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Twenty Questions About an Individual Debtor's Name Under Amended Article 9 Section 9-503(a)(4) Alternative A

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TWENTY QUESTIONS ABOUT AN INDIVIDUAL
DEBTOR'S NAME UNDER AMENDED ARTICLE 9
SECTION 9-503(A)(4) ALTERNATIVE A

RICHARD H. NOWKA*

ABSTRACT

This Article answers questions created by the financing statement requirements for sufficiency of the name of an individual debtor under the amendments to Uniform Commercial Code Article 9—Secured Transactions. An individual debtor in a security interest transaction could be known by various names: birth certificate name, driver's license name, passport name, or nickname. Revised Article 9 provides no guidance on what name is the correct name of the debtor for entry on the financing statement, and a financing statement that does not provide the correct name of the debtor does not perfect the security interest. To resolve this problem, the Joint Review Committee for Article 9 considered possible amendments to the individual debtor name requirements. Even the Joint Review Committee struggled with the issue, finally adopting two alternatives for sufficiency of the name of an individual debtor and asking states to choose between them. The Uniform Law Commission and the American Law Institute accepted the proposal and have offered the alternatives to the states, along with other amendments to Article 9. The proposed effective date of the amendments to Article 9 is July 1, 2013.

To date, most states have adopted Alternative A to section 9-503(a)(4) of amended Article 9. It is known as the "only if" rule. In accordance with this rule, a financing statement is sufficient only if it provides the name of the individual debtor as indicated on the debtor's unexpired driver's license. However, a secured party complying with section 9-503(a)(4) Alternative A could still face many questions regarding the debtor's name. This Article asks and answers twenty such questions. The Article also examines the statutory requirements of section 9-503(a)(4) Alternative A and how a filed financing statement that does not satisfy those requirements could nevertheless remain effective.

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INTRODUCTION

Brooks L. Dickerson, better known in his community as Louie Dickerson, borrowed money from two banks.¹ Each bank took a security interest in Dickerson's cattle.² The first secured party filed a financing statement providing the debtor's name as "Louie Dickerson."³ The second secured party filed a financing statement providing the debtor's name as "Brooks L. Dickerson."⁴ Do both financing statements sufficiently provide the name of the debtor? Cases such as this have presented problems for courts trying to determine whether the financing statement complies with the Article 9, section 9-502 requirement that the financing statement "provides the name of the debtor."⁵ The only direct guidance from Article 9 was that the "financing statement sufficiently provides the name of the debtor ... only if it provides the individual ... name of the debtor."⁶ Article 9 provides no explanation of the meaning of "individual name,"⁷ so a few jurisdictions adopted their own legislation to answer that question.⁸ This uncertainty led the Article 9 Review Committee to include the matter on its list of issues being considered by a drafting committee.⁹

¹ Peoples Bank v. Bryan Bros. Cattle Co., 504 F.3d 549, 551 (5th Cir. 2007).

² *Id.*

³ *Id.*

⁴ *Id.* at 552.

⁵ "Subject to subsection (b), a financing statement is sufficient only if it: (1) provides the name of the debtor" U.C.C. § 9-502(a)(1) (2002) (The 2002 Official Text of the U.C.C., better known as "Revised Article 9," is the Official Text immediately preceding the Amendments to Article 9, the 2010 Approved Amendments.); *see also In re Kinderknecht*, 308 B.R. 71, 72–73 (B.A.P. 10th Cir. 2004) (determining whether a nickname satisfies the Article 9 requirement); *In re Jones*, 2006 WL 3590097, at *1 (Bankr. D. Kan. Dec. 7, 2006) (determining whether a "full name" is required to satisfy the Article 9 requirement); *In re Stewart*, 2006 WL 3193374, at *1 (Bankr. D. Kan. Nov. 1, 2006) (determining whether any name other than the name on a birth certificate satisfies the Article 9 requirement).

⁶ U.C.C. § 9-503(a)(4) (2002). One court noted that the caption for the debtor's name box in the initial financing statement form approved in section 9-521(a) provides, "Debtor's Exact Full Legal Name." *In re Erwin*, 2003 WL 21513158, at *9 (Bankr. D. Kan. June 27, 2003).

⁷ *See* U.C.C. § 9-503.

⁸ Tennessee and Texas amended their sections 9-503(a) to establish sufficiency of an individual debtor's name if the financing statement provides the name as indicated on a driver's license or identification card. TENN. CODE ANN. § 47-9-503(a) (2010); TEX. BUS. & COM. CODE ANN. § 9.503(a)(4) (West 2009).

⁹ U.C.C. Article 9 Review Comm., *Statutory Modification Issues List*, A.L.I. 1, 1–2 (June 24, 2008), available at http://extranet.ali.org/directory/files/UCC9_IssuesList.pdf. The Uniform Law Commissioners and the American Law Institute formed the Article 9

After two years of study, the Joint Review Committee for Article 9, unable to agree on a single approach, recommended two alternatives for amending the requirements for sufficiency of the name of an individual debtor on a financing statement.¹⁰ Alternative A, labeled the “only if” alternative, mandates that “[a] financing statement sufficiently provides the name of the debtor ... if the debtor is an individual to whom this State has issued a [driver’s license] that has not expired, only if the financing statement provides the name of the individual which is indicated on the [driver’s license].”¹¹ Alternative B, labeled the “safe harbor” alternative, states that:

A financing statement sufficiently provides the name of the debtor ... if the debtor is an individual only if the financing statement: (A) ... provides the individual ... name of the debtor; (B) provides the surname and first personal name of the debtor; or (C) ... provides the name of the individual which is indicated on a [driver’s license] that this State has issued to the individual and which has not expired.¹²

The Reporter’s Note to section 9-503 discloses the committee’s struggle with the issue:¹³

Review Committee in 2008. NAT’L CONFERENCE OF COMM’RS ON UNIF. STATE LAWS, DRAFT FOR APPROVAL AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9 (2010), at Reporter’s Prefatory Note 1, *available at* http://www.law.upenn.edu/bll/archives/ulc/ucc9/2010am_draft.pdf [hereinafter ARTICLE 9 AMENDMENTS DRAFT FOR APPROVAL].

¹⁰ ARTICLE 9 AMENDMENTS DRAFT FOR APPROVAL, *supra* note 9, at Reporter’s Prefatory Note 1. The note lists the many factors weighed by the committee in reaching its decision. *Id.* The Uniform Law Commissioners and the American Law Institute formed the Joint Review Committee after deciding to proceed with drafting amendments to Article 9. *Id.*

¹¹ U.C.C. § 9-503(a)(4) (Alt. A) (Approved Amendments 2010). Alternatives A and B place brackets around “driver’s license” to allow a state to replace that term with an analogous term used by the state. *See id.* § 9-503 legis. n.3. If “this State” has not issued an unexpired driver’s license, Alternative A requires the “individual name of the debtor or the surname and first personal name of the debtor.” *Id.* § 9-503(a)(5).

¹² *Id.* § 9-503(a)(4) (Alt. B).

¹³ ARTICLE 9 AMENDMENTS DRAFT FOR APPROVAL, *supra* note 9, at Reporter’s Prefatory Note 2.

The provisions governing the name required to be provided with respect to a debtor who is an individual were the most contentious and perhaps the most difficult issues addressed by the Joint Review Committee. Recognizing the diversity of views, the Joint Review Committee recommends that each State be asked to choose between two alternatives.¹⁴

The American Law Institute and the Uniform Law Commissioners approved section 9-503 with the alternatives and have offered the Article 9 amendments to the states for adoption.¹⁵

Section 9-503(a)(4) Alternative B raises few questions regarding its operation. Because one of the Alternative B options is identical to the individual name requirement of pre-amendment Revised Article 9,¹⁶ filers and searchers will have familiarity with the requirement, regardless of the problems it created previously. The other safe harbors of Alternative B give filers two additional opportunities to provide a sufficient name on the financing statement.¹⁷ A secured creditor that acts with due diligence should have little trouble satisfying the debtor's name requirement of Alternative B because any of three options is sufficient.¹⁸

Section 9-503(a)(4) Alternative A, with its driver's-license-only sufficiency requirement, raises many questions concerning its operation. For example: What if the debtor has multiple driver's licenses? What happens when the license expires? What happens when the debtor changes her name? What happens when the debtor moves to another state? The answers to those questions are important because the majority of jurisdictions adopting the Article 9 amendments also adopt Alternative A.¹⁹ This

¹⁴ *Id.*

¹⁵ The amendments specify an effective date of July 1, 2013. U.C.C. § 9-801 (Approved Amendments 2010).

¹⁶ The "financing statement sufficiently provides the name of the debtor ... only if it provides the individual ... name of the debtor" U.C.C. § 9-503(a)(4)(A) (2002).

¹⁷ U.C.C. § 9-503(a)(4) (Alt. B) (Approved Amendments 2010).

¹⁸ *Id.*

¹⁹ Of the nine jurisdictions that have enacted the Article 9 amendments to date, seven chose Alternative A: Indiana, H.B. 1321, 117th Gen. Assemb., Reg. Sess. (Ind. 2011); Minnesota, S.F. 194, 87th Legis. Sess., Reg. Sess. (Minn. 2011); Nebraska, L.B. 90, 102d Legis. Sess. (Neb. 2011); Nevada, A.B. 109, 76th Reg. Sess. (Nev. 2011); North Dakota, H.B. 1137, 62d Leg. Assemb. (N.D. 2011); Rhode Island, H.B. 5573, Jan. Sess. (R.I. 2011); and Texas, S.B. 782, 82d Leg. (Tex. 2011). Connecticut and Washington enacted Alternative B. H.B. 6274, 2011 Sess. (Ct. 2011); H.B. 1492, 62d Leg., Reg. Sess. (Wash. 2011). There is debate about which is the better alternative. *See, e.g.,* Harry C. Sigman, *Improvements (?) to the UCC Article 9 Filing System*, 46 GONZ. L. REV. 457, 459 (2010–11) (supporting Alternative B); American Bankers Association UCC Article 9 Working Group, *Section 9-503. Name of Debtor and Secured Party Position Paper* (Mar. 17,

Article asks and answers questions pertaining to satisfying the financing statement requirements for the name of an individual debtor under section 9-503(a)(4) Alternative A.

Part I of this Article examines the debtor's name requirements of sections 9-503(a)(4) and (a)(5), Alternative A. Part II explains the Article 9 sections that can save a financing statement that does not satisfy those requirements. Part III answers twenty questions that relate to complying with the debtor's name requirements under Alternative A.

I. SECTION 9-503(A)(4) ALTERNATIVE A

Section 9-503(a)(4) Alternative A establishes the rule for sufficiency of the name of an individual debtor for a financing statement.²⁰ If the jurisdiction governing perfection ("this State") has issued a driver's license that has not expired, a financing statement is sufficient as to the name of the debtor only if it provides the name of the individual as it is indicated on the driver's license.²¹ The section creates a straightforward test—if this State has issued an unexpired driver's license, a financing statement must provide the name indicated on the license.²² It is the only name that allows a financing statement to be sufficient.²³

In some states, the agency that issues a driver's license also can issue an identification card to an individual who does not hold a driver's license.²⁴ The legislative note to section 9-503 advises those states to replace "driver's license" in subsection (a)(4) with an appropriate term that

2011), <http://www.aba.com/aba/documents/GeneralCounsel/UniformLaws/Article9PositionPaper03172011.pdf> (supporting Alternative A); Letter from Patrick M. Costell, Committee Co-Chair, Uniform Commercial Code Committee of the Business Law Section of the State Bar of California, to Uniform Law Commission and Article 9 Review Committee, *Re: Possible Amendments to Uniform Commercial Code Article 9 Individual Debtor Name Provisions* (July 9, 2009), available at http://www.law.upenn.edu/bll/archives/ulc/ucc9/letter_2009july9.pdf (supporting Alternative B); Barkley Clark, *Four Reasons to Adopt Alternative A for Individual Debtor Names*, AMERICAN BANKERS ASSOCIATION (Mar. 18, 2011), <http://www.aba.com/aba/documents/GeneralCounsel/UniformLaws/UCC9FourReasons03182011.pdf> (supporting Alternative A).

