

Be Sure to Search All Relevant UCC Debtor Names!

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The starting point for conducting a UCC search is to identify the correct name of the debtor. A financing statement is sufficient under Article 9 only if it provides the correct name of the debtor or if a search of the correct name would disclose the record. Under these rules it would appear that a search under only the correct name of the debtor would be sufficient to disclose all interests in the debtor's collateral.

Unfortunately for the unwary searcher, a search under just the correct name of the debtor may not reveal all the potentially effective records. There are circumstances where a financing statement or other lien may be indexed in the UCC records under something other than the debtor's correct name. These records could be fully effective to perfect the security interest in spite of debtor name variations.

Debtors sometimes change their name, business structure or enter into transactions that might have an impact on names that must be included in a UCC search. This article explains some of the more common situations where the searcher may need to look under additional debtor names.

Debtor name change. Debtors can and do change their names. Even seemingly minor changes to the name may make a financing statement filed under the old debtor name seriously misleading. Nevertheless, those records may remain effective.

Under Section 9-507(c), if the debtor so changes its name that a financing statement becomes seriously misleading, the financing statement remains effective to perfect a security interest in collateral acquired by the debtor before, or within four months after the change. Thus, a search of just the correct debtor name may not disclose all the financing statements that cover the debtor's collateral. It is essential for a searcher to look under not just the debtor's current name, but also include all former names of the debtor.

New Debtor Becomes Bound. A new debtor can become bound by another party's security agreement under Section 9-203(d). The Official Comment to Section 9-508 provides examples of how a new debtor can become bound, such as by a change in the debtor's business structure or when the original debtor merges into another entity.

If the new debtor's name is different from the original debtor name, then the filed financing statement could become seriously misleading. Nevertheless, that doesn't mean the searcher can ignore a financing statement filed under the original name. The record may remain effective against the new debtor.

Change in the governing law. A UCC search is normally conducted in the location of the debtor as specified in Section 9-307(b). If the debtor has recently relocated or been acquired by a new debtor in a different jurisdiction, there could still be financing statements filed in the old jurisdiction that cover the debtor's collateral.

Financing statements filed in the old jurisdiction generally remain effective under Section 9-316(a) for four months if the debtor simply

relocated, or for one year if the collateral was transferred to a person that becomes a debtor and is located in another jurisdiction. Consequently, the searcher must determine whether any recent events have triggered a change in the governing law. If the governing law has changed within the relevant time periods, a search should also be conducted in the old jurisdiction under the appropriate names.

Federal Tax Liens. Approximately half the states commingle federal tax liens in the UCC index. Filing offices often find it much more efficient to maintain just one searchable index. The result is that tax liens in these states are searched using the UCC search logic. The IRS does not have to comply with UCC debtor name sufficiency rules. If a UCC search is intended to include tax liens, then due diligence should focus on identifying likely name variations that the IRS may use.

Due Diligence Recommendations. The best practice for determining what names to include in a UCC search depends on the type of debtor. If the debtor is a registered organization, the searcher should review the articles of incorporation or equivalent formation documents, including any subsequent amendments. The articles and amendments will disclose whether the debtor has ever changed its name or acquired other companies. Searches should be conducted on all the names disclosed.

The task of identifying additional names becomes more difficult when dealing with individual debtors. There normally is no readily accessible public record of individual name changes. The best practice is to review the debtor's government-issued documents, such as a driver's license, marriage license, birth certificate, etc. Searchers must identify any current or former name that could be correct under Article 9 and search accordingly.

The search logic can also make a difference. The best practice for conducting due diligence searches is to use a search logic that will pick up name variations. That will enable a searcher to pick up tax liens, indexing errors and records with other name variations that could be effective.

The goal of a UCC search is to find all the active records that claim an interest in the debtor's collateral. Sometimes that requires a search that provides results beyond just the correct name of the debtor.

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