

The 2010 Amendments to UCC Article 9 Transition Period

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Background

The 2010 Amendments to UCC Article 9 (the “Amendments”) make the first significant changes to the law of secured transactions since Revised Article 9 took effect in 2001. For the most part, the Amendments merely clarify existing law, but some changes will affect the sufficiency of UCC records filed before the effective date.

To preserve the effectiveness of pre-effective-date records and to allow secured parties to bring affected records into compliance with the new requirements, the Amendments provide rules for an orderly transition. The transition rules are found in new Article 9 Part 8. The transition period begins in most states on the uniform effective date of July 1, 2013, and continues until June 30, 2018.

In general, a secured party will only need to take action to remain perfected in certain cases. One such case occurs when a pre-effective-date financing statement provides the name of a non-registered organization business trust debtor that will become a registered organization after the Amendments take effect.

Another case arises when a state enacts the Alternative A standard for sufficiency of an individual debtor name in § 9-503(a)(4). Under Alternative A, only the name on the debtor’s driver’s license is sufficient for purposes of the financing statement. The secured party may need to amend a pre-effective-date financing statement that does not provide the driver’s license name to remain perfected. These issues are explained in more detail below.

Financing Statement Names a Business Trust that Becomes a “Registered Organization”

The Amendments do not change the choice of law rules that determine where to file a financing statement. However, changes to the definition of “registered organization” will expand the types of entities that fall within the scope of the term. That could, in rare cases, cause a change in the governing law.

Section 9-301 provides that the law of the jurisdiction where the debtor is located governs perfection and priority of a security interest in most types of collateral. Under § 9-307(b)(2), a non-registered organization is located at its place of business or, if it has more than one place of business, at its chief executive office. However, under § 9-307(e), a registered organization is located in the state where it was organized.

If the location of a business trust changes because it becomes a registered organization, the law governing perfection will become the law of the state where the registered organization was formed. Any UCC record filed in the former location after that time will have no effect, including continuation statements. To remain perfected beyond the next lapse date, or if the secured party must file any type of amendment to the financing statement, the secured party will need to move its financing statement from the former state to the new state.

Section 9-806(a) provides the secured party with a method for moving the financing statement to the new jurisdiction, an initial financing statement in lieu of continuation (“In Lieu”). The filing of an In Lieu in the new jurisdiction will be effective

as an initial financing statement, but will relate back in priority to the original file date in the old jurisdiction. A more detailed explanation of In Lieu record filing is available as a separate article.

The secured party does not need to wait until just before the lapse date of the record in the former jurisdiction. An In Lieu financing statement is not subject to the six-month continuation window. However, the secured party must file its In Lieu before the lapse date of the record filed in the former jurisdiction or the end of the transition period, whichever comes first.

Financing Statement Filed in Alternative A State that Names an Individual Debtor

When the Amendments take effect, only the name indicated on the debtor's unexpired driver's license that otherwise complies with new § 9-503(a)(4) will be sufficient as the name of the debtor for purposes of the financing statement in those states that enacted legislative Alternative A. A financing statement filed before the effective date that provides individual debtor names may become seriously misleading if that name does not match the name on the individual's driver's license.

Under § 9-805(b)(1), the financing statement remains effective, even if it becomes seriously misleading, until it would have ceased to be effective had the Amendments not taken effect. In other words, a pre-effective-date financing statement will remain effective until the lapse date without further action by the secured party. Thus, the secured party can simply let the financing statement lapse, unless it plans to continue the effectiveness for another five-year period.

When the secured party intends to continue the financing statement, a debtor name amendment may be necessary. The secured party must review the individual name provided on each filed financing statement as part of the continuation process. If the name provided does not match the name indicated on the debtor's driver's license, then the secured party must amend the financing statement to add the new name before the scheduled lapse date. The secured party can make the name change either as a separate amendment or, if filing office rules allow it, in combination with the continuation statement.

Financing Statement Filed in Alternative B State that Names an Individual Debtor

Legislative Alternative B for § 9-503(a)(4) is a simple safe harbor. The name indicated on the debtor's driver's license or just the surname and first personal name will be sufficient as the name of the debtor, but any name that was sufficient before the effective date will also comply with the new individual name rules. Therefore, if the financing statement sufficiently provided the name of an individual debtor before the effective date, a secured party will not need to take any action to remain perfected through the transition period in an Alternative B state.

Other Concerns: Indications that Debtor is a Decedent's Estate, Trust or Trustee

The Amendments do not change the debtor name requirements when the debtor is a decedent's estate, trust or trustee acting with respect to property held in a trust. However, the Amendments change the inquiry used to determine when these name rules apply. The new inquiry is based on the status of the collateral, not the identity of the debtor as a decedent's estate, trust or trustee.

To reflect the new line of inquiry, the check boxes used to make the indications required by § 9-503(a)(2) and (3), an additional requirement for sufficiency of the financing statement, no longer identify a debtor. Instead, the check boxes will indicate the status of the collateral. The new rules require that the financing statement indicate that the collateral is being administered by a decedent's personal representative if subsection (2) applies or that the collateral is held in a trust for a debtor name provided under subsection (3).

If the financing statement sufficiently provides the name required for a decedent's estate, trust or trustee debtor, the secured party will remain perfected without further action after the Amendments take effect. The name requirements remain the same. Not even the indications need to change. Under § 9-805(e), a financing statement that indicates the debtor is a decedent's estate is sufficient to indicate the collateral is being administered by a decedent's personal representative for purposes of new § 9-503(a)(2). Likewise, an indication that the debtor is a trust or trustee acting with respect to property held in a trust is sufficient to indicate that the collateral is held in a trust for purposes of new § 9-503(a)(3).

Conclusion

Secured parties that plan ahead can remain perfected through the transition period and beyond. To do so, secured parties should modify their procedures to include a review of potentially affected records when making continuation decisions. That process should begin early. The secured party needs sufficient time for the due diligence necessary to prepare any amendments or In Lieu financing statements that it must file. Then, the secured party must be sure to file those records prior to the scheduled lapse date.

Please feel free to contact Paul Hodnefield, Associate General Counsel for Corporation Service Company, with any questions about the Amendments transition period at phodnefi@cscinfo.com, or 800-927-9801, ext. 62375.