²⁰ U.C.C. § 9-503(a)(4) (Alt. A) (Approved Amendments 2010).

²¹ The drafters recognized that not all states will use the term "driver's license" to denote the license that authorizes an individual to operate a motor vehicle. *Id.* § 9-503 legis. n.3. For example, a state may use "operator's license." Such states should insert the applicable term in section 9-503(a)(4).

²² *Id.* § 9-503(a)(4) (Alt. A).

²³ *Id.*

²⁴ See, e.g., *Adult ID Card*, VIRGINIA DEPARTMENT OF MOTOR VEHICLES, http://www.dmv.state.va.us/webdoc/citizen/id/adult_id.asp (last visited Jan. 31, 2012).

covers both documents.²⁵ In a state whose section 9-503(a)(4) includes “driver’s license or identification card,” a financing statement is sufficient if it provides the name indicated on an identification card when the state has not issued a driver’s license.²⁶ The Legislative Note limits this option to states where “an individual may hold either a driver’s license or an identification card but not both.”²⁷

“This State” in subsection (a)(4) is the state whose Article 9 governs perfection of the security interest determined under sections 9-301 and 9-307.²⁸ The general rule of section 9-301 is that the law of the jurisdiction where the debtor is located governs perfection.²⁹ Section 9-307(b)(1) provides that an individual debtor is located at the individual’s principal residence.³⁰ For example, if an individual debtor resides in Iowa, Iowa’s Article 9 governs perfection of a security interest created by the debtor.

Secured parties must be cognizant of the order in which the driver’s license or identification card lists the debtor’s names. The first name listed on the license could be the debtor’s surname or the debtor’s first personal name. For example, a driver’s license that provides “John, Elton” could be indicating “John” as the surname or the first personal name.³¹ The secured party must provide the name of the debtor as indicated on the license in the correct boxes on the financing statement: “Individual’s Surname”; “First Personal Name”; and “Additional Name(s)/Initial(s).”³² Note that if

²⁵ U.C.C. § 9-503 legis. n.3. Of the seven states that have enacted section 9-503(a)(4), Alternative A, only Nebraska did not include an identification card as a means for determining the debtor’s name. L.B. 90, 102d Legis. Sess. (Neb. 2011). For a list of states enacting Alternative A, see *supra* note 19.

²⁶ See, e.g., IND. CODE § 26-1-9.1-503, Version b.

²⁷ U.C.C. § 9-503 legis. n.3.

²⁸ *Id.* § 9-301(1); *id.* § 9-307(b). The first question a party should answer for any security interest is: “Which jurisdiction’s Article 9 governs the security interest?”

²⁹ “Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in collateral.” *Id.* § 9-301(1).

³⁰ *Id.* § 9-307(b)(1). The amendments to Article 9 amend only section 9-307(f), the location of a registered organization organized under federal law. *Id.* § 9-307(f)(2).

³¹ Determining the surname and first personal name can be complicated for names from international cultures. See *Corona Fruits & Veggies, Inc., v. Frozsun Foods, Inc.*, 48 Cal. Rptr. 3d 868, 870–71 (Ca. Ct. App. 2006) (rejecting Latin American naming conventions as controlling under a U.S. law); *All Bus. Corp. v. Choi*, 634 S.E.2d 400, 401 (Ga. Ct. App. 2006) (highlighting the difficulty in determining the surname of “Sang Woo Gu”).

³² See U.C.C. § 9-503 cmt. 2d. The “Debtor’s Name,” box 2b, has spaces for the “Individual’s Surname” and “First Personal Name,” and “Additional Name(s)/Initial(s).” See *UCC Financing Statement (Form UCC1)*, INT’L ASS’N OF COMMERCIAL ADM’RS, <http://>

a driver's license does not provide a debtor's additional name or initial, no such name is required or necessary.³³

Not every state will have issued either a driver's license or an identification card to an individual debtor, regardless of whether "this State" has laws authorizing an individual to obtain a driver's license or identification card. An individual may decide to have neither form of identification. For example, an individual could use a government-issued passport for identification in lieu of a driver's license or identification card. In those situations, section 9-503(a)(4) cannot apply because the state has not issued the requisite document.³⁴ Section 9-503(a)(5) applies when subsection (a)(4) does not.³⁵ Subsection (a)(5) establishes another "only if" rule.³⁶ A financing statement is sufficient as to the name of the debtor "only if the financing statement provides the individual name of the debtor" or the "surname and first personal name of the debtor."³⁷ Use of either name sufficiently indicates the name of the debtor.³⁸

The "individual name of the debtor" option is identical to the name requirement of pre-amendment section 9-503(a)(4)(A).³⁹ Thus, the same difficulties a secured party encountered previously in determining the "individual name" of a debtor will continue into amended Article 9.⁴⁰ Nevertheless, a financing statement sufficiently provides the name of the debtor if it indicates the individual name of the debtor.⁴¹

In addition, the amendments provide a new option—the "surname and first personal name of the debtor."⁴² No middle name or middle initial is required or necessary.⁴³ In theory, determining the debtor's surname, also known as an individual's last name or family name, should not be difficult. The secured party can simply ask the debtor her name or, as a safer option, determine the name by requiring that the debtor furnish mail addressed to the debtor or a copy of the debtor's tax return. Determining the first name of the debtor might be more difficult. This requirement be-

www.iaca.org/downloads/forms/ucc1.pdf (last visited Jan. 31, 2012) [hereinafter *Form UCC-1*].

³³ U.C.C. § 9-503(b) (Alt. A).

³⁴ *Id.* § 9-503(a)(4) (Alt. A).

³⁵ *Id.* § 9-503(a)(5) (Alt. A).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ U.C.C. § 9-503(a)(4)(A) (2002).

⁴⁰ See cases cited *supra* note 5.

⁴¹ U.C.C. § 9-503(a)(5) (Alt. A) (Approved Amendments 2010).

⁴² *Id.*

⁴³ *Id.*

comes tangled in the web of nickname versus actual name. What is the “first personal name” of “Michael” who uses the name “Mike”? For most courts it is “Michael,” but he may respond “Mike” when asked.⁴⁴

The problems arising in determining an individual debtor’s name by using either the individual name or surname and first personal name likely contributed to the drafters’ decision to adopt the debtor’s driver’s license name as the first-tier requirement of section 9-503(a)(4) Alternative A.⁴⁵ Although mandating use of the driver’s license name does not solve all problems, it does provide a means for determining the name of an individual debtor that a secured party can use easily and which most debtors will be able to supply.

II. EFFECTIVENESS OF A FINANCING STATEMENT THAT PROVIDES AN INCORRECT NAME OF THE DEBTOR

The apparent goal of the financing statement name requirements is that the secured party strictly complies. Evidence of that is seen in the Article 9 sections pertaining to financing statements: a financing statement that does not satisfy the name requirements of Article 9 is not effective.⁴⁶ Nevertheless, a financing statement that fails to provide the correct name of the debtor is not completely without effect. Article 9 includes two sections that validate, in some instances, a financing statement that provides an incorrect name.⁴⁷ Those sections are not, however, a panacea for an insuf-

⁴⁴ See *In re Larsen*, 2010 WL 909138, at *1 (Bankr. S.D. Iowa Mar. 10, 2010) (analyzing security agreement by a Michael D. Larsen with listed name of “Mike Larsen”); *In re Borden*, 353 B.R. 886, 887 (Bankr. D. Neb. 2006) (analyzing security agreement by a Michael Borden with listed name of “Mike Borden”); *In re Berry*, 2006 WL 2795507 (Bankr. D. Kan. Sept 26, 2006) (analyzing security agreement by a Michael R. Berry, Jr. with listed name of “Mike R. Berry, Jr.”); *In re Erwin*, 2003 WL 21513158 (Bankr. D. Kan. June 27, 2003) (analyzing security agreement by a Michael A. Erwin with listed name of “Mike Erwin”).

⁴⁵ American Bankers Association UCC Article 9 Working Group, *supra* note 19 (supporting Alternative A); Clark, *supra* note 19 (supporting Alternative A).

⁴⁶ See U.C.C. § 9-310(a) (2002) (“Except as otherwise provided ... a financing statement must be filed to perfect all security interests”); U.C.C. § 9-502(a) (Approved Amendments 2010) (“[A] financing statement is sufficient only if it ... provides the name of the debtor”); *id.* § 9-506(b) (“[A] financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a) is seriously misleading.”).

⁴⁷ *Id.* § 9-506(c) (validating a financing statement that incorrectly provides the debtor’s name); *id.* § 9-507(c) (a filed financing statement remains effective after name it provides becomes seriously misleading).

ficient financing statement. A secured party must be diligent in satisfying the debtor's name requirements.

A. Section 9-506(c)—A Search Discloses the Financing Statement

Section 9-506(c) provides relief for some financing statements that do not satisfy the name requirements of section 9-503(a).⁴⁸ Unfortunately, it provides a cure in limited situations only.⁴⁹ Initially, section 9-506(b) adopts a severe rule that a financing statement is seriously misleading if it fails to provide the name of the debtor as required by section 9-503(a).⁵⁰ A financing statement that is seriously misleading is not effective to perfect a security interest.⁵¹ However, section 9-506(c) is an exception to the rule of section 9-506(b),⁵² which lessens the severity of section 9-506(b) by, in some cases, transforming a financing statement that is seriously misleading into one that is not seriously misleading,⁵³ provided certain criteria are fulfilled.

The rule of section 9-506(c) is simple, but lacking in detail. A filed financing statement that does not satisfy the debtor's name requirement nevertheless is not seriously misleading if a search under the correct name of the debtor, using the standard search logic of the filing office, would disclose the financing statement.⁵⁴ Simple enough—the financing statement is not seriously misleading if the search discloses it regardless of the fact that it does not sufficiently provide the debtor's name.⁵⁵

But what is “standard search logic”? Although Article 9 offers no detail on its meaning, the International Association of Commercial Administrators (IACA) has promulgated model rules for standard search logic.⁵⁶ Basically, standard search logic is the search methodology that a filing office applies when it conducts a search of its filing records for financing

⁴⁸ *Id.* § 9-506(c).

⁴⁹ *Id.*

⁵⁰ “Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a) is seriously misleading.” U.C.C. § 9-506(b).

⁵¹ *See supra* note 46.

⁵² U.C.C. § 9-506(c).

⁵³ *Id.*

⁵⁴ *Id.* The search is performed in the records of the office where the financing statement is filed. *Id.*

⁵⁵ *Id.*

⁵⁶ *See* INT’L ASS’N OF COMMERCIAL ADM’RS (IACA), UNIFORM COMMERCIAL CODE, ARTICLE 9; MODEL ADMINISTRATIVE RULES §§ 100–505 (2010), *available at* http://www.iaca.org/downloads/2010Conference/STS/v14-2010_Model_Administrative_Rules.pdf [hereinafter IACA MODEL RULES].

statements filed against a debtor.⁵⁷ Search methodology rules cover aspects of the debtor's name such as punctuation, upper and lower case letters, accent marks, abbreviations, and number of matches returned.⁵⁸ Searches conducted by filing offices that implement and apply standard search logic produce uniform results because human judgment is not a factor in the search.⁵⁹ States can adopt the IACA rules or create rules of their own.⁶⁰

To illustrate section 9-506(c), assume the debtor's correct name under section 9-503(a)(4) Alternative A is "Michael R. Borden."⁶¹ The secured party files a financing statement providing the debtor's name as "Mike Borden," because that is the name the debtor gives to the secured party, so on its face, the financing statement is seriously misleading for failing to comply with the name requirement of section 9-503(a)(4).⁶² However, section 9-506(c) makes the financing statement not seriously misleading if a search of the financing statement records under the correct name of the debtor using the standard search logic of the filing office would disclose the filed financing statement.⁶³ A standard search logic search would not save this financing statement unless the filing office's standard search logic retrieves all financing statements filed under "Borden" whose first personal name begins with the letter "M." It is unlikely that any filing office has adopted such search logic.⁶⁴ A search of "Michael Borden" using the model standard search logic would retrieve a financing statement providing the initial "M," but not a financing statement providing another name that begins with "M."⁶⁵ This hypothetical demonstrates the limited ability of section 9-506(c) to save a financing statement that provides an incorrect name.

