
THE 2010 AMENDMENTS TO U.C.C. § 9-503: SUFFICIENCY OF
AN INDIVIDUAL DEBTOR'S NAME

AUSTIN MORRIS*

On the whole, Revised Article 9 of the Uniform Commercial Code has been a success. However, it is not perfect. The proper method of naming individual debtors on financing statements is not clear to many filers.

The 2010 Amendments to Article 9 attempt to clarify the naming of individual debtors by providing two alternatives, “A” and “B”. Alternative A is superior. Alternative A corrects many of the problems associated with naming individual debtors under Revised Article 9. On the other hand, Alternative B does not diverge much from Revised Article 9 in practical effect, and will retain most of the problems associated with naming individual debtors under Revised Article 9. Overall, the 2010 Amendments may create more problems than they solve, because (1) Alternative B is only a slight improvement over Revised Article 9, and (2) the presence of two alternative standards detracts from jurisdictional uniformity.

I. NAMING DEBTORS UNDER U.C.C. §§ 9-503 AND 9-506

A Brief History of Revised Article 9

Article 9 of the Uniform Commercial Code (“U.C.C.”) governs any contract creating a security interest in personal property.¹ The last significant revision to Article 9 (“Revised Article 9”) took place in 1998

* Elon University School of Law, Class of 2012

¹ U.C.C. § 9-109(a)(1) (2000). See also Edwin E. Smith, *A Summary of the Provisions of Article 9 of the Uniform Commercial Code*, in *ASSET BASED FINANCING IN TODAY'S ECONOMY* 27-28 (Practicing Law Inst., Commercial Law & Practice Course Handbook Series No. 28870, 2011) [hereinafter Smith, *Summary of Article 9*]. Mr. Smith is currently Chair of the Commercial Code Article 9 Committee. Uniform Law Commission, *Committees: Commercial Code Article 9* (2010), <http://www.nccusl.org/Committee.aspx?title=Com>

and reflected years of work by a committee co-sponsored by the American Law Institute and the Uniform Law Commission.² Revised Article 9 was the first major revision to Article 9 since 1972.³ Its goals included expanding Article 9's scope; simplifying and clarifying its rules for creation, perfection, and enforcement of security interests; reducing the cost of compliance; and reducing the risk of inadvertent errors.⁴ The drafters hoped that Revised Article 9 would "facilitate electronic filing, foster nationwide utilization of well-designed user-friendly uniform paper forms, and make filing office practices more efficient, transparent, and uniform."⁵

Revised Article 9 Adopted in All Fifty States

Revised Article 9 was eventually adopted as law in all fifty states, as well as in the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.⁶ Revised Article 9 became effective in most states on July 1, 2001.⁷ As of the completion of this Note, Revised Article 9 remains in effect in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, the District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, the

mercial Code Article 9 (last visited Sept. 24, 2011) [hereinafter ULC, *Article 9 Committee*].

² Steven O. Weise, *Materials on Revised UCC Article 9*, in THE NEW UNIFORM COMMERCIAL CODE (ALI-ABA Continuing Legal Educ., ALI-ABA Course of Study No. SK038 ALI-ABA 235, 2004) [hereinafter Weise, *Revised Article 9*]. Mr. Weise is a current member of the Commercial Code Article 9 Committee. ULC, *Article 9 Committee*, *supra* note 1.

³ Weise, *Revised Article 9*, *supra* note 2.

⁴ *Id.*

⁵ Harry C. Sigman, *Twenty Questions About Filing Under Revised Article 9: The Rules of the Game Under New Part 5*, 74 CHI-KENT L. REV. 861, 861 (1999) [hereinafter Sigman, *Twenty Questions*]. Mr. Sigman is a current member of the Commercial Code Article 9 Committee. ULC, *Article 9 Committee*, *supra* note 1.

