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Now What? Life after the 2010 Amendments to UCC Article 9

Your questions, asked and answered

By Paul Hodnefield
Associate General Counsel, CSC

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800-927-9800

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Your questions, asked and answered

In 2010, the Uniform Law Commission and American Law Institute approved the first significant changes to UCC Article 9 since the revision that took effect in 2001. With the 2010 Amendments to UCC Article 9 (the “2010 Amendments”), the drafting committee intended to address a limited number of specific, ongoing issues that have arisen since Revised Article 9 took effect.

The official text of the 2010 Amendments provided for a uniform effective date of July 1, 2013. With the effective date now behind us, this white paper offers answers to the most common questions lenders and their legal counsel are still asking about the 2010 Amendments, and the resulting changes to UCC search and filing procedures.

“I need a refresher on the 2010 Amendments. What exactly changed?”

The 2010 Amendments mostly clarified, but did not change, the existing law, with a few exceptions. The changes that had the most significant impact are those that affected the filing and search process. These included new debtor name sufficiency requirements in Section 9-503(a), new forms, and a revised definition of “registered organization” that clarifies the types of entities that fall within the scope of that term and expands it to include business trusts.

Visit www.csctransactionwatch.com/amendments for a comprehensive look at statutory changes, legislative statuses, and other news.

“How do I now determine the correct debtor name of a registered organization? Can I use the state’s business entity databases?”

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.

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One important new feature of the forms is that the Addendum has longer fields for individual debtor names. The longer fields for the individual's surname, first personal name and other names or initials were included to ensure adequate space for the filer to comply with both legislative alternatives for Section 9-503(a)(4).

“What about determining the correct name of an individual debtor? I've heard that I need to use the driver's license.”

The 2010 Amendments included two alternative versions of Section 9-503(a)(4) for sufficiency of an individual debtor name. Most state legislatures selected one of the alternatives. Alternative A for Section 9-503(a)(4) requires a financing statement to provide the name indicated on the debtor's driver's license that is unexpired and issued by the jurisdiction where the record will be filed. If the debtor lacks a qualifying driver's license, then the record is sufficient only if it provides the individual name of the debtor or surname and first personal name of the debtor. Alternative B is similar, but uses the driver's license name as a simple safe harbor. Those who file or search UCC records must understand the requirements of both alternatives. CSC has prepared a quick reference at www.csctransactionwatch.com/amendments that explains which legislative alternative has been enacted in each state and any text variations that may affect debtor name due diligence.

Most of the states that enacted the 2010 Amendments selected Alternative A. Only a few states chose to enact Alternative B. Thus, secured parties will be required to provide the driver's license name on financing statements filed in most states. Secured parties with a multistate business footprint may decide to use the driver's license as the source of an individual debtor's name in both Alternative A and Alternative B states. That allows for a consistent process from state to state and greatly simplifies personnel training.

“What exactly changed on the new UCC forms?”

The 2010 Amendments replace the forms contained in current Section 9-521. As originally contemplated, the replacement versions eliminate the fields for the debtor's SSN/FEIN and organization information. Those fields were eliminated because the debtor's SSN/FEIN has never been required by the official text of Article 9 and the organization information will no longer be required under Section 9- 516(b). The additional space created by eliminating the organization fields allows the new financing statement form to display the various indication check boxes that are currently located on the Addendum form.

The new forms were designed to implement the statutory changes to Article 9 through non-substantive changes to layout and wording. The forms themselves do not change the statute in any way.

One important new feature of the forms is that the Addendum has longer fields for individual debtor names. The longer fields for the individual's surname, first personal name and other names or initials were included to ensure adequate space for the filer to comply with both legislative alternatives for Section 9-503(a)(4). A new check box was also added to the name sections on the financing statement. If an individual name is too long for the financing statement fields, then the filer simply checks the appropriate box and enters the name on the Addendum form instead.

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.

“Will I need to file In Lieu financing statements like I did during the Revised Article 9 transition period?”

The transition rules for the 2010 Amendments are similar to, but somewhat simpler than, the transition rules for Revised Article 9. A transition period was necessary for the 2010 Amendments 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. The five-year transition period runs from the uniform effective date of July 1, 2013, through June 30, 2018.

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 very rare situations.

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. In very rare cases, e.g., when the debtor is a business trust, that may change the debtor’s location under Section 9-307, and therefore, the governing law under Section 9-301. These circumstances are likely to arise so infrequently that many secured parties will never need to file an In Lieu financing statement.

“Have the 2010 Amendments changed the standard search logic used by filing offices or other search procedures?”

The 2010 Amendments do not change current law with respect to search logic. Each filing office establishes its standard search logic through administrative rules. But 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, 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 debtor’s new location and under the new name rules.

“I’d like to stay better informed about important legislative updates. How can CSC help?”

For the latest information about the 2010 Amendments to UCC Article 9, including a state-by-state accounting of legislation and the new UCC forms, visit www.csctransactionwatch.com/amendments.

About the author

Paul Hodnefield is associate general counsel for Corporation Service Company (CSC) and a frequent speaker/writer on UCC, lien and real property service issues. Please feel free to contact him with questions or comments at phodnefi@cscinfo.com or 800-927-9801, ext. 62375.

About CSC

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