⁵⁷ *Id.* § 501.4.

⁵⁸ *Id.* § 503.1.

⁵⁹ *Id.* § 503.

⁶⁰ The IACA webpage has links to the rules of each state. *Model Administrative Rules for UCC Article 9*, INT'L ASS'N OF COMMERCIAL ADM'RS, <http://www.iaca.org/node/46> (last visited Jan. 31, 2012) [hereinafter *Model Administrative Rules*].

⁶¹ The correct name is the driver's license name for states enacting Alternative A to section 9-503. U.C.C. § 9-503(a)(4) (Alt. A) (Approved Amendments 2010).

⁶² *Id.* § 9-506(b).

⁶³ *Id.* § 9-506(c).

⁶⁴ For the IACA webpage with links to the rules of each state, see *supra* note 60.

⁶⁵ See IACA MODEL RULES, *supra* note 56, § 503.1.8.

B. Section 9-507(c)—Financing Statement that Becomes Insufficient Remains Effective

Section 9-507(c) pertains to the situation in which the name of the debtor on a filed financing statement becomes seriously misleading.⁶⁶ It operates whenever the debtor's name provided on a filed financing statement becomes insufficient, causing the financing statement to become seriously misleading.⁶⁷ A filed financing statement becomes seriously misleading when it does not provide the name of the debtor as required by section 9-503(a)(4), regardless of the reason why the name becomes insufficient.⁶⁸ For example, insufficiency of the debtor's name could result from a name change of the debtor, the expiration of the debtor's driver's license, or the issuance of multiple unexpired licenses by the governing jurisdiction.⁶⁹ Nevertheless, under section 9-507(c)(1), the financing statement remains effective to perfect the security interest in collateral that the debtor acquired before and within four months after the filed financing statement becomes seriously misleading.⁷⁰ No action need be taken by the secured party to continue that perfection.⁷¹

To illustrate section 9-507(c)(1), assume the debtor is a sole proprietor whose full individual name is "Lucille Jennifer Koch," and the collateral

⁶⁶ The operation of section 9-507(c) presumes that the filed financing statement sufficiently provides the name of the debtor. U.C.C. § 9-507(c) ("[T]he name that a filed financing statement provides for a debtor *becomes insufficient* as the name of the debtor") (emphasis added).

⁶⁷ Section 9-507(c) provides relief much more frequently than section 9-506(c) because many common occurrences cause the name on a filed financing statement to become seriously misleading. *See infra* note 69 and accompanying text.

⁶⁸ The section was amended in the 2010 amendments to Article 9. U.C.C. § 9-507 (Approved Amendments 2010). Previously, it applied when the debtor changed its name so that a filed financing statement became seriously misleading. U.C.C. § 9-507(c) (2002). The amendments make the section applicable to the situation in which the name on a filed financing statement becomes seriously misleading, not only when the debtor changes its name. U.C.C. § 9-507(c) (Approved Amendments 2010). The section applies to all debtors, not only an individual debtor.

⁶⁹ These situations are discussed in Questions 13–17. *See infra* Part III.

⁷⁰ U.C.C. § 9-507(c)(1) (Approved Amendments 2010). Although the continued perfection established by section 9-507(c)(1) is phrased as "or" ("effective to perfect a security interest in collateral acquired by the debtor before, *or* within four months after") (emphasis added) there is no logical reason to interpret "or" as indicating an alternative between existing collateral and after-acquired collateral. *Id.* The section uses "or" but the meaning must be "and." If the financing statement remains effective, it must be effective for existing collateral as well as for collateral the debtor acquires within four months after the seriously misleading event. *Cf. id.* § 9-508(b)(2).

⁷¹ *Id.* § 9-507(c).

for the security interest is the debtor's existing and after-acquired inventory. The secured party filed a financing statement that provides the name as indicated on the debtor's driver's license, "Jen Koch."⁷² When her driver's license expires on December 31, 2013, the debtor neglects to obtain a new driver's license and, because there is no unexpired driver's license, section 9-503(a)(5) applies and fixes the name of the debtor as either "Lucille Jennifer Koch" or "Lucille Koch."⁷³ That change causes the financing statement to become seriously misleading on that date unless a standard search logic search would disclose the filed financing statement.⁷⁴ Nevertheless, under section 9-507(c)(1) the financing statement remains effective to perfect the security interest in all inventory the debtor had before the financing statement became seriously misleading and all inventory the debtor acquires within four months after it became seriously misleading.⁷⁵ Thus, the security interest is perfected in all inventory the debtor possesses as of April 30, 2014 (four months after the financing statement became seriously misleading). The security interest remains perfected in such collateral until perfection would otherwise lapse.⁷⁶

Section 9-507(c)(1) offers significant protection for a secured party. Events that can cause the name on a filed financing statement to become seriously misleading are common and likely to occur without the knowledge of the secured party.⁷⁷ Regardless of whether the secured party is negligent, neglectful, or without fault for not discovering the event, losing

⁷² The name of the debtor indicated on the debtor's driver's license could be different from the debtor's individual name because the name on the documentation that a jurisdiction requires to issue a driver's license might not be identical to the debtor's individual name. Because the governing jurisdiction has enacted section 9-503(a)(4) Alternative A, the financing statement must provide the name as indicated on the debtor's driver's license, regardless of whether it is the same as the debtor's individual name. *Id.* § 9-503(a)(4) (Alt. A).

⁷³ The correct name of the debtor is either her individual name or her surname and first personal name. *Id.* § 9-503(a)(5) (Alt. A).

⁷⁴ U.C.C. § 9-506(b)–(c). The discrepancy between the names makes it highly unlikely that a standard search logic search under the correct name would retrieve the filed financing statement.

⁷⁵ *Id.* § 507(c)(1).

⁷⁶ For most security interests perfected by filing, the period of effectiveness of a financing statement, and consequently the period of perfection of the security interest, is five years from the date of filing. *Id.* § 9-515(a), (c). Filing an effective continuation statement can extend the life of a financing statement for an additional five years. *Id.* § 9-515(e).

⁷⁷ A name change of the debtor, the expiration of the debtor's driver's license, or issuance of multiple licenses to the debtor by the governing jurisdiction can all cause the name on a filed financing statement to become seriously misleading. *Id.* § 506(b). The secured party has no way of knowing if these events occur.

perfection of its security interest would be an unforgiving penalty. Another secured party that extends credit based on the debtor's correct name would prefer its competitor's loss of perfection, but that secured party is likely in a better position to discover the various names that the debtor uses or previously used, simply by asking during the credit application process.

The protection of section 9-507(c) is not without limits—not all collateral will be automatically protected. To perfect the security interest in any collateral the debtor acquires more than four months after the financing statement becomes seriously misleading, the secured party must amend the financing statement within that four month period to sufficiently provide the name of the debtor.⁷⁸ The amendment must provide the name in accordance with the applicable “only if” rule—either section 9-503(a)(4) or (a)(5).⁷⁹ Filing an amendment that sufficiently provides the name of the debtor perfects the security interest in all collateral, without any gap in perfection.⁸⁰ Using the names of the hypothetical discussed above, the amendment must provide the name “Lucille Jennifer Koch” or “Lucille Koch.”

In limiting the automatic perfection of the security interest to collateral the debtor has or acquires up to four months after the financing statement becomes seriously misleading, the drafters give the secured party four months to discover that the financing statement has become seriously misleading and to take remedial action.⁸¹ This rule provides some protection for the secured party that extends credit based on the debtor's current correct name and adds a diligence requirement for the secured party whose filed financing statement became seriously misleading.⁸²

A secured party that fails to amend the financing statement will not be perfected in collateral the debtor acquires more than four months after the financing statement becomes seriously misleading.⁸³ Although the security interest will attach to that collateral, provided the security agreement includes an after-acquired property clause, the filed financing statement will not perfect it.⁸⁴ For example, assume the financing statement becomes

⁷⁸ *Id.* § 9-507(c)(2). A financing statement is amended in accordance with section 9-512. U.C.C. § 9-512. Section 9-509(b) authorizes the secured party to file an amendment to the financing statement. *Id.* § 9-509(b).

⁷⁹ *Id.* § 503(a)(4), (5) (Alt. A).

⁸⁰ *Id.* § 9-507(c)(2).

⁸¹ *Id.* § 9-507(c).

⁸² *Id.*

⁸³ U.C.C. § 9-507(c)(2).

⁸⁴ U.C.C. § 9-204(a) (2002) (validating an after-acquired property clause).

seriously misleading on December 31, 2013. The secured party has not filed an amendment to the financing statement. Because the security agreement includes an after-acquired property clause, the security interest attaches to collateral the debtor acquires on May 12, 2014, but the security interest in that collateral is no longer perfected because the four-month safe harbor ended on April 31, 2014. However, failing to file an amendment has no effect on perfection of the security interest in collateral the debtor acquired before the end of the four-month period.

A secured party that fails to timely file an amendment can file it as soon as the secured party discovers that the financing statement has become seriously misleading, regardless that the discovery occurs outside the four-month period.⁸⁵ If filed within the four-month grace period, an amendment that makes the financing statement not seriously misleading will perfect the security interest in all collateral, whenever acquired.⁸⁶ However, if the financing statement is amended after the grace period, the security interest in collateral acquired after the grace period is perfected only from the date of filing the amendment.⁸⁷ Continuing with the previous example, if the secured party files an amendment on June 1, 2014, the financing statement will perfect collateral the debtor acquired on May 12, 2014. However, because the four-month grace period expired, the amendment is effective only from the time of its filing, and there is a gap in perfection for any collateral acquired between the end of the four-month period and the filing of the amendment.⁸⁸ As a result of the gap, the collateral acquired on May 12 has a priority of June 1.⁸⁹ The security interest in the “gap” collateral likely would be subordinate to another security interest perfected before or during the gap period.⁹⁰

III. TWENTY QUESTIONS CONCERNING THE NAME OF THE DEBTOR

The following twenty questions involve pre-filing and post-filing issues. Questions 1 through 11 discuss questions that can arise when a se-

⁸⁵ See U.C.C. § 9-507 cmt. 4 (Approved Amendments 2010) (noting that a secured party may file an amendment either before or after the expiration of the four-month grace period).

⁸⁶ See *id.*

⁸⁷ *Id.*

⁸⁸ *Id.* § 9-507 cmt. 4; *Id.* § 9-512(c).

⁸⁹ *Id.* § 9-322(a)(1).

⁹⁰ Section 9-322(a), the general priority rule of Article 9, awards priority to the security interest with the earlier time of filing or perfection. U.C.C. § 9-322(a). For any “gap” collateral, priority would go to the first security interest to file or perfect during that period. *Id.*

cured party is determining the appropriate name to provide on the financing statement and how to provide it. Question 12 provides guidance on the debtor's name a secured party searches under in a standard search logic search⁹¹ of the financing statement records. Questions 13 through 20 address events that affect the sufficiency of the debtor's name on a filed financing statement, and consequently the perfection of the security interest.