⁶ Uniform Law Commission, *Legislative Fact Sheet – UCC Article 9, Secured Transactions (1998)* (2010), [http://www.nccusl.org/LegislativeFactSheet.aspx?title=UCC Article 9, Secured Transactions \(1998\)](http://www.nccusl.org/LegislativeFactSheet.aspx?title=UCC%20Article%209,%20Secured%20Transactions%20(1998)) (last visited Sept. 24, 2011). See also Margit Livingston, *A Rose by Any Other Name Would Smell as Sweet (Or Would It?): Filing and Searching in Article 9's Public Records*, 2007 BYU L. REV. 111, 113 (2007); Smith, *Summary of Article 9*, *supra* note 1, at 27; Weise, *Revised Article 9*, *supra* note 2.

⁷ Weise, *Revised Article 9*, *supra* note 2.

U.S. Virgin Islands, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.⁸

Perfection and the Importance of the Individual Debtor's Name

A perfected security interest gives a secured party rights in a debtor's collateral that are superior to unperfected security interests, later-in-time security interests, unsecured creditors, and lien creditors (including bankruptcy trustees acting as lien creditors).⁹ Under Revised Article 9, most security interests can be "perfected" by submitting a properly-filed financing statement to the appropriate filing office.¹⁰ A financing statement which fails to properly provide the name of the debtor fails to perfect the security interest.¹¹ The most important purpose of a financing statement, other than achieving perfection, is giving third parties notice of the existence of a security interest.¹² U.C.C. § 9-502(a) (1998) sets out three requirements for the sufficiency of a financing statement.¹³ A sufficient financing statement:

- (1) provides the name of the debtor;
- (2) provides the name of the secured party or a representative of the secured party; and
- (3) indicates the collateral covered by the financing statement.¹⁴

The creation of a financing statement appears simple enough. However, as you are likely already aware if you are reading this Note, providing the correct formulation of the debtor's name, particularly the name of an individual debtor, has become a tricky and sometimes heavily litigated issue. It is for this reason that this Note will focus on

⁸ See Uniform Law Commission, *Legislative Fact Sheet - UCC Article 9 Amendments (2010)* (2010), [http://www.nccusl.org/LegislativeFactSheet.aspx?title=UCC Article 9 Amendments \(2010\)](http://www.nccusl.org/LegislativeFactSheet.aspx?title=UCC Article 9 Amendments (2010)) (last visited Sept. 24, 2011) [hereinafter ULC, *Legislative Fact Sheet*]. The District of Columbia, Kentucky, Massachusetts, Oklahoma, and Puerto Rico introduced legislation to adopt the 2010 Amendments to Article 9 in 2011. *Id.*

⁹ U.C.C. §§ 9-102(a) (52) (2003), 9-317 (2003), 9-322 (1998). In addition, a number of collection rights are available to the secured party in the event of default. See Smith, *Summary of Article 9, supra* note 1, at 71-76.

¹⁰ U.C.C. § 9-310 (2003). See also Smith, *Summary of Article 9, supra* note 1, at 39. "[T]he local law of the jurisdiction where the debtor is located governs whether or not perfection of a security interest has taken place." *Id.* at 62 (citing U.C.C. § 9-301(1) (2003)).

¹¹ U.C.C. § 9-502(a)(1) (1998); see also Sigman, *Twenty Questions, supra* note 5, at 861.

¹² See Paul J. Ricotta & Adrienne K. Walker, *What's in a Name? (Apparently, a Lot)*, AM. BANKR. INST. J., May 2005, at 67.

¹³ Financing statements involving real property as collateral are dealt with separately in U.C.C. § 9-502(b) (1998).

¹⁴ U.C.C. § 9-502(a) (1998).

the first requirement of U.C.C. § 9-502(a)(1) (1998): the sufficient naming of an individual debtor.

