

New Texas UCC Legislation Changes Debtor Name Requirements

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The State of Texas recently passed legislation that should be of concern for any secured party that files UCC records in that state. Senate Bill 1540 amended the Revised Article 9 debtor name requirements found in § 9-503(a).¹ The non-uniform amendments have already taken effect; so secured parties must immediately assess the impact of the law on their UCC filing procedures.

The new Texas law is the first legislative attempt to resolve uncertainty surrounding the sufficiency of debtor names. This issue has plagued secured parties ever since Revised Article 9 took effect. Most notably, the sufficiency of individual debtor names has generated spirited discussion in legal circles and caused plenty of headaches for secured parties. Even the sufficiency of registered organization names is not without controversy.

No single piece of information is more important to the UCC search and filing process than the correct debtor name. Only if the filing office index accurately reflects the debtor name will a UCC search reliably disclose relevant security interests. Any errors or omissions in the debtor name may defeat the process and create a hidden lien. Consequently, Revised Article 9 requires the secured party to provide the correct name of the debtor on the financing statement. Failure to do so could result in an unperfected security interest.² This provides a lot of incentive for the secured party to identify the correct debtor name.

Unfortunately, finding the “correct” name is sometimes easier said than done. Revised Article 9 sets forth confusing standards for some types of debtor names and is silent with regard to others. The resulting uncertainty increases the risk for secured parties.

A Safe Harbor for Individual Debtor Names in Texas

Revised Article 9 offers no standard for determining the name of an individual. Under § 9-503(a)(4)(A), the financing statement sufficiently provides the name of an individual debtor “only if it provides the individual... name of the debtor.” This rather circular requirement provides no indication of what constitutes the correct name of an

¹ Unless otherwise noted all citations are to the official text of UCC Revised Article 9. The corresponding Texas provisions are found in Tex. Bus. & Com. Code Ann. 9.503(a).

² See UCC § 9-506(b).

individual. Even case law interpreting this section has done little more than indicate what is not sufficient.

The utter lack of an individual name standard poses a substantial problem for secured parties. The secured party must exercise its best judgment as to the correct debtor name and hope for the best. This is not a satisfactory solution considering the number and value of individual debtor transactions. Approximately half of the financing statements indexed with filing offices nationally contain individual debtor names. The Texas legislation offers a solution to the individual debtor name concerns by creating a “safe harbor” when the financing statement provides the name of an individual debtor shown on the individual’s driver’s license or identification certificate issued by the individual’s state of residence. The “safe harbor” does not replace the individual debtor name standards found in § 9-503(a)(4)(A), whatever those may be. That would have required another transition period for secured parties to bring individual debtor names into compliance. Instead, the safe harbor serves as an alternative standard, allowing secured parties to provide an individual name with greater certainty.

Many secured parties have concerns about the effect of Senate Bill 1540 on previously filed financing statements. The law was enacted as a clarification to create guidelines for individual debtor names. As it did not replace the existing standards, a financing statement that sufficiently provided the individual debtor name before the law took effect should remain sufficient.

Best Practices for Individual Debtors in Texas

The Texas amendments require UCC filers to adjust their procedures for determining the correct name of an individual debtor. Filers should continue to follow their current process for establishing the name required by § 9-503(a)(4)(A). In addition, the filer must review the debtor’s driver’s license. If the names differ, the secured party should provide both names on the financing statement as separate debtors. In any event, all financing statements that list an individual debtor must provide at least the name indicated on the debtor’s driver’s license.

Previously filed financing statements with individual debtor names do not necessarily require an amendment to add the name on the driver’s license. The secured party should make this decision on a case-by-case basis, depending on the risk and its confidence in sufficiency of the name currently indexed.

UCC searchers must also take note of the Texas amendments. Although the name on an individual debtor’s driver’s license provides a safe harbor for the filer, other names may also be sufficient under § 9-503(a)(4)(A). Consequently, UCC searchers may need to conduct more than one search to find all effective financing statements filed against the debtor. The need for additional searches is a step back from the intent of Revised Article 9. However, it is a small price to pay for the added certainty when dealing with Texas debtors.

Clarification of Registered Organization Name Sufficiency

While individual names have generated the most controversy, Revised Article 9 also contains some ambiguity concerning the source of registered organization names. The definition of “registered organization” includes corporations, limited liability companies and limited partnerships.

At first glance, Revised Article 9 appears to contain very specific requirements for registered organization debtor names. Under § 9-503(a)(1), a registered organization debtor 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.” The drafters intended this to mean the articles of incorporation or equivalent formation documents. However, Revised Article 9 failed to define the term “public record.” There are other public records that arguable fall within this definition. These include the state business entity index and an entity’s certificate of good standing.

Every state maintains a business entity index. The filing office generally makes some or all of the data available to the public, often for free over the Internet. The purpose of putting this information online is to give interested parties the ability to look up the status of an organization or search for name availability.

The states never intended for the business entity index to provide the correct name of entities registered in the state. The states’ data entry rules often modified entity names with abbreviations, omissions or rearranged the word order. Consequently, the name in a business entity index does not always match the name as set forth in the formation documents.

The registered organization name on a certificate of good standing is no more accurate the business entity index. In fact, a certificate of good standing simply lists the name found in the business entity index, not the formation documents. Nevertheless, many UCC filers look to the business entity index or certificate of good standing as public record sources for registered organization debtor names.

The Texas legislation decisively resolves any ambiguity surrounding the source of a registered organization debtor name. The amended version of Tex. Bus. & Com. Code 9.503(a)(1) clearly states that a registered organization name is sufficient only if it provides the name “indicated on the debtor’s formation documents that are filed of public record...” (emphasis added).

Best Practices for Texas Registered Organizations

The Texas amendments have no effect on the best practices for filing UCC records with registered organization debtor names. Since Revised Article 9 took effect, the best practice has always been for the financing statement to provide the registered organization debtor name exactly as it appears on the articles of incorporation, or equivalent formation documents for other entities. That has not changed. The new Texas law merely reinforces the importance of obtaining the name from the formation documents.

Conclusion

The Texas debtor name initiatives have attracted the attention of lawmakers, legal commentators and practitioners around the country. Other states may follow Texas' lead in addressing these issues. The courts may also find the Texas clarifications influential, so UCC filers may want to follow the same practices when dealing with debtors located in other states as well.

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