A. Questions

1. What if "this State" Has Not Issued the Debtor a Driver's License?

Suppose the debtor does not have a driver's license. The "only if" rule of section 9-503(a)(4) may nevertheless control sufficiency of the debtor's name. If "this State" (the jurisdiction that governs perfection) is a state in which the same agency that issues a driver's license also issues an identification card to an individual as an alternative to a driver's license *and* the section 9-503(a)(4) of the governing jurisdiction includes both documents in the "only if" rule, then the financing statement is sufficient as to the debtor's name only if it provides the name as it is indicated on the identification card.⁹²

If the section 9-503(a)(4) of the governing jurisdiction does not include identification cards and the state has not issued a driver's license, then section 9-503(a)(5) supplies the requirements for sufficiency of the debtor's name.⁹³ In that case, the financing statement is sufficient only if it provides the individual name of the debtor or the surname and first personal name of the debtor.⁹⁴ This rule, examined in Part I, requires the secured party to ascertain one of those two names of the debtor and place it on the financing statement;⁹⁵ either name is sufficient.⁹⁶

⁹¹ A "standard search logic search" under section 9-506(c) is explained *supra* Part II.A.

⁹² U.C.C. § 9-503(a)(4) (Alt. A). The uniform section 9-503(a)(4), Alternative A places brackets around "driver's license" so that a state can provide appropriate terminology if it adopts the identification card option. *Id.* § 9-503 legis. n.3.

⁹³ Section 9-503(a)(5) applies "if the debtor is an individual to whom paragraph (4) does not apply." *Id.* § 9-503(a)(5) (Alt. A). Subsection (a)(4) does not apply because the governing jurisdiction has not issued a driver's license or identification card.

⁹⁴ *Id.* § 9-503(a)(5) (Alt. A), as discussed *supra* Part I.

⁹⁵ *Id.*

⁹⁶ *Id.*

2. *What if “this State” Has Not Issued the Debtor a Driver’s License or an Identification Card?*

Assume that, although the section 9-503(a)(4) of the governing jurisdiction includes identification cards in its “only if” rule, the debtor has neither driver’s license nor identification card.⁹⁷ Because that debtor is an “individual to whom paragraph [9-503(a)](4) does not apply,” section 9-503(a)(5) governs the debtor’s name.⁹⁸ Sufficiency of the debtor’s name under the “only if” rule of subsection (a)(5) requires that the financing statement provide the individual name of the debtor or the surname and first personal name of the debtor.⁹⁹

3. *What if “this State” Has Issued the Debtor a Driver’s License and an Identification Card that Provide Different Names?*

Assume the section 9-503(a)(4) of the governing jurisdiction includes identification cards in its “only if” rule. The state issued the debtor an identification card in 2012 that indicates the name as “Beth Gannon.” The state issued her a driver’s license in 2014 that indicates the name as “Elizabeth Gannon.”¹⁰⁰ Neither document has expired. Which name is required for a sufficient financing statement?

Section 9-503(g) resolves this name quandary. If the governing state has issued more than one unexpired driver’s license or identification card, the financing statement must provide the name on the document issued most recently.¹⁰¹ The “only if” rule—financing statement must provide name indicated on the applicable driver’s license or identification card—is subject to section 9-503(g), which requires use of the name on the most

⁹⁷ Having neither form of identification would seem to be a rare situation for a debtor who is seeking secured credit, but is possible nevertheless. Perhaps a passport serves as the debtor’s identification.

⁹⁸ U.C.C. § 9-503(a)(5) (Alt. A).

⁹⁹ *Id.*

¹⁰⁰ The feasibility of this situation depends on the state requirements for establishing the name of an individual on a driver’s license or identification card. To establish a name on a license or identification card, a state might require mail addressed to the debtor, a social security card, or a birth certificate. Each document could indicate the individual’s name differently.

¹⁰¹ “If this state has issued to an individual more than one [driver’s license] of a kind described in subsection (a)(4), the one that was issued most recently is the one to which subsection (a)(4) refers.” U.C.C. § 9-503(g) (Alt. A). The brackets placed around “driver’s license” allow states to substitute words that add an identification card to subsection (g). *See id.* § 9-503 legis. n.3.

recently issued document for sufficiency of the financing statement.¹⁰² In this situation the secured party should use “Elizabeth Gannon” on the financing statement.

4. What if “this State” Has Issued the Debtor Multiple, Unexpired Driver’s Licenses?

Suppose the debtor loses his unexpired driver’s license from “this State” and obtains a replacement driver’s license using a different name. For example, Henry Beams’ driver’s license indicates his name as “Henry Beams.” He loses that license and obtains a replacement that indicates his name as “Hank Beams.” Later he finds the lost license and now has two unexpired licenses.¹⁰³ Should a filer indicate “Henry” or “Hank” on a financing statement?

Because the state has issued more than one unexpired driver’s license, section 9-503(g) is the applicable rule.¹⁰⁴ The financing statement is sufficient as to the debtor’s name only if it indicates the name from the most recently issued license.¹⁰⁵ “Hank Beams” is the name necessary for sufficiency.

5. What if Multiple States Have Issued the Debtor Unexpired Driver’s Licenses?

Suppose the debtor spends December to April in Florida at her beach-front condominium and April to December in Michigan at her lakeside cottage and consequently has unexpired driver’s licenses issued by both states. Her Michigan license indicates her name as “Florence M. Sheen” while her Florida license provides her name as “Mary Sheen.” A secured party takes a security interest in her personal art collection, housed in both locations. Which name should the secured party indicate on the financing statement?

This question raises an issue of which jurisdiction’s Article 9 governs perfection of a security interest. The answer to that question determines which name is sufficient on a financing statement, because the amendments to Article 9 do not change the choice-of-law rules with respect to

¹⁰² *Id.* § 9-503(a)(4), (g) (Alt. A).

¹⁰³ Because both licenses are unexpired, the hypothetical posed in the text has two driver’s licenses of a kind described in section 9-503(a)(4), and multiple licenses activate section 9-503(g). *See id.* § 9-503(g). *See supra* note 100 for the possibility of this situation.

¹⁰⁴ U.C.C. § 9-503(g) (Alt. A).

¹⁰⁵ *Id.*

individual debtors.¹⁰⁶ Perfection of a non-possessory security interest in goods is governed by the jurisdiction in which the debtor is located.¹⁰⁷ Other types of collateral are subject to different choice-of-law rules.¹⁰⁸ Section 9-307(b)(1) provides that an individual debtor is located at the individual's principal residence.¹⁰⁹ Article 9 does not define "principal residence," nor does the Official Comment provide guidance, but in most situations, the location of the principal residence should be clear.¹¹⁰ In close cases, the comment advises filing in each jurisdiction that could be the location of the principal residence.¹¹¹

In the hypothetical above, it seems the debtor's principal residence is Michigan because she spends eight months of the year there, thus Michigan law governs perfection of a security interest.¹¹² The financing statement should be filed in Michigan and indicate the debtor as "Florence M. Sheen" using the name on the Michigan license. The "only if" rule does not require an alternate filing in Michigan with the name "Mary Sheen."¹¹³ However, the Comment's advice is sound and caution dictates filing another financing statement in Florida indicating "Mary Sheen," the name indicated on the Florida license, as the debtor.

¹⁰⁶ Compare U.C.C. §§ 9-301(1)–307(b)(1) (2002), with U.C.C. §§ 9-301(1)–307(b)(1) (Approved Amendments 2010).

¹⁰⁷ U.C.C. § 9-301(1) (Approved Amendments 2010). Note that the jurisdiction governing priority of a security interest can be different from that governing perfection. See *id.* § 9-301(3)(C).

¹⁰⁸ The governing law for a security interest in goods covered by a certificate of title is the jurisdiction whose certificate of title covers the goods. U.C.C. § 9-303 (2002). The governing law for a security interest in a deposit account is the jurisdiction of the bank that maintains the account. *Id.* § 9-304(a). The governing law for a security interest in investment property depends on the type of investment property and the method of perfection. *Id.* § 9-305. The governing law for a security interest in a letter-of-credit right is the jurisdiction of the issuer or nominated person. *Id.* § 9-306.

¹⁰⁹ U.C.C. § 9-307(b)(1) (Approved Amendments 2010).

¹¹⁰ *Id.* § 9-307 cmt. 2; see also *LOL Fin. Co. v. Paul Johnson & Sons Cattle Co.*, 758 F. Supp. 2d 871, 893 (D. Neb. 2010) (principal residence found where debtors had lived continuously in jurisdiction for fifteen years); *In re Reel*, 2005 WL 1668279, at *1 (Bankr. D. Wyo. June 7, 2005) (principal residence found where debtor made purchase and subsequently resided in jurisdiction).

¹¹¹ U.C.C. § 9-307 cmt. 2.

¹¹² *Id.*

¹¹³ *Id.* § 9-503(a)(4) (Alt. A).

6. *What if “this State” Has Not Issued the Debtor a Driver’s License, but Another State Has Done so?*

Suppose the debtor moves from Missouri to Kansas, establishing his principal residence in Kansas. Missouri has issued an unexpired driver’s license to the debtor indicating the debtor’s name as “Randall N. Chambers.” The debtor grants a security interest to a Kansas secured party, signing the security agreement as “Randy Chambers,” but has not obtained a Kansas driver’s license. Which name should the secured party provide on the financing statement?

This scenario initially raises a choice-of-law issue. Because the debtor’s principal residence is in Kansas, the Article 9 of Kansas governs perfection of the security interest,¹¹⁴ making Kansas “this State.” The fact that Missouri has issued an unexpired license is irrelevant for two reasons. First, the Article 9 of Missouri does not govern perfection.¹¹⁵ Second, this is not a situation where the governing law changes while there is a perfected security interest because the debtor did not grant a security interest during the time when his principal residence was Missouri.¹¹⁶

After determining the governing law, the secured party can deal with the issue of the debtor’s name. Section 9-503(a)(4) does not apply because Kansas has not issued a driver’s license.¹¹⁷ Thus, the “only if” rule of section 9-503(a)(5) governs. The financing statement is sufficient only if it provides the individual name of the debtor or the surname and first personal name of the debtor.¹¹⁸ Once again the secured party must ascertain one of those two names of the debtor and place it on the financing statement. The Missouri driver’s license is evidence of the debtor’s name and might be the name the secured party chooses to provide on the financing statement. Whether it is sufficient depends on its being the debtor’s individual name or surname and first personal name.

¹¹⁴ The Article 9 of Kansas governs under the rules of 9-301(1) and 9-307(b)(1).

¹¹⁵ See U.C.C. § 9-307(b)(1).

¹¹⁶ *Id.* § 9-316(a) would have continued perfection of a security interest that was perfected before the governing jurisdiction changed. See *infra* Question 18.

¹¹⁷ Application of the “only if” rule of section 9-503(a)(4) depends on “this State” having issued a driver’s license that has not expired. U.C.C. § 9-503(a)(4) (Alt. A).

¹¹⁸ *Id.* § 9-503(a)(5) (Alt. A).

7. *What if the Name on the Debtor's Unexpired License Differs from Her Individual Name?*

Assume that debtor informs secured party that her name is Judith H. McCormack. Secured party examines debtor's unexpired driver's license, which indicates debtor's name as "Judy McCormack." Upon further investigation, secured party determines that debtor's name is Judith H. McCormack. Which name should secured party place on the financing statement?

The "only if" rule of section 9-503(a)(4) controls sufficiency of the debtor's name.¹¹⁹ There is only one name that is sufficient—the name as indicated on the debtor's driver's license.¹²⁰ It is the only name that is sufficient, even though the driver's license name is not the correct name of the individual.¹²¹ The financing statement must provide the name as "Judy McCormack."

