



STATE OF NEW JERSEY

NEW JERSEY LAW REVISION COMMISSION

Final Report
Relating to

Uniform Commercial Code, Article 9

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Introduction

The Uniform Law Commission and the American Law Institute approved revisions to Article 9 of the Uniform Commercial Code in 2010. They recommend a uniform effectiveness date of July 1, 2013 with the hope that legislatures in all states will have an opportunity to consider the revisions before that time.

Article 9 governs security agreements where the property is not real estate. These arrangements are the basis of an important part of commercial finance. Many of the commercial security arrangements under Article 9 are interstate transactions, and it is important that the state laws governing them are as nearly uniform as possible. In reviewing the proposed changes, the Law Revision Commission was aware of the need for uniformity. As a result, the Commission is disposed to accept the revisions proposed by the Uniform Law Commission and the American Law Institute unless there is a significant reason to deviate from them.

The most significant change proposed is in regard to specification of the name of debtors who are natural persons. The current Article 9 was found to be insufficiently specific as to the debtor's name as it was to be included in a security filing. The chairman of the drafting committee explained the problem:

Some courts have struggled with the question of what name a financing statement must provide for an individual debtor in order for the debtor's name on the financing statement to be sufficient. The problem arises because an individual does not typically have a single name. The individual's name on his or her birth certificate, driver's license, passport, tax return or bankruptcy petition may all be different. Moreover, the debtor may be known in his or her community by a name that is not reflected on any official document. . .the cases have created a level of uncertainty that has led secured parties to search and file financing statements under multiple names.

The proposed amendments use the drivers license as the source for the "official" version of a person's name. The creditor uses the license to determine the debtor's surname and first personal name. Any other names on the license would be inserted under "additional names." If the debtor does not have a drivers license or non-drivers state identification card, the situation is unchanged from that under current law, no rule for "official" name is provided.

In comments to the draft, the ULC has raised the question as to whether a state's license space for the entry of a name is too limited to allow the license to be a good source for an accurate full name. The Commission has been informed by MVC that while there is a problem in New Jersey now, the space for the name will be increased by June of this year. As a result, there should be no problem with reliance of the name on a drivers license on the uniform effectiveness date of July 1, 2013.

The proposed Article 9 amendments offer two approaches to the problem. The first alternative makes use of the name as it appears on the drivers license a requirement. The second, the safe haven alternative, does not require the use of that version of the name but specifies that if that version is used, it is sufficient. Nationally, banking interests appear to be supporting for the first, stricter, approach. Their position is of special importance because the burden of complying with a strict standard will be on lenders. Informal discussions with the New Jersey Bankers Association indicates that it also supports the first approach. In addition, versions of the Article 9 revisions pending in other states' legislatures overwhelmingly have opted for the first, stricter, approach. For all of these reasons, the Commission has chosen to support Alternative A as presented in the report of The Uniform Law Commission and the American Law Institute.

The amendments also make other, more technical changes to Article 9. They modify the definition of "registered organization" to reflect that an organization is a registered organization if it is formed or organized under the law of a state by the filing of a public record with the state rather than, as under current Article 9, by the state merely being required to maintain a public record showing that the organization has been organized.

The amendments also clarify that, for a financing statement to be sufficient, the name of the registered organization debtor on the financing statement is the name reflected on the "public organic record" of the registered organization. Accordingly, a corporation with a name on its publicly available charter document that is different than the name on the state's publicly searchable data base, the debtor's name on the financing statement should be the debtor's name as reflected on the charter document.

The amendments also change what must be done when the debtor changes its location. Under current Article 9, if a debtor changes its location to a new jurisdiction, a secured party whose security interest was perfected by filing in the original jurisdiction has a period of up to four months to continue the perfection of its security interest by filing a financing statement in, or otherwise perfecting the security interest under the law of, the new jurisdiction. The four month grace period applies, however, only to collateral in which the secured party's security interest was perfected at time of the change of location. There is no grace period under current Article 9 for perfection of any security interest that may attach to post-change of location after-acquired property of the debtor. The amendments add a grace period for the after-acquired property by providing that the financing statement filed in the original jurisdiction is effective with respect to collateral acquired within the four months after the debtor's location changes.

The amendments provide similar protection for a security interest in after-acquired property if a new debtor becomes bound by the original debtor's security agreement and the new debtor is located in a different jurisdiction than the jurisdiction in which the original debtor was located. If a debtor located in one state merges into a new debtor located in another, under current Article 9 there is a grace period of up to one year for the secured party to file a financing statement against the new debtor. But the grace

period does not apply to post-merger after-acquired property. Using an approach similar to that taken with respect to property acquired by a debtor after it relocates, the amendments provide for a grace period of up to four months in the case of such an interstate merger.

The amendments provide for other, more technical changes to Article 9:

- Only an initial financing statement may indicate that the debtor is a transmitting utility, in which case the financing statement does not lapse. -
- A filing office will no longer be permitted to reject a financing statement that fails to provide the type of organization of the debtor, the jurisdiction of organization of the debtor, or the organizational identification number of the debtor or a statement that the debtor has none.
- The term “correction statement” as used in current Article 9 has been changed to the more accurate “information statement”.
- The amendments clarify that effectiveness of an anti-assignment term of a payment intangible or promissory note in the case of a sale or other disposition of collateral under section 9-610 or an acceptance of collateral under section 9-620 is governed by section 9-406 and not by section 9-408.
- The amendments modify the definition of the term “authenticate” to conform to the definitions of “sign” in Article 1 and Article 7.
- The amendments modify the definition of “certificate of title” to take into account state certificate of title systems that permit or require electronic records as an alternative to the issuance of certificates of title.
- The amendments modify the requirements for control of electronic chattel paper to conform them with those in Article 7 for electronic documents of title and in the Uniform Electronic Transactions Act for transferable records.
- The amendments clarify that a registered organization organized under federal law, such as a national bank, that, by authorization under federal law, designates its main or home office as its location is located in the state of that office for purposes of Article 9.
- The amendments expand the list of collateral for which a licensee or buyer takes free of a security interest if the licensee or buyer gives value without knowledge of the security interests and before it is perfected.
- The amendments confirm that a secured party’s authorization to record an assignment of a mortgage securing a promissory note assigned to the secured party in order for the secured party to conduct a non-judicial foreclosure sale of the mortgaged real property applies when there is a default by the mortgagor.

Having considered the revisions to Article 9 of the Uniform Commercial Code proposed by the Uniform Law Commission and the American Law Institute, The Law Revision Commission recommends their enactment.