Article 9's goal is to name individual debtors with precision so that future searches of financing statements will yield accurate results.¹⁵ As noted in U.C.C. § 9-503 cmt. 2 (1998), "the debtor's name is particularly important. Financing statements are indexed under the name of the debtor, and those who wish to find financing statements search for them under the debtor's name." Commentators have called the debtor's name the "key to the index"¹⁶ and the most important piece of information on a financing statement.¹⁷

As a preliminary step in preparing a financing statement, it is helpful to ensure that the correct debtor has been identified. The term *debtor* is defined by U.C.C. § 9-102(a)(28) (2003).¹⁸ Once the identity of the debtor has been confirmed, determining the sufficiency of the debtor's name requires consulting U.C.C. § 9-503 (1998). U.C.C. § 9-503(a) (1998) sets forth the following rules:

- if the debtor is a registered organization, the financing statement is sufficient if it "provides the name of the debtor indicated on the public records of the debtor's jurisdiction of organization¹⁹ which shows the debtor to have been organized"²⁰ [Note the crucial statutory dis-

¹⁵ Harry C. Sigman, *Improvements (?) to the UCC Article 9 Filing System*, 46 GONZ. L. REV. 457, 459 (2011) [hereinafter Sigman, *Improvements (?)*]; Sigman, *Twenty Questions*, *supra* note 5, at 865.

¹⁶ Sigman, *Twenty Questions*, *supra* note 5, at 865.

¹⁷ Livingston, *supra* note 6, at 125; Kevin V. Tu, *The Rise of State-Specific Attempts to Decipher the Sufficiency-of-a-Debtor-Name Standard Under Revised Article 9 and the End of Uniformity in Secured Transactions*, 59 U. KAN. L. REV. 85, 90-91 (2010).

¹⁸ "Debtor" means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee."

¹⁹ "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized." U.C.C. § 9-102(a)(50) (2003). See also U.C.C. § 9-503 cmt. 2 (1998).

²⁰ U.C.C. § 9-503(a)(1) (1998). Reportedly, registered organizations pose fewer naming problems for filers than individual debtors. "[T]he filer need only obtain a good-standing certificate from the state where the corporation is incorporated, fill out the financing statement using the name exactly as set forth on the certificate, and file the financing statement in the state where the corporation is incorporated." Ricotta & Walker, *supra* note 12, at 67.

- inction between an “organization”²¹ and a “registered organization.”²²];
- if the debtor is a decedent’s estate, the financing statement is sufficient if it “provides the name of the decedent and indicates that the debtor is an estate”²³;
 - if the debtor is a trust or trustee, the financing statement is sufficient if it “(A) provides the name . . . specified for the trust . . . or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts . . . and (B) indicates . . . that the debtor is a trust or is a trustee acting with respect to property held in trust”²⁴;
 - in cases not governed by U.C.C. § 9-503(a)(1-3) (1998),
 - o if the debtor “has a name,”²⁵ the financing statement is sufficient if it “provides the individual or organizational name of the debtor”²⁶; and
 - o if the debtor “does not have a name,”²⁷ the financing statement is sufficient if it “provides the names of the partners, members, associates, or other persons comprising the debtor.”²⁸

Furthermore, even if an individual debtor’s name is otherwise provided correctly on a financing statement, the filing office will be instructed to reject the financing statement if it does not make clear which part of the individual debtor’s name is the first name and which part is the last name.²⁹ These simple principles can be costly for creditors who do not heed them.

²¹ U.C.C. § 1-201(b)(25) (2003).

²² U.C.C. § 9-102(a)(70) (2003).

²³ U.C.C. § 9-503(a)(2) (1998).

²⁴ U.C.C. § 9-503(a)(3) (1998).

²⁵ The distinction drawn in U.C.C. § 9-503(a)(4) (1998) between debtors with names and those without names may seem odd at first. However, the distinction is illuminated by the Official Comment, which states that this provision is drafted “very broadly,” to provide naming rules for individuals and “all legal and commercial entities as well as associations that lack the status of a legal entity” which are not already covered by the specific naming rules of U.C.C. § 9-503(a)(1-3) (1998). U.C.C. § 9-503 cmt. 2 (1998). Examples of organizations with “names” include corporations, business trusts, limited liability companies, personal trusts, governments, and estates. *Id.* Of course, U.C.C. § 9-503(a)(4)(A) (1998) also governs individual debtors, which are the focus of this Note.