The driver's-license-name-only rule applies regardless of the reason for the difference in name.¹²² Suppose the name of the debtor is misspelled on the driver's license—actual name "Judith," driver's license name "Judth"—missing the letter "i." To accomplish sufficiency, the financing statement must indicate the name as "Judth." That is the name on the driver's license and section 9-503(a)(4) mandates its use.¹²³ A secured party must resist the temptation to use the debtor's correct name. The "only if" rule of section 9-503(a)(4) authorizes only one name for sufficiency—the name on the unexpired driver's license.¹²⁴ A cautious secured party might file a financing statement that lists all the debtor's names, but the only name necessary is the name on the unexpired driver's license.

In any situation where the driver's license name differs from the debtor's individual name, the secured party may want to file separate financing statements under the various names of the debtor or list multiple names of the debtor on the financing statement.¹²⁵ Nevertheless, the rule of section 9-503(a)(4) is clear for a court to apply—the only name neces-

¹¹⁹ *Id.* § 9-503(a)(4) (Alt. A).

¹²⁰ Recall that the name on an identification card could supply sufficiency if the applicable section 9-503(a)(4) includes identification cards. *See supra* Question 1.

¹²¹ Article 9 does not determine the "individual name" of the debtor, nor does it provide any guidance on determining such name. U.C.C. § 9-503 cmt. 2d.

¹²² *Id.*

¹²³ *Id.* § 9-503(a)(4) (Alt. A).

¹²⁴ *Id.*

¹²⁵ Section 9-509 authorizes the secured party to file records necessary to perfect the security interest. *Id.* § 9-509. Section 9-503(e) authorizes the secured party to provide multiple names on the financing statement. *Id.* § 9-503(e).

sary for sufficiency of an individual debtor's name is the name as indicated on the debtor's driver's license.¹²⁶

8. *What if the Driver's License Provides a Suffix to the Debtor's Name?*

The debtor's driver's license indicates the name as "Ken Griffey, Jr." Does a sufficient financing statement require "Jr."? If the name on the unexpired driver's license adds "Jr.," that suffix is part of the debtor's name and the financing statement must provide it.¹²⁷ Both the current and the draft Form UCC-1 include a space to provide a suffix.¹²⁸

Other suffixes can indicate status. Suppose the debtor's driver's license indicates the name as "Kristen Price, MD." If the suffix is provided on the driver's license as part of the name, its inclusion is necessary for sufficiency of the financing statement.¹²⁹ The secured party should provide "MD" in the "suffix" field on the financing statement. Entering "Kristen Price" in the "additional debtor" space on the financing statement seems warranted in this situation.¹³⁰

9. *What Surname Issues Might Arise?*

States may vary in the order in which they list the debtor's name on a driver's license. A license could first list the surname or the first personal name of the debtor. The secured party must know the order in which the debtor's name appears on the driver's license because it must enter the appropriate name in the space on the financing statement designated for that name.¹³¹ The financing statement will not be sufficient unless the parts of the debtor's name are placed in the appropriate space on the financing statement.¹³²

¹²⁶ U.C.C. § 9-503(a)(4) (Alt. A).

¹²⁷ See *id.* § 9-503 cmt. 2d; see also *UCC Financing Statement Addendum (Form UCC1Ad)*, INT'L ASS'N OF COMMERCIAL ADM'RS, <http://www.iaca.org/downloads/forms/UCC1AD.pdf> (last visited Jan. 31, 2012) [hereinafter *Form UCC-1Ad*].

¹²⁸ U.C.C. § 9-521(a); *Form UCC-1*, *supra* note 32; *UCC Financing Statement (2013) (Approved)*, INT'L ASS'N OF COMMERCIAL ADM'RS, [http://www.iaca.org/downloads/2011Conference/STS/04.02UCC1\(2013\).pdf](http://www.iaca.org/downloads/2011Conference/STS/04.02UCC1(2013).pdf) (last visited Jan. 31, 2012) [hereinafter *2013 Approved UCC-1*].

¹²⁹ See U.C.C. § 9-503(a)(4) (Alt. A).

¹³⁰ Section 9-503(e) authorizes entry of multiple debtor and secured party names on a financing statement. *Id.* § 9-503(e); see also *Form UCC-1Ad*, *supra* note 127.

¹³¹ See U.C.C. § 9-503 cmt. 2d.

¹³² See *All Bus. Corp. v. Choi*, 634 S.E. 2d 400, 404 (Ga. Ct. App. 2006) (illustrating the problems caused by misplaced names).

This problem can be made more difficult when the license includes three names, two of which could be surnames. For example, if the debtor's driver's license reads "Rosalie Lopez Garcia," the secured party must ascertain whether the surname is "Lopez" or "Garcia."¹³³

A secured party must also be careful with a surname that includes a hyphen. If the driver's license indicates the debtor's surname is hyphenated, the financing statement must include that name in the surname space.¹³⁴

10. What if the Debtor's Name on the Mortgage Record Is Used as the Financing Statement?

Article 9 allows a record of a mortgage to operate as the financing statement filed as a fixture filing.¹³⁵ The mortgage record must satisfy the general requirements of a sufficient financing statement in addition to specific requirements relating to a fixture filing.¹³⁶ In a jurisdiction that enacts the "only if" requirement of Alternative A, should the secured party provide the debtor's driver's license name on the mortgage record?

A secured party logically would assume that the mortgage must provide the debtor's driver's license name because that is the only name sufficient under Alternative A.¹³⁷ However, that is not the rule the drafters adopted. Instead, a mortgage record is effective as a financing statement if the record provides the "individual name" of the debtor or the "surname and first personal name" of the debtor.¹³⁸ This is virtually identical to the "only if" rule of section 9-503(a)(5),¹³⁹ which applies when the governing

¹³³ See *Corona Fruits & Veggies, Inc. v. Frozsun Foods*, 143 Cal. App. 4th 319, 322–25 (2006) (highlighting the issues with multiple potential surnames). If there is a question regarding multiple surnames, both names should be included in the financing statements. *Id.* at 325. The approved financing statement form UCC-1 includes a space for "additional name(s)/initial(s)." 2013 *Approved UCC-1*, *supra* note 128.

¹³⁴ See U.C.C. § 9-503 cmt. 2d (Approved Amendments 2010).

¹³⁵ *Id.* § 9-502(c).

¹³⁶ *Id.*

¹³⁷ *Id.* § 9-503(a)(4) (Alt. A). As noted in Part I, the financing statement must provide the name indicated on the driver's license if the governing jurisdiction has issued an unexpired driver's license. See *supra* Part I.

¹³⁸ U.C.C. § 9-502(c)(3)(B).

¹³⁹ The difference between section 9-503(a)(5) and section 9-502(c)(3)(B) is that section 9-503(a)(5) reads "only if," followed by the name requirements, while section 9-502(c)(3)(B) reads "if," followed by the name requirements. Compare *id.* § 9-503(a)(5), with *id.* § 9-502(c)(3)(B). It seems unlikely that the omission signifies an important difference.

jurisdiction has not issued an unexpired driver's license.¹⁴⁰ The drafters did not indicate why they chose not to authorize use of the driver's license name. Regardless of their rationale, the financing statement must provide the debtor's individual name or the debtor's surname and first personal name to satisfy the name requirement¹⁴¹—either name suffices.¹⁴² The debtor's driver's license name is sufficient for the mortgage record if it matches the debtor's individual name or the surname and first personal name.¹⁴³

11. What Data Field Issues Might Be Encountered?

Data field issues provide a problem a secured party never wants to encounter.¹⁴⁴ Suppose the name on the driver's license includes a special character, which the filing office cannot process, for example “~,” a tilde, or the name on the driver's license exceeds the data field size capability of the filing office. What happens next?

Optimistically, the legislatures adopting Alternative A have heeded the advice of the drafters of the Article 9 amendments and have determined whether such issues exist and resolved them before enactment of Alternative A.¹⁴⁵ Regardless, it is the responsibility of the secured party to ensure that the filed financing statement mirrors the driver's license name.¹⁴⁶ Compliance could require that the secured party file a tangible financing statement to secure consistency between the names. A secured party can facilitate consistency by searching the financing statement index under the debtor's name after filing its financing statement and checking the information indicated on the record retrieved against the information on the financing statement the secured party submitted. The secured party should resolve any discrepancy between the records with the filing office.

A secured party that complies with Article 9's filing requirements receives protection from section 9-516(a). Section 9-516(a) provides that

¹⁴⁰ See *supra* Part I (discussing section 9-503(a)(5)).

¹⁴¹ U.C.C. § 9-503(a)(5) (Alt. A).

¹⁴² *Id.*

¹⁴³ *Id.* § 9-502(c)(3).

¹⁴⁴ The data field issues would arise predominantly in electronic filing situations.

¹⁴⁵ In the Legislative Notes to section 9-503, the drafters raise these issues and advise the states to “make certain that such issues have been resolved.” U.C.C. § 9-503 legis. n.2. These issues can arise in jurisdictions that have adopted Alternative B, but they are not as troublesome because the financing statement can sufficiently provide the debtor's name in any of three ways under the safe harbor rule of Alternative B. *Id.* § 9-503(a)(4) (Alt. B).

¹⁴⁶ *Id.* § 9-506 cmt. 2.

“communication”¹⁴⁷ of a sufficient financing statement to the filing office with tender of the filing fee “constitutes filing.”¹⁴⁸ Thus, a financing statement is filed when the secured party fulfills those requirements, regardless of what the filing office does with the financing statement or how the filing office enters it into the filing index.¹⁴⁹ The key for the filer is to correctly enter the debtor’s name on the financing statement, having regard for any problems with the data field limitations of the filing office.¹⁵⁰ Taking that action initiates the protection of section 9-516(a).¹⁵¹

12. *What Search Issues Should Be Considered?*

Suppose a debtor uses various names: “Becky Johnson,” “Rebecca L. Johnson,” and “Becca Johnson.” Her driver’s license indicates her name as “Becky Johnson” and that is the only name she has used on her driver’s licenses.¹⁵² A potential secured creditor wants to know the existence of any filings against her since they would indicate the possibility of a security interest.¹⁵³ In which names should the secured party search?

Because “this State” has enacted Alternative A, the only sufficient name for the financing statement is “Becky Johnson.”¹⁵⁴ A financing statement that provides only a different name is seriously misleading un-

¹⁴⁷ “Communicate” includes sending a tangible record or electronically sending a record to a filing office that accepts filings made in that manner. *Id.* § 9-102(a)(18).

¹⁴⁸ *Id.* § 9-516(a).

¹⁴⁹ U.C.C. § 9-517 (2002) (“The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.”).

¹⁵⁰ U.C.C. § 9-516(a) (Approved Amendments 2010).

¹⁵¹ *Id.*

¹⁵² The facts of Question 12 are limited to the situation in which the debtor has used the same name for all her driver’s licenses. Question 19 discusses the priority issue created if a filed financing statement provides a sufficient name from a previous driver’s license but that name is different from the name on the current license. *See infra* Question 19.

¹⁵³ A filed financing statement does not guarantee that the security interest is perfected. Perfection requires that the secured party fulfill all attachment and perfection requirements. U.C.C. § 9-308(a) (2002). However, the filing date can fix the priority of a security interest and a potential secured creditor would be interested in that information. *See* U.C.C. § 9-322(a) (Approved Amendments 2010).

¹⁵⁴ *Id.* § 9-503(a)(4) (Alt. A).

less a standard search logic search would disclose it.¹⁵⁵ Thus, an interested creditor should search “Becky Johnson.”¹⁵⁶

The search logic rule of section 9-506(c) does not necessitate searching under other names.¹⁵⁷ That rule validates a financing statement that would be disclosed through a search using the debtor’s correct name.¹⁵⁸ Any financing statement retrieved through a search under “Becky Johnson” would not be seriously misleading. Thus, searching in the names of “Becca Johnson” or “Rebecca L. Johnson” is not necessary to find sufficient financing statements.

