



# Commercial Financial Services Brief: Minnesota Adopts Several Changes to Article 9 of the UCC

June 25, 2013

Minnesota has adopted several changes to Article 9 of the UCC, effective July 1, 2013. Many of these changes relate to the preparation and filing of financing statements which perfect security interests granted by individual debtors. However, other revisions address financing statements covering collateral held in trust and the name of registered organizations. In response to numerous inquiries, we have prepared a summary of the most important revisions, provide explanations of the changes and offer suggestions for best practices to meet the requirements of the new rules.

## **How do we determine an individual's legal name after July 1, 2013?**

*Effective July 1, 2013, Minnesota law will require a financing statement contain the name of an individual debtor which is indicated on an unexpired Minnesota driver's license or state identification card.*

Explanation: Obtain a copy of the debtor's Minnesota driver's license or identification card and make sure the debtor's name on the financing statement is identical to the name on the license or identification card. To be effective, the financing statement must set forth the same name, even if the driver's license or identification card contains a typo, uses a nickname, or contains suffixes (e.g., "Jr.", "M.D." etc.).

Comments: Consider retaining a copy of the driver's license in the bank's collateral file in order to establish that the financing statement is consistent with the driver's license or identification card.

Pay attention to whether the driver's license has expired.

## **Do the same rules apply if the debtor lives in another state?**

*As of May 15, 39 states, including all neighboring states, have enacted the revisions set to take effect on July 1, 2013. Most states, including all contiguous states to Minnesota, have rules similar to Minnesota's.*

Explanation: If in doubt, you can check to see if the debtor's state has enacted the revisions by going to the Uniform Law Commission's website: [Article 9 Amendments \(2010\) summary](#).

## **What should we use for an individual debtor's name for a loan to be closed prior to July 1, 2013?**

*Use the debtor's surname and first personal name.*



Explanation: The debtor's surname and first personal name should meet the requirement of current law that the financing statement set forth the debtor's "individual name."

Comments: Consider using the debtor's name as it appears on her driver's license as an additional debtor on the financing statement. If this is done, there will be no need to amend the financing statement after July 1, 2013.

Do NOT use the new financing statement forms prior to July 1, 2013. They may be rejected by the Secretary of State. After July 1, 2013, the current version of the financing statement form may be rejected by the Secretary of State.

**What should we do if the debtor does not have a current driver's license or state identification card?**

*Use the debtor's surname and first personal name.*

Comments: Use of the debtor's surname and first personal name is a safe harbor under the new statutes if the debtor does not have a driver's license or identification card.

**What if the debtor has a driver's license issued by another state but the debtor is a Minnesota resident?**

*Since the debtor will not possess an unexpired Minnesota driver's license, you should use the debtor's surname and first personal name.*

Explanation: The state of the debtor's principal residence determines the law to be applied to determine where a financing statement must be filed. The safe harbor provided by Minnesota law only applies if the debtor has a Minnesota driver's license or identification card.

Consider using the debtor's name as it appears on the out of state driver's license as an additional debtor on the financing statement.

You will need to verify that the debtor resides in Minnesota by means of other documents. Only if the debtor is a Minnesota resident will Minnesota law govern perfection of the security interest granted by the debtor.

**What happens if the driver's license expires?**

*If the debtor's driver's license expires during the term of the loan, and the debtor fails to renew, the security interest may remain perfected if the name on the license is the same as the debtor's surname and first personal name.*

Explanation: The expiration of the driver's license may constitute a change in name of the debtor. If this is the case, you will have four months to amend your financing statement in order to maintain perfection.



Comments: If you used the debtor's surname and first personal name on the original financing statement, there will be no need to amend upon expiration of the debtor's driver's license.

### **What happens if the debtor's name changes?**

*If the debtor's name changes and the debtor obtains a new driver's license, the security interest will become unperfected with respect to collateral acquired by the debtor more than four months after the name change.*

Explanation: This risk must be managed by periodic verification of the debtor's driver's license (e.g., upon renewal of the credit facility).

Comments: If the debtor's name changes, but the debtor does not obtain a new driver's license, you must continue to use the name on the license.

