

## Amendments to Article 9 of the Uniform Commercial Code Effective July 1, 2013

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If in the course of your dealings you file financing statements to perfect security interests in connection with loans or other obligations of a third party to you, the amendments to Article 9 of Nebraska's Uniform Commercial Code that become effective July 1, 2013 (the "Amendments"), likely have great relevance to you. For those of you, in particular, who file financing statements against individuals (as opposed to entities), the Amendments have even greater relevance, as they represent a considerable change in how to perfect a security interest by filing a financing statement against an individual starting July 1, 2013.

Though other changes exist, one of the most significant changes to Article 9 is that it provides bright-line guidance as to the proper name of an individual to use for purposes of filing a financing statement to achieve perfection. The Amendments provide that as of July 1, 2013, a secured creditor must file a financing statement under an individual's name exactly as that name is listed on the debtor's unexpired driver's license or state identification card. Only if the debtor does not have an unexpired driver's license or state identification card may the secured creditor rely on the rule in effect prior to July 1, 2013 and file under the debtor's "individual name" or the debtor's surname and first personal name.

The transition rules specify that if your security interest is currently properly perfected, and the requirements are otherwise met under the Amendments, except for a defect on the financing statement (e.g., some error in the debtor's name

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on the financing statement or the office in which it is filed), then the security interest remains perfected until its normal lapse date if filed in Nebraska or, if it is filed in a different jurisdiction, until the earlier of its normal lapse date or June 30, 2018. However, starting July 1, 2013, all secured creditors must comply with the Amendments to obtain perfection of their security interests.

From and after July 1, 2013, secured creditors must file under the name of the debtor as listed on the debtor's unexpired driver's license or state identification card, even if the license or state identification card has a typo, and also should file against name variations as a matter of best practices with respect to a debtor that goes by different names.

By filing against name variations, secured creditors should remain perfected following the expiration of a driver's license post-filing where the application of the new rule results in the debtor's name for perfection being different than what is on such debtor's driver's license. Verification of the name on the debtor's driver's license should be checked against a copy of the debtor's unexpired driver's license and the information on file with the Nebraska Department of Motor Vehicles. If the debtor has more than one unexpired driver's license or state identification card with two different names, secured creditors will need to file against the most recently issued driver's license or state identification card, though it may be advisable to file under both names. Likewise, if the debtor has an out-of-state driver's license but claims a "principal residence" in Nebraska, the secured creditor should file a financing statement in both states, using (1) the name on the unexpired driver's license and (2) the debtor's surname and first personal name.

Additional amendments not specifically mentioned herein exist and should be reviewed by those with significant business activities in this area. To discuss the additional amendments and best practices to employ, or to discuss what to include in a compliance checklist, please contact Matthew J. Speiker, Brian J. Koenig, or another member of the Koley Jessen Banking, Finance, and Creditors' Rights Practice Group.

by Matthew J. Speiker and Brian J. Koenig