Beyond the desire to discover sufficient financing statements filed against a debtor, a potential secured party might want to know the complete secured debt position of the debtor.¹⁵⁹ To gain that knowledge, the secured party should search all possible names of the debtor. Retrieving a filed financing statement that provides an incorrect, seriously misleading debtor’s name does not jeopardize the priority position of the security interest because the security interest coupled to that financing statement is unperfected and a perfected security interest has priority over an unperfected security interest.¹⁶⁰ Knowledge of a prior, unperfected security interest does not affect the priority of a perfected security interest.¹⁶¹ It does, however, provide a creditor with knowledge of other debts and a potential secured party may wish to search other names of the debtor for that reason.

¹⁵⁵ *Id.* § 9-506(b)–(c). A financing statement that provides additional names for the debtor can be effective, even if those names are incorrect, if it also provides the correct name. *Id.* § 9-503(a)(4), (e).

¹⁵⁶ If the jurisdiction whose law governs the security interest has changed, searches under other names of the debtor are warranted because a security interest perfected under the law of the previously applicable jurisdiction remains perfected under section 9-316(a) for a limited period of time. *Id.* § 9-316(a). Question 18 provides a more complete discussion of such a situation. *See infra* Question 18.

¹⁵⁷ *See* U.C.C. § 9-506(c).

¹⁵⁸ *See supra* Part II.A (discussing rule 9-506(c)).

¹⁵⁹ A security interest that has attached but is not perfected is “effective according to its terms.” U.C.C. § 9-201(a) (2002). A filed financing statement that does not provide a sufficient name of the debtor cannot perfect a security interest unless the financing statement is not seriously misleading under the search logic rule of section 9-506(c). U.C.C. § 9-506(c) (Approved Amendments 2010).

¹⁶⁰ *Id.* § 9-322(a)(2).

¹⁶¹ The rule of section 9-322(a) bases priority on time of filing or perfection. Knowledge, notice, or the lack of either are not factors. *See id.* § 9-322(a); *id.* § 9-322 cmt. 4.

13. What Happens if the Debtor's Driver's License Expires while the Debt Remains Unpaid?

A secured party that correctly provides the debtor's driver's license name on the financing statement satisfies the sufficiency requirement for the debtor's name,¹⁶² but what happens when the debtor's driver's license expires and the debtor neglects to renew the license?¹⁶³

Section 9-503(a)(4) does not control this issue because there is no longer an unexpired driver's license.¹⁶⁴ Subsection (a)(5) provides the name requirement.¹⁶⁵ A sufficient name is now either the individual name of the debtor or the surname and first personal name of the debtor.¹⁶⁶ The expiration of the driver's license creates no problems if the name of the debtor on the driver's license is the same as either of the names that are sufficient under subsection (a)(5).¹⁶⁷ If so, the financing statement still sufficiently indicates the name of the debtor and the security interest remains perfected, assuming all other perfection requirements are satisfied.

The problem for the secured party arises if the driver's license name, although correctly provided on the filed financing statement, differs significantly from the names that are sufficient under subsection (a)(5).¹⁶⁸ A financing statement is seriously misleading if it "fails sufficiently" to provide the name of the debtor in accordance with section 9-503(a),¹⁶⁹ and a security interest is not perfected if the financing statement is seriously misleading.¹⁷⁰ Although the search logic rule of section 9-506(c) can validate a financing statement and thus save perfection of the security interest,

¹⁶² *Id.* § 9-503(a)(4) (Alt. A).

¹⁶³ State law controls the duration of a driver's license. *See, e.g.*, KY. REV. STAT. § 186.412(7)(d) (West 2011) (Kentucky law requiring driver's license renewal every four years).

¹⁶⁴ Section 9-503(a)(4) applies when "this State" has issued an unexpired driver's license or, if applicable, an identification card. U.C.C. § 9-503(a)(4) (Alt. A).

¹⁶⁵ *Id.* § 9-503(a)(5) (Alt. A).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ The difference could result from a variance between the driver's license name and the section 9-503(a)(5) names, or from the debtor changing his name.

¹⁶⁹ Section 9-506(b) establishes the rule that a financing statement that "fails sufficiently" to provide the name of the debtor in accordance with section 9-503(a) is seriously misleading, unless saved by the search logic rule of section 9-506(c). U.C.C. § 9-506(b).

¹⁷⁰ *See supra* note 46.

such result is unlikely if there is a significant difference between the names.¹⁷¹

Section 9-507(c), however, provides partial protection for the security interest in this case.¹⁷² It makes the financing statement effective for collateral the debtor acquired before and within four months after the filed financing statement becomes seriously misleading.¹⁷³ To perfect the security interest in collateral the debtor acquires more than four months after the financing statement becomes seriously misleading, the secured party must amend the financing statement to provide sufficiently the name of the debtor within that four-month period.¹⁷⁴

14. What if the Debtor's Driver's License Expires and "this State" Issues Him a New License with Different Name?

The debtor, Robert Allen Zimmerman, legally changes his name to "Bob Dylan." When his driver's license expires, he renews it and is issued a license indicating his name as "Bob Dylan." The filed financing statement indicates the debtor's name as "Robert Allen Zimmerman." Is the debtor's name sufficiently indicated on the financing statement?¹⁷⁵ No, but the financing statement is partially effective regardless of the insufficient name.

Section 9-503(a)(4) governs the sufficiency of the debtor's name because "this State" has issued an unexpired driver's license.¹⁷⁶ Section 9-503(a)(4) requires that the financing statement provide the name on the unexpired driver's license, "Bob Dylan."¹⁷⁷ The financing statement does not sufficiently provide the name of the debtor because it indicates the name of the debtor as "Robert Allen Zimmerman." That error in the deb-

¹⁷¹ A financing statement that does not indicate sufficiently the name of the debtor is not seriously misleading if a search under the debtor's correct name using the filing office's standard search logic would disclose the financing statement. *See supra* Part II.A (discussing section 9-506(c)).

¹⁷² *See supra* Part II.B (discussing section 9-507(c)).

¹⁷³ U.C.C. § 9-507(c)(1) (Approved Amendments 2010).

¹⁷⁴ *Id.* § 9-507(c)(2). A financing statement is amended in accordance with section 9-512.

¹⁷⁵ This issue arises if the current driver's license provides a name different from that of the expired license, regardless of the reason. Note that a filed financing statement remains sufficient under section 9-503(a)(4), Alternative A, regardless of the name change, until a new driver's license is issued. *See infra* Question 15.

¹⁷⁶ U.C.C. § 9-503(a)(4) (Alt. A).

¹⁷⁷ *Id.*

tor's name makes the financing statement seriously misleading, and that affects perfection of the security interest.¹⁷⁸

Happily, section 9-507(c) again performs a partial rescue.¹⁷⁹ The financing statement continues to be effective and the security interest remains perfected for all collateral acquired by the debtor until four months after the financing statement becomes seriously misleading.¹⁸⁰ To perfect the security interest in collateral the debtor acquires thereafter, the secured party must amend the financing statement to provide a sufficient name for the debtor.¹⁸¹

15. What if the Debtor Changes Her Name, and "this State" Does Not Issue Her a New Driver's License?

Suppose the debtor, Stefani Germanotta, legally changes her name to "Lady Gaga." She does not, however, apply for a new driver's license and her driver's license provides her name as "Stefani Germanotta." The filed financing statement likewise indicates the debtor as "Stefani Germanotta." Must the secured party take action to preserve perfection of the security interest? No, the security interest remains perfected until the license expires or a new license is issued.¹⁸²

Section 9-503(a)(4) controls the debtor's name because "this State" has issued an unexpired driver's license.¹⁸³ Sufficiency of the debtor's name requires that the financing statement provide the name as indicated on the unexpired license.¹⁸⁴ The name on the driver's license is "Stefani Germanotta." The name provided on the filed financing statement is "Stefani Germanotta." Therefore, the financing statement sufficiently provides the name of the debtor and the security interest remains perfected. Even if this were a new security interest, perfection by filing a financing statement would require that the financing statement provide "Stefani Germanotta" for the debtor's name.¹⁸⁵

¹⁷⁸ *Id.* § 9-506(b). The search logic rule of section 9-506(c) does not validate the financing statement because a search under the debtor's correct name, "Bob Dylan," would not produce a financing statement indexed under "Zimmerman." *Id.* § 9-506(c).

¹⁷⁹ Section 9-507(c) is discussed more fully *supra* Part II.B.

¹⁸⁰ U.C.C. § 9-507(c).

¹⁸¹ *Id.*

¹⁸² *Id.* § 9-503(a)(4) (Alt. A).

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

If the driver's license expires without issuance of a new license, section 9-503(a)(5) governs sufficiency.¹⁸⁶ That scenario is fully discussed in Question 13.¹⁸⁷ If the driver's license expires and a license is issued that provides the new name, section 9-503(a)(4) controls sufficiency of the debtor's name and section 9-507(c) preserves perfection for some of the collateral.¹⁸⁸ That scenario is fully discussed in Question 14.¹⁸⁹ If "this State" issues a new license before expiration of the current license, sections 9-503(a)(4) and 9-503(g) combine to require use of the name on the new license for sufficiency.¹⁹⁰ That scenario is fully discussed in Question 16.¹⁹¹

16. What if the Debtor Changes Her Name, and "this State" Issues Her a New Driver's License?

Stefani Germanotta, the debtor from Question 15, after legally changing her name to "Lady Gaga," obtains a new driver's license that provides her new name. Assuming that her previous license does not automatically expire on the issuance of a new license, she now has two unexpired driver's licenses. Because "this State" has issued an unexpired driver's license, section 9-503(a)(4) provides the sufficiency rule.¹⁹² When a state has issued multiple unexpired driver's licenses, section 9-503(g) mandates that the most recently issued license is the license used for purposes of 9-503(a)(4).¹⁹³

A name change followed by a new license can produce two scenarios. In one scenario, the name change creates no problem, because the filed financing statement providing the debtor's previous name is disclosed by a standard search logic search under the name on the current license.¹⁹⁴ In that case, the name change does not make the financing statement seriously misleading and the security interest remains perfected in all collateral-

¹⁸⁶ Section 9-503(a)(5) governs because "this State" has not issued an unexpired driver's license. U.C.C. § 9-503(a)(5) (Alt. A).

¹⁸⁷ See *supra* Question 13.

¹⁸⁸ See *supra* Part II.B (discussing section 9-507(c) more fully).

¹⁸⁹ See *supra* Question 14.

¹⁹⁰ U.C.C. § 9-503(a)(4), (g) (Alt. A).

¹⁹¹ See *infra* Question 16.

¹⁹² U.C.C. § 9-503(a)(4) (Alt. A).

¹⁹³ *Id.* § 9-503(a)(4), (g) (Alt. A).

¹⁹⁴ The filing records are searched using the current license debtor's name because section 9-506(c) requires a search under the debtor's "correct name" and section 9-503(g), Alternative A directs that the name on the most recently issued license is the correct name. *Id.* § 9-506(c); *id.* § 9-503(g) (Alt. A).

al.¹⁹⁵ That outcome is not possible with our hypothetical since the two names are significantly different.

The other scenario creates a problem because a search under the debtor's current license name does not produce the filed financing statement. That means the financing statement is seriously misleading.¹⁹⁶ Once again, section 9-507(c)(1) continues the effectiveness of the filed financing statement for all collateral the debtor acquires before the financing statement becomes seriously misleading or within four months after that event.¹⁹⁷ To perfect the security interest in collateral the debtor acquires after the four-month period, the secured party must amend the financing statement so it provides the name of the debtor indicated on the current license.¹⁹⁸ In our hypothetical, the secured party must therefore amend the financing statement to indicate the name of the debtor as "Lady Gaga."

