when the individual debtor name on the filed record does not match the name on the debtor’s driver’s license.

Do we need to amend financing statements filed on individual debtors in § 9-503(a)(4) Alternative B states after the 2010 Amendments take effect?

Probably not. If the name on the financing statement is sufficient under current law, it will remain sufficient under the 2010 Amendments. However, if there is any question, the secured party should consider filing an amendment to bring the financing statement within the new safe harbor.

PART 6 SEARCHES

Will the 2010 Amendments change the standard search logic used by filing offices?

No. The 2010 Amendments do not change current law with respect to search logic. Each filing office establishes its standard search logic through administrative rules.

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Do we need to revise our registered organization search practices during the transition period?

Yes. Searchers will need to be familiar with the new debtor name rules to ensure that the search is conducted under the correct name. In addition, it may be necessary to search under the old name rules for the duration of the transition period. Likewise, if the debtor is not a registered organization under current law, but becomes a registered organization under the 2010 Amendments, then it might be necessary to search in more than one location during the transition period. After the end of the transition period it will only be necessary to search in the new location of the debtor and under the new name rules.

If we don't know exactly what name is on the individual's driver's license, how do we conduct a thorough UCC search?

The starting point for every UCC search conducted on an individual debtor name after the effective date is the driver's license. The name on the driver's license is sufficient in both Alternative A and Alternative B states and cannot be overlooked. The name on a driver's license may be truncated, have errors or include nicknames that would not be disclosed by a search on what would otherwise appear to be a correct name of the debtor. A searcher cannot know exactly what name variations need to be searched without prior review of the driver's license. An interested party cannot safely rely on an individual name UCC search conducted without prior access to the driver's license.

How will search practices change if the collateral is being administered by a decedent's personal representative as provided in new § 9-503(a)(2)?

Search practices for records filed under the name required by § 9-503(a)(2) generally will not change. The individual name of the decedent remains the only sufficient debtor name under both current § 9-503(a)(2) and the new version that will take effect with the 2010 Amendments.

How will search practices change if the collateral is held in a trust that is not a registered organization as provided in new § 9-503(a)(3)?

Search practices for records filed under the name required by § 9-503(a)(3) generally will not change. The only options remain the name of the trust, if it has a name or the name of the settlor of an unnamed trust. That will remain the case under § 9-503(a)(3) after the 2010 Amendments take effect. Although, there is a clarification that the name of the testator may need to be searched for an unnamed testamentary trust.

If an individual debtor has a driver's license issued by a state other than the state of his or her principal residence, should we search that location as well?

Generally, a UCC search in the jurisdiction that issued the debtor's driver's license will not be necessary unless it is also the state of the debtor's principal residence. The exception will be if the debtor has relocated from the state that issued the driver's license within the previous year.

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In that case, relocation may have changed the governing law. A financing statement filed in the former state may remain effective for up to a year following the debtor's move to a new jurisdiction.

Can we limit our search only to exact matches of the individual debtor's driver's license in § 9-503(a)(4) Alternative A states?

Not unless the searcher is willing to accept a significant degree of risk. It is risky to rely on just exact matches, even in Alternative A states, because filed financing statements may provide a name variation for the debtor, yet remain fully effective. Other names may be sufficient throughout the transition period if they are sufficient under current law. Moreover, records filed with filing office indexing errors or that were filed while the driver's license was expired, even for a short period of time, could be effective, but would not be disclosed on an exact match search. The best search practice in Alternative A states will continue to require disclosure of name variations when conducted for due diligence purposes.

What is the best practice for individual name searches during the transition period?

The best practice continues to be that a search must be conducted to disclose name variations for the debtor. That is the only way to identify all potentially effective financing statements. That is especially important in Alternative B states. Searchers should always verify the name on the driver's license, which can be significantly different from other potentially correct names, and ensure the search is crafted to pick up all relevant variations.

Part 7 Additional Resources

CSC created a new 2010 Amendments Resource Center to provide additional information, including materials on legislative status, state-by-state enactment variations and a summary of the statutory changes. The Resource Center is available at:

<http://csctransactionwatch.com/amendments>

If you have questions not covered in this FAQ or need more information, please contact your CSC customer service representative or:

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