²⁶ U.C.C. § 9-503(a)(4)(A) (1998).

²⁷ General partnerships, joint ventures, and common law associations often operate as unregistered organizations, or “without names.” Ricotta & Walker, *supra* note 12, at 67.

²⁸ U.C.C. § 9-503(a)(4)(B) (1998).

²⁹ U.C.C. § 9-503 cmt. 2 (1998).

The “Seriously Misleading” Standard

When disputes arise over whether a certain formulation of an individual debtor’s name meets the requirements of U.C.C. § 9-502(a) (1998), Revised Article 9 relies on U.C.C. § 9-506 (1998) to determine the sufficiency of the debtor’s name. The core principle of U.C.C. § 9-506(a) (1998) is that “[a] financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.” This is what is known as the “seriously misleading” standard. It may sometimes be helpful to note that U.C.C. § 9-506(b) (1998) states that “a financing statement that fails sufficiently to provide the name of the debtor” will most often be seriously misleading. However, U.C.C. § 9-506(b) (1998) is a guideline which is too broad to be of much use. To determine whether a given financing statement is seriously misleading, courts ultimately look to U.C.C. § 9-506(c) (1998):

If a search of the records 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 sufficiently to provide the name of the debtor in accordance with Section 9-503(a), the name provided DOES NOT make the financing statement seriously misleading [emphasis added].

U.C.C. § 9-506 cmt. 2 (1998), providing a further explanation of § 9-506(c), adds a slight amplification of its practical meaning:

A financing statement that is seriously misleading under this section is ineffective even if this is disclosed by (i) using a search logic other than that of the filing office to search the official records, or (ii) using the filing office’s standard search logic to search a data base other than that of the filing office.³⁰

The rationale behind U.C.C. § 9-506(c) (1998)’s demanding standard for naming individual debtors has been called “a fairly simple calculation” by drafter Steven Weise.³¹ The calculation was apparently that, “it is generally easier for the filer to ascertain and file under the correct name than to put the burden on searchers to identify and search against all possible minor errors.”³² Harry Sigman has written that U.C.C. § 9-506(c) (1998) “reflects a balance between the need for

³⁰ See also Sigman, *Twenty Questions*, *supra* note 5, at 862 (“The fact that a wider search logic used by a private search service might have disclosed an erroneous filing does not bring that financing statement within the safe harbor.”).

³¹ Steven O. Weise, *U.C.C. Article 9: Personal Property Secured Transactions*, 62 BUS. LAW. 1633, 1640 (2007) [hereinafter Weise, *Secured Transactions*].

³² *Id.*

some flexibility to allow for human error on the part of filers . . . and the avoidance of a rule that would cast an altogether inappropriate burden on searchers to have to try to divine potential errors”³³ Revised Article 9 appears to allocate the burdens of filing to the party best able to bear those burdens.³⁴ Nonetheless, identifying the “correct name” of an individual debtor is easier said than done.³⁵ Scholars and practitioners alike have criticized Revised Article 9 for making it difficult to determine the proper formulation of an individual debtor’s name and for allowing seemingly insignificant transcription errors to prevent perfection.³⁶

II. CRITICAL ANALYSIS OF REVISED ARTICLE 9

Difficulties with Individual Names

Practitioners have bemoaned the lack of a “clear source of information for determining the debtor’s correct name.”³⁷ No particular identification document is defined by law as being definitive.³⁸ The standard U.C.C.-1 filing form in use in most jurisdictions instructs filers to list the “DEBTOR’S EXACT FULL LEGAL NAME.”³⁹ Many secured parties wish that naming a debtor could be made as easy as this deceptively simple instruction makes it sound. In practice, it often remains unclear to filers what actually constitutes a given debtor’s exact full legal name. These issues arise particularly with respect to individual debtors, who constitute the bulk of filings.⁴⁰

Successfully naming registered organizations typically only requires reviewing public records and organizational documents, then transferring the official name of the registered organization from

³³ Sigman, *Twenty Questions*, *supra* note 5, at 862-63.

