



## COMMERCIAL LENDING ALERT

### FILING UCC FINANCING STATEMENTS AND SEARCHING AGAINST INDIVIDUALS

June 2006

#### The UCC Article 9 Filing System

Article 9 of the Uniform Commercial Code governs how most security interests in personal property are created and perfected. Perfection is normally accomplished by filing a UCC financing statement in the appropriate state office. The general rule is that the first secured creditor to file a correctly prepared financing statement has priority over a security interest perfected in the same property by a later filing.

Prospective lenders will normally search the appropriate UCC filing office under the name of the prospective borrower to confirm that no other party has a prior perfected security interest on file against the prospective borrower covering the proposed collateral. Filing offices index UCC files by the debtor's name.

Revised Article 9 (effective July 1, 2001) simplifies the task of searching the records when the borrower is a "registered organization" (corporation, limited partnership or limited liability company). Under Revised Article 9, a proposed lender searching the appropriate records using the exact legal name of a registered organization can rest assured that, if UCC filings are not found using that system, they are not effective against the proposed borrower. Revised Article 9 requires the UCC searcher to use the exact legal name of a registered organization, which is the name in the official records of the state of organization of the entity.

#### Filing and Searching Against an Individual

But what about UCC searches and filings under the name of an individual debtor? This issue is relevant to the commercial lender if the lender proposes to make a secured loan to an individual doing business in his or her own name as a sole proprietorship or if the individual is guaranteeing the obligations of his or her company and is securing that guaranty with a security interest in personal property.

Unfortunately, there is no official register for individual names, nor is there even a single generally

accepted source for determining one's "name." Revised Article 9 gives little guidance. Section 9-502(a) requires that a financing statement must include the "name of a debtor." Section 9-503(a)(4)(A) states that a financing statement against an individual is sufficient "only if it provides the individual... name." Revised Article 9 offers no guidance as to what constitutes the "individual name." The consequence, however, of filing a financing statement that does NOT provide the "individual name" is that the financing statement is "seriously misleading" and therefore is not valid to perfect the intended security interest as against a subsequent secured lender who correctly files a financing statement.

#### Real-World Example

A recent case from the Kansas Supreme Court highlights the continuing struggle with this issue. In Pankratz Implement Co. vs. Citizen's National Bank, 130 P.3d 57 (2006), Lender 1 made a loan to Rodger House to purchase a tractor and took back a security interest in the tractor and filed a UCC financing statement listing the debtor's name as "Roger House" instead of "Rodger House."

One year later, House obtained a loan from Lender 2, secured by a pledge of, among other things, all then-owned and subsequently acquired equipment. Lender 2 filed a financing statement using the correct name of the debtor, "Rodger House."

House filed a petition for bankruptcy three years later. After obtaining relief from the bankruptcy court to pursue House, Lender 1 filed suit in state court against Lender 2 seeking a declaratory judgment that Lender 1's security interest had priority.

The trial court held that Lender 1's filing was effective because the misspelled first name was a minor error, not seriously misleading under Revised Article 9. The Kansas Court of Appeals, however, reversed that decision and the Kansas Supreme Court affirmed that determination.

Section 9-506 of the UCC determined the outcome. It provides that a misspelling will not be considered seriously misleading if a search, using the state's standard search logic, under the "debtor's correct name" would turn up the financing statement. This determination is clearly the correct one under Revised Article 9 even though it seems harsh to hold that a missing "d" in a debtor's first name on a financing statement renders the financing statement seriously misleading. In this case, it was undisputed that a search under the debtor's correct name using the standard search logic of the Kansas Secretary of State did not disclose the first filing.

The court correctly determined that the legislative intent of Revised Article 9 is to shift the responsibility to follow the name requirement to the one filing the UCC financing statement, with the effect that the party searching for prior liens on the same property will not be required to conduct UCC searches using nicknames or possible alternate spellings of the name. The greater certainty fostered by Revised Article 9 comes at the price of an occasional harsh result.

### **How to Address the Challenge.**

What should a lender do? A few suggestions:

First, a lender needs to understand the official search logic used by the applicable state filing office. Under the Missouri search logic (15 C.S.R. 30 90.220), a search request for "Rodger A. House" would cause the search to retrieve all filings against all individual debtors with "Rodger" or the initial "R" as the first name, "House" as the last name, and the initial "A" or any middle name beginning with "A" or no middle name or

initial in the middle name field. A search against "R. House" would retrieve all filings using that initial for the first name and also all filings with a first name beginning with "R." (This search would have revealed the prior filing with the misspelled name in Pankratz).

Second, a lender should make every effort to obtain the debtor's "exact full legal name" (which is the heading on the approved financing statement form for the "name" entry for an individual), and file using that name. Ideally, but highly unlikely, the name would be evidenced by a birth certificate or a Social Security card. More likely, the best name evidence a lender may have is the debtor's driver's license.

Third, a lender should do multiple UCC searches to determine whether there is a prior filing against the debtor. Under Revised Article 9, an official search by the state filing office in the full legal name should protect the lender against claims of prior filings if the search does not reveal prior filings. In order to minimize the possibility of facing a claim of prior filings not in the exact name, a lender should also consider searching using the first initial and last name of the individual debtor.

### **Conclusion**

Searches against individuals will not have the same level of certainty as searches against registered organizations under the UCC. Knowledge of the official search logic of the state in which the searches is to be accomplished, however, can lessen the possibility of a dispute over whether there is an effective prior perfected security interest in the collateral of your individual borrower or guarantor.

---

This Commercial Lending Alert was prepared by John P. Walsh, Chair of the Business Services Department and the Commercial Finance Practice Group of Gallop, Johnson & Neuman, L.C. Mr. Walsh is a member of the Commercial Financial Services Committee and the Legal Opinions Committee of the Section of Business Law of the American Bar Association. He is also a member of the Bank Counsel Section of the Missouri Bankers' Association and its past-Chair. If you wish to obtain further information regarding these matters, please contact either the Gallop, Johnson & Neuman attorney who normally provides or manages your legal services or a member of the Firm's Commercial Finance Practice Group. Members include:

John P. Walsh, Chair  
Robert H. Epstein  
Robert H. Wexler

Mary M. Bannister  
Thomas G. Lewin  
Robert D. Cantwell

Wendi Alper-Pressman  
Peter D. Kerth  
Bradford J. Cytron

Copyright 2006 by Gallop, Johnson & Neuman, L.C. Permission is granted for reproduction and distribution of this newsletter in its entirety if all reproductions include this copyright notice. This publication is intended to provide the reader with general information concerning selected current legal issues and developments and is not intended to constitute or to be relied upon as legal advice or a legal opinion relating to any specific fact or circumstance.

---

**THE CHOICE OF A LAWYER IS AN IMPORTANT DECISION AND SHOULD NOT BE BASED SOLELY UPON ADVERTISEMENTS. THIS STATEMENT IS REQUIRED BY RULE OF THE SUPREME COURT OF MISSOURI.**

---