



CORPORATION SERVICE COMPANY™

[Home](#)[Statutory Updates](#)[State Holidays](#)[Seminars](#)[Product Training](#)

CSC Flash™ Newsletter

April 2009

www.cscglobal.com | [Contact Us](#) | [Newsletter Archive](#)

Virginia Adopts Non-uniform UCC Debtor Name Legislation

On March 27, 2009, Virginia became the latest state to adopt a safe harbor for individual debtor names under UCC Article 9. The new law will take effect on July 1, 2009. UCC filers will need to prepare for this change and adopt individual name verification procedures consistent with the new law.

Effective July 1, Section 8.9A-503(a) of the Code of Virginia is amended to add the following new subsection:

(4) if the debtor is an individual, if the financing statement provides the individual's name shown on the individual's driver's license or identification card issued by the individual's state of residence...

This amendment addresses concerns many UCC filers have with the lack of any guidance in Article 9 for determining the correct name of an individual debtor. Failure to provide the correct name can result in a seriously misleading financing statement. The Virginia amendments to UCC Section 9-503(a) will provide secured lenders with more certainty, but may require changes to individual name verification procedures.

The new Virginia law is modeled on similar provisions already enacted in Texas and Tennessee. Texas was the first to address the individual name issue through legislation. In 2007, Texas created a safe harbor if the financing statement provided the name indicated on the debtor's driver's license or "identification certificate issued by the individual's state of residence." Tennessee enacted nearly identical language in 2008. Other states have similar measures under consideration.

Secured parties should immediately review their methods for determining the correct name of an individual debtor located in Virginia. The best practice is to first determine the name(s) of the individual debtor that would be sufficient under Article 9. The filer should then compare the possible names to the name on the debtor's driver's license or state-issued identification card. If the names are not identical, the secured party should list each name as a separate debtor on the financing statement.

UCC filers may want to consider following this best practice nationally as well. There is a growing potential that the individual debtor's driver's license will form the basis of a uniform national solution in upcoming amendments to the official text of Article 9. The Uniform Law Commission and American Law Institute recently formed the Article 9 Joint Review Committee ("JRC") to examine and draft solutions for a variety of issues, including the sufficiency of individual debtor

names.

Secured parties that file on the driver's license or identification card now, in addition to other correct names, may avoid the need to later amend individual debtor names if states enact one of the proposals currently under consideration by the JRC.

The Virginia legislation did not contain any special priority rules for the name on the debtor's driver's license, so financing statements filed before the legislation takes effect should be unaffected. Nevertheless, secured parties should consider amending any previously filed financing statements to take advantage of the safe harbor.

Paul Hodnefield is Associate General Counsel for Corporation Service Company and a frequent speaker/writer on UCC search and filing issues. Please feel free to contact him with questions or comments at phodnefi@cscinfo.com, or 800-927-9801, ext. 2375.

**Corporate Identity Protection | Matter & Deal Management | Compliance & Governance
Transactional Services | Trust, Escrow & SPE**

Corporation Service Company · 2711 Centerville Road · Wilmington, DE 19808
www.cscglobal.com · 800.927.9800 · 302.636.5400

CSC is a service company and does not offer legal or financial advice.