17. What if the Debtor Marries and Takes the Name of the Spouse?

Assume that a filed financing statement provides the name of the debtor as indicated on the debtor's current driver's license. If the debtor marries, takes the name of the spouse, and does not obtain a new driver's license, this presents the same issue as discussed in detail in Question 15. Section 9-503(a)(4) provides the rule for sufficiency of name because the facts present an unexpired driver's license.¹⁹⁹ Regardless of the new name, the name on the driver's license is required for sufficiency of a financing statement.²⁰⁰

If the debtor marries, takes the name of the spouse, and obtains a new driver's license providing the married name, this presents the same issue as discussed in detail in Question 16. Assuming the debtor possesses two unexpired licenses,²⁰¹ section 9-503(g) designates the most recently issued license as the license used for establishing the name of the debtor under

¹⁹⁵ See *supra* Part II.A (discussing section 9-506(c)).

¹⁹⁶ U.C.C. § 9-506(b).

¹⁹⁷ *Id.* § 9-507(c)(1).

¹⁹⁸ *Id.* § 9-507(c). Filing the amendment during the four-month grace period provides continuous perfection for collateral acquired after four months. Filing after the four-month period provides perfection for that collateral from the time of filing. See *supra* Part II.B.

¹⁹⁹ U.C.C. § 9-503(a)(4) (Alt. A).

²⁰⁰ *Id.*

²⁰¹ Whether the debtor has two unexpired driver's licenses depends on whether the laws and regulations of the state provide for the automatic expiration of a previous license on the issuance of a new license.

section 9-503(a)(4).²⁰² If the name change makes the financing statement seriously misleading, section 9-507(c)(1) maintains perfection for existing and four months of after-acquired collateral regardless whether the secured party amends the financing statement to provide the correct name.²⁰³ Amending the financing statement is necessary to perfect the security interest in collateral acquired more than four months after the financing statement becomes seriously misleading.²⁰⁴ Because of the likely difference in the debtor's married and unmarried names, it is doubtful the search logic rule of section 9-506(c) would make the financing statement not seriously misleading.

18. What if the Jurisdiction Governing the Security Interest Changes?

Suppose an individual debtor who resides in a jurisdiction that adopted Alternative A to section 9-503(a)(3) changes her principal residence to a jurisdiction that adopted Alternative B. A secured party previously perfected its security interest in the Alternative A jurisdiction by filing a financing statement that provided the name of the debtor as indicated on the debtor's driver's license issued by the Alternative A jurisdiction.

The change in principal residence causes an immediate shift in the law that governs perfection of the existing security interest.²⁰⁵ In accordance with sections 9-301(1) and 9-307(b)(1), perfection of the security interest is governed by the law of the jurisdiction where the debtor is located: his principal residence.²⁰⁶ Section 9-316 controls the effect that a change in governing law has on perfection of a security interest.²⁰⁷ Perfection of the security interest is in question because the Alternative B jurisdiction has become the proper jurisdiction in which to file a financing statement. The following explanation of section 9-316 is pertinent also if the governing law changes from Alternative B to Alternative A or if the debtor changes her principal residence to another Alternative A jurisdiction.

The security interest perfected under the law of the Alternative A jurisdiction remains perfected in the Alternative B jurisdiction until the earlier of four months after the change in governing law or the time per-

²⁰² U.C.C. § 9-503(g) (Alt. A).

²⁰³ See *supra* at Part II.B (discussing section 9-507(c)).

²⁰⁴ U.C.C. § 9-507(c)(2).

²⁰⁵ *Id.* § 9-503 cmt. 2d.

²⁰⁶ Section 9-301(1) provides that the law of the jurisdiction where the debtor is located governs perfection of a security interest. *Id.* § 9-301(1). Section 9-307(b)(1) provides that an individual debtor is located in the jurisdiction of the debtor's principal residence. *Id.* § 9-307(b)(1).

²⁰⁷ *Id.* § 9-316.

fection would have ceased under the law of the Alternative A jurisdiction.²⁰⁸ This continuing perfection is not contingent on the filing of a financing statement in the Alternative B jurisdiction.²⁰⁹ For example, suppose the perfection of a security interest perfected under the law of an Alternative A jurisdiction would lapse on December 30, 2013.²¹⁰ The debtor changes her residence to an Alternative B jurisdiction on July 15, 2013. Section 9-316(a) continues perfection of the security interest until November 15, 2013.²¹¹ If the secured party perfects the security interest in the new jurisdiction before November 15, 2013, the security interest remains perfected thereafter.²¹² In essence, section 9-316(a) creates a grace period for the secured party to discover the change in location of the debtor and perfect under the law of the new jurisdiction.²¹³ The grace period lasts until the earlier of four months after the governing law changes or the remaining period of perfection under the previous governing law.²¹⁴ Although this grace period is a maximum of four months, it is less than four months in the situation where perfection of the security interest would cease under the law of the previous jurisdiction before the expiration of four months after the change in governing law.²¹⁵

Because the governing law is an Alternative B jurisdiction, a financing statement sufficiently provides the debtor's name if it indicates the debtor's individual name, the surname and first personal name, or the name from an unexpired driver's license issued by the new jurisdiction.²¹⁶ If the change in governing law is from an Alternative B jurisdiction to an Alternative A jurisdiction, the financing statement sufficiently shows the debtor's name only if provides the name on the expired driver's license.²¹⁷ However, if the new jurisdiction has not issued a license, then either the

²⁰⁸ *Id.* § 9-316(a)(1)–(2). An amendment to section 9-316 adds a similar rule for collateral the debtor acquires pursuant to an after-acquired property clause of a security agreement after a change in governing law. U.C.C. § 9-316(h).

²⁰⁹ *Id.* § 9-316(a); *see also id.* § 9-503.

²¹⁰ Most financing statements are effective for five years from the date of their filing. *Id.* § 9-515(a). When the effectiveness of the financing statement ends, a security interest perfected by filing becomes unperfected unless a continuation statement is filed. *Id.* § 9-515(c).

²¹¹ *Id.* § 9-316(a).

²¹² U.C.C. § 9-316(b); *see also id.* § 9-316(h).

²¹³ The secured party can increase the odds it will discover the change in location by including a term in the security agreement that requires the debtor to notify it of any change of residence.

²¹⁴ U.C.C. § 9-316(a).

²¹⁵ *Id.*

²¹⁶ *Id.* § 9-503(a)(4) (Alt. B).

²¹⁷ *Id.* § 9-503(a)(4) (Alt. A).

debtor's individual name or the surname and first personal name is sufficient.²¹⁸

An important aspect of the change in governing law is the change in place of filing a financing statement. Because each jurisdiction's section 9-501 will designate an office in that jurisdiction as the place of filing a financing statement, a change in governing law will require a new filing if the security interest is perfected by filing a financing statement.²¹⁹ Thus, even if the debtor's name is the same in both jurisdictions, perfection of the security interest requires a filing in the new jurisdiction.²²⁰ The grace periods of section 9-316(a) grant the secured party time to make that filing.²²¹

Section 9-316(b) implements grave consequences if the secured party fails to perfect in the new jurisdiction before the expiration of the earlier of four months after the change or the remaining period of perfection in the old jurisdiction.²²² First, the security interest becomes unperfected.²²³ Second, it is deemed never to have been perfected against a purchaser of the collateral.²²⁴ "Purchaser" includes a person who takes a security interest.²²⁵ The second consequence is a "retroactive unperfection" rule.²²⁶ If a purchaser has an interest in the collateral and the secured party does not timely perfect in the new jurisdiction, the rule of section 9-316(b) is that the security interest never was perfected as against the purchaser.²²⁷ The purchaser will have priority over the security interest regardless whether the security interest was perfected before the purchaser acquired its interest.²²⁸ For example, Bank perfects its security interest by filing a financing statement in State A. Later, Lender perfects a security interest in the same collateral by filing a financing statement in State A. Bank's security interest has priority over Lender's security interest under the first-to-file-or-

²¹⁸ *Id.* § 9-503(a)(5) (Alt. A).

²¹⁹ *Id.* § 9-501(a).

²²⁰ U.C.C. § 9-316(b).

²²¹ *Id.* § 9-316(a).

²²² *Id.* § 9-316(b).

²²³ *Id.*

²²⁴ *Id.*

²²⁵ The definitions of "purchaser" and "purchase" are found in sections 1-201(b)(30) and (29) respectively. U.C.C. § 1-201(b)(29)–(30) (2002). A secured party is a purchaser under those definitions. *Id.*

²²⁶ U.C.C. § 9-316(b) cmt. 3 (Approved Amendments 2010).

²²⁷ *Id.* § 9-316(b).

²²⁸ A perfected security interest has priority over an unperfected security interest. *Id.* § 9-322(a)(2).

perfect rule of section 9-322(a)(1).²²⁹ Debtor changes his principal residence to State B and Lender files a financing statement in State B. Bank is unaware of the change in governing law so it does not file in State B. When Bank's perfection ceases (the earlier of four months after the change to State B or the remaining period of perfection in State A), Lender's security interest gains priority over Bank under the rules of sections 9-316(b) and 9-322(a)(2).²³⁰

19. What Priority Issues Might Arise?

Two or more security interests can exist in the same collateral.²³¹ A debtor can use different names on her driver's licenses issued at different times.²³² The collision of those circumstances raises an interesting priority question. Suppose Bank perfects a security interest by filing a financing statement that provides the name of the debtor as "Richard Wilson," the name indicated on the debtor's current driver's license. The license expires, and the debt remains unpaid. Debtor obtains a new license that indicates his name as "Dick Wilson." Six months later, Lender makes a secured loan to debtor and perfects its security interest by filing a financing statement that provides the name of the debtor as "Dick Wilson," the correct name under section 9-503(a)(4) Alternative A because it is the name on the only unexpired driver's license.²³³

Regardless of the difference in the name provided on each financing statement, both are effective and—assuming all other perfection requirements are satisfied—both security interests are perfected. Lender's financing statement is effective because it satisfies the debtor's name requirement of section 9-503(a)(4) by providing the name of the debtor as indicated on the unexpired driver's license.²³⁴ Bank's financing statement is effective under section 9-507(c) notwithstanding that the insufficiency of the debtor's name makes it seriously misleading.²³⁵ The effectiveness of

²²⁹ *Id.* § 9-322(a)(1).

²³⁰ *Id.* §§ 9-316(b), 9-322(a)(2).

²³¹ *Id.* § 9-322.

²³² *See supra* Part II.B.

²³³ The same problem could arise if the debtor possesses two unexpired driver's licenses. The most recently issued license controls. U.C.C. § 9-503(g) (Alt. A).

²³⁴ *Id.* § 9-503(a)(4) (Alt. A).

²³⁵ *Id.* § 9-507(c). Bank's financing statement does not sufficiently provide the name of the debtor because it indicates the name on the expired driver's license and the correct name is the name indicated on the unexpired driver's license. *Id.* § 9-503(a)(4) (Alt. A). Thus, the financing statement is seriously misleading regarding the debtor's name. *Id.* § 9-506(b), (c).

Bank's financing statement, however, is only for collateral the debtor acquired before the financing statement became seriously misleading and within four months thereafter.²³⁶ To perfect the security interest in collateral the debtor acquires more than four months after the financing statement became seriously misleading, Bank must amend the financing statement to provide the correct name.²³⁷ Bank has not amended its financing statement. The result is that there are conflicting perfected security interests in collateral the debtor acquired before the financing statement became seriously misleading and within four months thereafter.

