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When it Comes to Names and the UCC, You Need to Sweat the Small Stuff

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A lender/creditor ("Secured Party") may want to obtain a security interest in personal property of a debtor/borrower ("Debtor") to secure a variety of obligations including a loan, rent payments under a real or personal property lease, or the purchase price of goods, inventory, or equipment bought on an open account. In each case, in order to maintain the priority of its security interest and to protect against the right of a debtor in possession or a trustee in bankruptcy to set aside a security interest, it is necessary to file a UCC-1 financing statement in the appropriate records.

The UCC filing system is a debtor name search system which relies on filings having the correct name of the Debtor so they can be searched. The Debtor's name on the UCC-1 financing statement must be accurate and getting it right can be harder than it would seem.

Section 9.503(a) of the UCC contains the test for stating the Debtor's name correctly and it must be strictly complied with. If the name is not in strict compliance with § 9.503(a), it may still be sufficient if a search of the correct Debtor name using standard search logic employed in the appropriate jurisdiction would disclose the financing statement. However, the search logic employed in many jurisdictions is often very literal and it is best to make the extra effort to ensure that the Debtor's name is correct.

Courts in various jurisdictions have invalidated financing statements based on technical discrepancies in the Debtor's name because the search logic in the relevant jurisdiction did not pick up a financing statement containing what would seem to be innocuous errors, such as including an extra space in the name, the omission of "Inc." at the end of the name, errors in punctuation, or adding extraneous information in the blank on the form for the name. For example, stating a name as ABC, Inc., a Texas corporation, in the name line on the form could invalidate the filing because "a Texas corporation," is not part of the name. Also, it would be inappropriate to list the name as ABC, Inc. d/b/a ABC because "d/b/a ABC" is not a part of the official name.

With respect to organizations that are registered in a given state, the UCC in most jurisdictions says that the name is sufficient only if the financing statement provides the name indicated on the public record in the Debtor's jurisdiction of organization. Therefore, a Secured Party should check the public records in the state of the Debtor's organization (in Texas it would be necessary to check with the Secretary of State) and make sure that the name listed in the financing statement conforms exactly to that name including commas, periods, spaces, capitalization, etc. However, a Secured Party should not rely on a business entity database maintained by the state, which is not an official record.

Texas has amended the name requirement and its UCC now says the financing statement should provide the name of the Debtor indicated on the Debtor's formation documents that are filed as a public record. Of course, this amendment in Texas is not uniform for all states. To be safe it is recommended that a Secured Party file both in the name shown in the official records of the state in which the Debtor is organized and in the name reflected on the Debtor's formation documents filed as a public record if they differ in even the slightest respect.

With respect to individual Debtors, the UCC says that the financing statement should provide the individual name. The provision in effect in most states does not designate a document that can be relied upon as giving the correct name. Again it is important not to include any additional information in the space for the Debtor's name, such as "doing business as" or "sole proprietor." Descriptive information such as titles should also be omitted, including "Jr.," unless it is an official part of the Debtor's name. There have been some troubling cases involving the misspelling of names, including spelling the name "Roger" when it should be "Rodger." Also there can be problems with middle names and middle initials. Because of the lack of clarity under the UCC as it exists in most states, secured parties often file using variations of the Debtor's name to make sure that they have one that is correct. Also Secured Parties often ask for multiple sources of identification to check for variations in the name.

Texas has clarified this situation by adopting a non-uniform provision in § 9.503(a)(4) that says a financing statement is sufficient if it provides the Debtor's name shown on the individual's driver's license or identification certificate issued by the individual's state of residence. So, it is essential in Texas that the lender get a copy of the Debtor's driver's license or official identification and use that name verbatim in the UCC-1.

There are further complications involved with estates, trusts, and special entities. See Current Revised Article 9 Search and Filing Issues by Susan E. Collins and Paul Holdenfield in Vol. 42, No. 975 of the *Texas Journal of Business Law* for a more detailed discussion of the problems in naming estates, trusts, and other entities.

In conclusion, it is possible to get a properly executed security agreement, file a UCC-1 financing statement in the proper place, and find out that the Secured Party's interest is primed by another security interest, or judgment creditor, or subject to challenge by a debtor in possession or a trustee in bankruptcy because of what would appear to most people to be an insignificant discrepancy in the name of the Debtor on the UCC-1. ■