If the collateral includes after-acquired property such as inventory or equipment, any change in the debtor's name could be critical to monitor.

### **What happens if a real estate mortgage is to be filed as a fixture filing?**

*If a real estate mortgage is to serve as a fixture filing, it is effective if it sets forth the debtor's surname and first personal name.*

Explanation: An exception to the driver's license rule is provided in the new statutes for mortgages intended to also serve as fixture filings. However, a financing statement filed which includes fixtures must meet the driver's license test.

Comments: As a result of the alternative provided for mortgages, if equipment may become a fixture, it will be necessary to search under variations of the debtor's name other than the name on the debtor's driver's license.

### **What should we do if a debtor moves to another state?**

*In order to maintain perfection, it will be necessary to file a financing statement conforming to the law of the state of the debtor's new residence within four months of the move.*

Explanation: If a debtor moves to a state which has not adopted the new rules, the old name rules will apply.

If the new state of residence has adopted these rules, you must comply with the driver's license rules applicable in that state.

Comments: Consider filing a financing statement containing the debtor's name as set forth in the "old" state of residence driver's license as well as in the debtor's surname and first personal name.



### **How should we search for individual debtor names?**

*You should search both the driver's license name, the debtor's surname and first personal name, and any variations of the debtor's name of which you are aware.*

Explanation: While the debtor's driver's license will become the standard name under the UCC, the Internal Revenue Service is not governed by the UCC rules. Case law has provided the IRS with significantly more leeway in identifying debtors in their tax liens.

Comments: If a search using the filing office's standard search logic under the debtor's surname and first personal name reveals prior filings made under variations of the debtor's name, those filings cannot be ignored.

### **How do we perfect a security interest in assets held by a trustee?**

*The financing statement must set forth the name of the trust as set forth in the trust documents or, if no name is set forth, the name of the trust settlor or testator.*

Explanation: If there is a name for the trust, the financing statement must also set forth the fact that the collateral is held in trust. Checking box 5 of the new UCC-1 should meet this requirement.

If the trust is unnamed, the financing statement must contain sufficient information to distinguish the trust from other trusts having one or more of the same settlors and must indicate the collateral is held in trust. In addition to checking box 5, the additional information may be inserted in Box 17 of the UCC Financing Statement Addendum.

Comments: Under Minnesota law, a common law trust is not an entity. Rather, assets "in" a trust are held by a trustee for the benefit of the trust beneficiaries.

### **How do we determine the name of a corporation, LLC or other business entity?**

*If a business organization is formed by the filing or issuance of a "public organic record," the name of the organization is the name set forth in that record.*

Explanation: For corporations, limited partnerships and LLCs, the public organic record will be the articles of formation, including amendments which purport to change the name of the organization.

If the entity is created by statute, the name of the organization will be that set forth in the statute.

Comments: Do not rely upon online searches, certificates of good standing, tax returns or any other secondary documents to determine the name of a business entity.



Partnerships are not formed by public organic records. However, the name of the partnership is generally set forth in the partnership agreement.

**If we have filed prior to July 1, 2013, what do we need to do to maintain perfection after July 1, 2013?**

*A financing statement which perfected a security interest prior to July 1, 2013, will continue to be sufficient after July 1, 2013, even if it becomes seriously misleading under the new rules.*

Explanation: When it is time to continue the financing statement, you should verify the debtor's name on her driver's license to ensure the name on the financing statement is adequate. If the debtor's name on the financing statement matches the driver's license, you need only continue the financing statement in a timely manner to maintain perfection.

Comments: If the collateral includes after-acquired property, you may want to amend your financing statement prior to its lapse if the current financing statement does not meet the driver's license test of the new statutes.

**If a financing statement filed prior to July 1, 2013 would be seriously misleading under the new rules, what can be done to correct it after July 1, 2013?**

*You can amend the prior financing statement to reflect the debtor's name as it appears on her driver's license.*

Explanation: If it is necessary to amend a financing statement filed prior to July 1, 2013, the amendment should be filed prior to filing any continuation statement or you could lose priority.

Comments: Filing a new financing statement with the debtor's name as set forth on her driver's license is an option, but could result in a loss of priority.

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