Section 9-322(a) determines the priority of conflicting security interests if no specific rule of Article 9 is applicable to the situation.²³⁸ It awards priority to the security interest that has the earlier date of filing or perfection.²³⁹ Bank's financing statement remains effective and it was filed before Lender's financing statement. Thus, Bank has priority in collateral the debtor acquired before the financing statement became seriously misleading and within four months thereafter. That Lender's financing statement is the only financing statement that is sufficient as to the debtor's name does not change the priority between the security interests.

Lender can gain knowledge of Bank's filing by requiring Debtor to disclose all names he uses and has used and searching through those names.²⁴⁰ With that knowledge, Lender can decide whether to extend credit.²⁴¹ However, a debtor might forget a previously used name or knowingly fail to disclose a name. Those events could cause the debtor to be in default under the security agreement with Lender, but they do not change the priority between the security interests.

20. What if the Financing Statement Is Sufficient under Pre-Amendment Article 9 but Not under Amended Article 9?

Suppose the debtor's individual name is Stephen Lynn Wilms. Secured party perfects its security interest in December 2012 by filing a financing statement providing that name. That financing statement sufficiently pro-

²³⁶ See *supra* Part II.B (discussing section 9-507(c)(1)).

²³⁷ U.C.C. § 9-507(c)(2). If a secured party amends the filed financing statement within the four-month period, the security interest is continuously perfected in all collateral without any gap in perfection. See *supra* notes 78–82 and accompanying text.

²³⁸ U.C.C. § 9-322(f).

²³⁹ *Id.* § 9-322(a)(1).

²⁴⁰ Lender could even obtain the debtor's promise that he has disclosed all current and previous names.

²⁴¹ Lender could request that Bank subordinate its priority and, if Bank agrees, section 9-339 recognizes the validity of the agreement. U.C.C. § 9-339 (2002).

vides the debtor's name under pre-amendment Article 9 section 9-503(a)(4)(A).²⁴² The governing jurisdiction enacts section 9-503(a)(4) Alternative A, effective July 1, 2013. Although the security interest attached and was perfected under pre-amendment Article 9, section 9-802(a) makes amended Article 9 applicable to pre-amendment security interests upon the effective date of the amendments.²⁴³ Consequently, the debtor's name requirements of amended section 9-503(a)(4) apply to secured party's filed financing statement. On July 1, 2013, debtor's unexpired driver's license indicates his name as "Steve Wilms." Assuming that a standard search logic search²⁴⁴ under "Steve Wilms" would not produce the filed financing statement, the financing statement does not sufficiently provide the name of the debtor under amended Article 9 section 9-503(a)(4). Does the security interest remain perfected nevertheless? The short answer is yes, although the duration and extent of perfection vary depending on which section of Article 9 governs this issue and where the financing statement was filed.

There are two possible solutions to this question. First, the effect of the transition to amended Article 9 could engage section 9-507(c)—"the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under Section 9-503(a) so that the filed financing statement becomes seriously misleading."²⁴⁵ A secured party could assert that because amended Article 9 changes the requirements for sufficiency of the debtor's name, the filed financing statement becomes insufficient, thus seriously misleading, and results in the applicability of section 9-507(c).²⁴⁶ If section 9-507(c) applies, it makes the financing statement effective for collateral the debtor acquired before the financing statement became seriously misleading, and within four months thereafter.²⁴⁷ Be-

²⁴² *Id.* § 9-503(a)(4)(A) ("A financing statement sufficiently provides the name of the debtor ... only if it ... provides the individual ... name of the debtor").

²⁴³ U.C.C. § 9-802(a) (Approved Amendments 2010) ("Except as otherwise provided in this part, this [Act] applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this [Act] takes effect."). The brackets around "Act" allow a jurisdiction to insert the title it assigns the Article 9 amendments.

²⁴⁴ Section 9-506(c) renders the error on a financing statement not seriously misleading if a search under the debtor's correct name using the filing office's standard search logic would reveal the financing statement. *Id.* § 9-506(c). *See supra* part II.A.

²⁴⁵ U.C.C. § 9-507(c).

²⁴⁶ *Id.*

²⁴⁷ *Id.* § 9-507(c)(1). An amendment that renders the financing statement not seriously misleading must be filed to perfect the security interest in collateral the debtor acquires more than four months after the financing statement became seriously misleading. *Id.* § 9-507(c)(2).

cause the financing statement is effective for that collateral, the security interest in that collateral remains perfected, although the secured party has not amended the financing statement to provide the name on the current driver's license. Under this solution, the extent of perfection is limited to time-specific collateral.

Utilizing section 9-507(c), however, apparently does not align with the intent of the drafters of amended Article 9.²⁴⁸ Their Comment to section 9-801 includes an example that is identical to the situation Question 20 presents.²⁴⁹ They address the issue using section 9-805, without mentioning section 9-507.²⁵⁰ Accordingly, the second solution comes from section 9-805(b).²⁵¹ However, a brief discussion of section 9-803(b) is warranted first because section 9-805(b) is an exception to it.²⁵²

A secured party concerned about whether the Article 9 amendments will affect perfection of its security interest might be alarmed after reading section 9-803(b). It provides that a security interest perfected under pre-amendment Article 9 that does not satisfy the perfection requirements of amended Article 9 remains perfected for only one year after amended Article 9 becomes effective.²⁵³ The amendments to the debtor's name requirements can cause the financing statement to fail to satisfy the amended Article 9 perfection requirements.²⁵⁴ But the secured party need not panic because the one-year rule is subject to section 9-805.²⁵⁵

Section 9-805(b) pertains to a financing statement that satisfies the perfection requirements of the applicable governing jurisdiction under pre-amendment Article 9.²⁵⁶ The subheading for subsection (b) is: "When pre-

²⁴⁸ *Id.* § 9-801 cmt.

²⁴⁹ Section 9-801 is part of the "Transition Provisions for 2010 Amendments," adopted in Article 9, Part 8. The difference between this situation and the comment is the name of the individual debtor.

²⁵⁰ U.C.C. § 9-801 cmt.

²⁵¹ *Id.* § 9-805(b).

²⁵² *Id.* § 9-803(b); *id.* § 9-805(b).

²⁵³ *Id.* § 9-803(b) ("Except as otherwise provided in Section 9-805, if, immediately before this [Act] takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under [Article 9 as amended by this [Act]] are not satisfied when this [Act] takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under [Article 9 as amended by this [Act]] are satisfied within one year after this [Act] takes effect.").

²⁵⁴ Compare U.C.C. § 9-503(a)(4)(A) (2002), with U.C.C. § 9-503(a)(4) (Alt. A) (Approved Amendments 2010).

²⁵⁵ U.C.C. § 9-803(b) (Approved Amendments 2010).

²⁵⁶ *Id.* § 9-805(b).

effective-date filing becomes ineffective.”²⁵⁷ Subsection (b) adopts two rules.²⁵⁸ First, a filed financing statement that perfected a security interest under pre-amendment Article 9 is not rendered ineffective.²⁵⁹ The implicit meaning is that a financing statement effective under pre-amendment Article 9 remains effective regardless of whether it satisfies the perfection requirements of amended Article 9.²⁶⁰ The second rule establishes the duration of the effectiveness of the filed financing statement.²⁶¹ The duration of effectiveness depends on the jurisdiction where the financing statement is filed.²⁶²

If the financing statement was filed in the same jurisdiction that now governs perfection of the security interest, the effectiveness of the financing statement ceases when its effectiveness would have ceased under pre-amendment Article 9.²⁶³ For example, if a security interest was perfected by filing a financing statement in Ohio on August 1, 2011, and Ohio law governs perfection of the security interest under amended Article 9, the financing statement remains effective until August 1, 2016, the length of its effectiveness under pre-amendment Article 9.²⁶⁴ If the filed financing statement was filed in a jurisdiction other than the now governing jurisdiction, the effectiveness of the financing statement ceases at the earlier of when its effectiveness would have ceased under pre-amendment Article 9 or June 30, 2018.²⁶⁵ Under this solution the extent of perfection is not limited to certain collateral, but the duration of perfection has a limited time period.²⁶⁶

²⁵⁷ *Id.* Although the section captions are part of the uniform act, U.C.C. § 1-107 (2002), the subheadings of Article 9 “are not a part of the official text itself and have not been approved by the sponsors.” *Id.* § 9-101 cmt. 3. Each jurisdiction can decide whether to adopt the subheadings. *Id.*

²⁵⁸ U.C.C. § 9-805(b) (Approved Amendments 2010).

²⁵⁹ *Id.*

²⁶⁰ A filed financing statement could fail to satisfy the amended Article 9 perfection requirements because of differences from pre-amendment Article 9 in the requirements for the debtor’s name or a change in governing law caused by differences from pre-amendment Article 9 in fixing the location of the debtor.

²⁶¹ U.C.C. § 9-805(b). The duration rules are qualified by: section 9-805(c) (effectiveness of a continuation statement), section 9-805(d) (effectiveness of financing statement when debtor is a transmitting utility), and section 9-806 (filing an “in lieu” statement to continue effectiveness of financing statement). *Id.* §§ 9-805(c)–(d), 9-806.

²⁶² *Id.* § 9-805(b)(2).

²⁶³ *Id.* § 9-805(b)(1).

²⁶⁴ This assumes the applicability of the five-year rule for duration of the effectiveness of a financing statement under section 9-515(a). *Id.* § 9-515(a).

²⁶⁵ *Id.* § 9-805(b)(2).

²⁶⁶ U.C.C. § 9-805(b)(2).

The good news for the secured party is that under either section 9-805(b)(1) or (b)(2), the financing statement remains effective when Article 9 becomes effective and thus the security interest continues perfected without immediate action by the secured party.²⁶⁷ Consequently, it is not necessary that a secured party review all pre-amendment filings before the effective date of amended Article 9 to determine if they will satisfy the requirements of amended Article 9. That review is necessary when it is time to continue the effectiveness of a pre-amendment financing statement.²⁶⁸ Returning to the situation Question 20 poses, although the filed financing statement does not sufficiently provide the debtor's name under amended Article 9, it remains effective to perfect the security interest because it was sufficient under pre-amendment Article 9 to perfect the security interest.

CONCLUSION

It is of utmost importance that the secured party correctly provides the name of the debtor on the financing statement. Failure to do so can result in the security interest being unperfected. It seems as if compliance would be uncomplicated but, in the case of individual debtors, ascertaining the correct name can require choosing among alternatives. Choosing the wrong name can prove a fatal error.

The Article 9 drafters have attempted to remedy this problem through amendments to the Article 9 requirement for sufficiency of an individual debtor's name. They have adopted rules that specify what name or names are sufficient. These rules seem well-designed to facilitate a secured party's compliance with the requirement. As with all rules of law, however, applying the rule to the facts of the situation raises questions.

A secured party attempting to comply with the driver's-license-name-only rule of section 9-503(a)(4) Alternative A will encounter many situations, including multiple driver's licenses, no driver's license, unexpired driver's license, multiple names, and changed names. The questions I ask and answer in this Article address these issues. They give the secured

²⁶⁷ See *id.* § 9-805(b)(1)–(2).

²⁶⁸ When the effectiveness of the financing statement ceases after the effective date of the Article 9 amendments, the secured party must file either: (1) if the amendments have not changed the office for filing a financing statement, a continuation statement that satisfies the requirements of amended Article 9, U.C.C. § 9-805(c), (e); or (2) if the initial financing statement was filed in a different jurisdiction, an "in lieu" statement that satisfies the financing statement requirements of amended Article 9, identifies the pre-effective-date financing statement by filing office, date and file numbers, and indicates that the financing statement remains effective. *Id.* § 9-806.

party a start on sufficiently providing the name of an individual debtor on a financing statement. These twenty questions came to my mind early in my study of section 9-503(a)(4) Alternative A, but I can predict with near certainty that other questions involving the debtor's name will confound secured parties in the future. Secured parties must stay vigilant to protect perfection of their security interests.