

UCC Individual Debtor Name Best Practices

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Since Revised Article 9 (RA9) took effect in 2001, no part of the filing process has proven more critical than listing the debtor name correctly on the financing statement. The accurate indexing and searching of debtor names is essential in avoiding the problem of hidden liens. To make the secured transactions search and filing process more certain, RA9 contains very specific rules regarding the sufficiency of debtor names. This is especially true for registered organizations and certain other debtors. Unfortunately, the rules are far less clear when it comes to individual debtors.

There are two sections of RA9 that address whether a debtor name is sufficient or seriously misleading. Section 9-503 deals with the sufficiency of debtor names. Regarding individual debtors, §9-503(a)(4)(A) states that the financing statement sufficiently provides the name of the debtor “only if it provides the individual name” of the debtor. This language is more broad than the rule for registered organization names found in §9-503(a)(1).

Section 9-503 provides little guidance for secured parties or legal counsel to assess the sufficiency of individual debtor names. For a start, RA9 does not define the term individual debtor. Nor does it expressly require that the financing statement include the legal name of an individual

debtor. The language of §9-503 falls far short of creating a clear rule to guide filers. The Official Comment also fails to provide any assistance.

Another section that deals with the sufficiency of individual debtor names is §9-506. This section addresses the effect of minor errors or omissions. Under §9-506(a), a financing statement with minor errors or omissions is effective, unless the errors or omissions make the financing statement seriously misleading. However, any error in the debtor name is far from minor. Subsection (b) states that “a financing statement that fails to sufficiently provide the name of the debtor in accordance with §9-503(a) is seriously misleading.”

There is a safe harbor for a financing statement with minor errors or omissions in the debtor name. Section 9-506(c) provides that “if a search of the filing office under the debtor’s correct name, using the filing office’s standard search logic, if any, would disclose a financing statement that fails to sufficiently provide the name of the debtor in accordance with §9-503(a), the name provided does not make the financing statement seriously misleading.”

In March, the Kansas Supreme Court issued a decision that may prove very influential and provide more certainty regarding what constitutes a sufficient name for individual debtors. In

Pankratz Implement Co. v. Citizens National Bank, 130 P.3d 57 (Kan. 2006), the issue before the court was whether a minor error in the debtor name rendered the financing statement seriously misleading.

Pankratz involved a debtor whose legal name was Rodger House. Pankratz financed a tractor for House and assigned its interest to John Deere, Inc. Deere filed a financing statement that incorrectly spelled the debtor name as Roger House. Citizens later took a security interest in the same collateral and filed a financing statement that contained the correct spelling of the debtor's name.

House later filed for bankruptcy. Deere re-assigned its interest back to Pankratz. Pankratz brought suit against Citizens, seeking a declaratory judgment that its security interest took priority over that of Citizens.

Pankratz argued that the misspelling of the debtor's first name was only a minor error and not seriously misleading. In support of its argument, Pankratz asserted that RA9 does not adequately define the sufficiency of individual names and, consequently, the effectiveness of a financing statement with an incorrect debtor name that is not disclosed under §9-506(c) must be resolved by the courts on a case-by-case basis.

The court rejected this argument. In its opinion, the court interpreted §9-503 and §9-506 together *in para materia* and reached the conclusion that these sections require the legal name of individual debtors. It reasoned that RA9 requires a precise standard for individual names, just as it

does for entities. The court cited the policy behind the RA9 name provisions and the practical considerations of using this policy.

The decision in *Pankratz* underscores the importance of using the correct legal name of the debtor. While the direct effect of *Pankratz* is limited to Kansas, this was a well-reasoned decision that is bound to be influential in other jurisdictions. For now, it is a good idea for secured parties and their legal counsel to heed the court's opinion.

In light of *Pankratz*, the best-filing practice for secured parties is to always use the full legal name for individual debtors. Nicknames and spelling errors will almost certainly cause the financing statement to be seriously misleading. Therefore, the first step in preparing a financing statement with an individual debtor is to determine the correct legal name.

Normally, it will not be particularly difficult for the secured party to determine the debtor's legal name. There are several documentary sources that can assist the filer in verifying this information. The two most important are the debtor's driver's license and Social Security Card. Other useful sources may include the birth certificate, marriage license, passport, or naturalization papers. Beware of using tax returns as a source for the individual debtor's name. There is no requirement that an individual use his or her legal name on a tax return.

There are occasions where the name varies on different source documents. One or more of the variations could potentially be the correct legal

name. If the debtor's legal name cannot be clearly identified, then the secured party still has a solution. If one or more variations could be the legal name, then the secured party should simply list those names as additional debtors on the financing statement. That way, a search on any of the listed variations will disclose the financing statement.

Due diligence for the individual debtor name should not stop at the filing office door. After filing, the single most important method for the secured party to help ensure the sufficiency of a debtor name is to conduct a search to reflect. A search to reflect should be performed on the correct legal name of the debtor, using the filing office's standard search logic. If the financing statement appears on the search, then it indicates that the name is not seriously misleading in accordance with §9-506(c).

The secured party also gains valuable information if the search to reflect fails to disclose the financing statement. In that case, it indicates either an indexing error by the filing office or that the secured party made a mistake in the name. Regardless of the cause, it gives the secured party an opportunity to fix the problem up-front and avoid costly problems down the road.

The Pankratz case provides a good indication of how other courts will resolve issues regarding the sufficiency of individual debtor names. Secured parties and legal counsel need to be diligent when dealing with individual debtors. This means always including the debtor's legal name

on the financing statement. It is also a good idea to conduct a post-filing search to confirm that the financing statement is disclosed on a search of the debtor's correct legal name. By following these simple steps, diligent filers can reduce their risk.

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