³⁴ Livingston, *supra* note 6, at 128; *see also* Deborah L. Thorne, *Trouble for Secured Creditors: Avoiding the Traps of UCC §§ 9-503 and 9-506*, AM. BANKR. INST. J., June 2008 (citing *Pankratz Implement Co. v. Citizens Nat’l Bank*, 130 P.3d 57 (Kan. 2006)).

³⁵ *See* Weise, *Secured Transactions*, *supra* note 31, at 1641 (“[F]ilings against individuals are compounded by the difficulty in ascertaining the debtor’s ‘correct’ name and uncertainty over whether an individual may have more than one ‘correct’ name.”).

³⁶ *See, e.g.*, Livingston, *supra* note 6, at 127 (“Filing creditors must set forth the debtor’s name accurately on the financing statement or risk lack of perfection.”).

³⁷ Ricotta & Walker, *supra* note 12, at 67.

³⁸ Sigman, *Improvements (?)*, *supra* note 15, at 464.

³⁹ INT’L ASS’N OF COMMERCIAL ADM’RS, FORM UCC1, UCC FINANCING STATEMENT 1 (2002) [hereinafter FORM UCC1], *available at* <http://www.iaca.org/downloads/forms/ucc1.pdf>.

⁴⁰ Sigman, *Improvements (?)*, *supra* note 15, at 465.

those records to the financing statement.⁴¹ In contrast to the relative ease of naming registered organizations, the process of filing against individuals can give practitioners more trouble, especially when name changes, nicknames, culturally unfamiliar names, or multiple names are involved.⁴² As explained in the proposed amendment to the Official Comments to U.C.C. § 9-503, “This is because in the case of individuals, unlike registered organizations, there is no public organic record to which reference can be made and from which the name and its components can be definitively determined.”⁴³ The challenge of naming individual debtors is exacerbated by the dearth of meaningful guidance on the U.C.C.-1 form itself.⁴⁴ The difficulties associated with correctly identifying debtors have personal ramifications for attorneys, who can face malpractice concerns and other sanctions if they fail to correctly identify an individual debtor.⁴⁵

Even when a filer is able to locate one or more government documents containing the debtor’s legal name, it can be difficult to ascertain which of those documents provides the debtor’s definitive name if they differ.⁴⁶ Some individual debtors use more than one name, and may even have more than one “legal” name.⁴⁷ Birth certificates, social security cards, driver’s licenses, passports, tax returns, and bankruptcy petitions might all contain different formulations of a debtor’s name.⁴⁸

⁴¹ Livingston, *supra* note 6, at 127; Thorne, *supra* note 34, at 53.

⁴² See Livingston, *supra* note 6, at 150; Hon. John K. Pearson & J. Scott Pohl, *If the Name is Bubba, You’d Better Spell it Right*, AM. BANKR. INST. J., June 2006, at 71; Ricotta & Walker, *supra* note 12, at 67.

⁴³ U.C.C. § 9-503 cmt. 2(d) (2010).

⁴⁴ “‘Individual’ means a natural person; this includes a sole proprietorship, whether or not operating under a trade name. Don’t use prefixes (Mr., Mrs., Ms.). Use suffix box only for titles of lineage (Jr., Sr., III) and not for other suffixes or titles (e.g., M.D.). Use married woman’s personal name (Mary Smith, not Mrs. John Smith). Enter individual Debtor’s family name (surname) in Last Name box, first given name in First Name box, and all additional given names in Middle Name box.” FORM UCC1, *supra* note 39, at 2.

⁴⁵ John C. Murray, *Sufficiency of Debtor’s Name for Valid UCC Filing – Recent Cases*, in TITLE INSURANCE 2006: MASTERING CRITICAL ISSUES FACING BUYERS, SELLERS & LENDERS *630 (Practicing Law Inst., Real Estate & Practice Course Handbook Series No. 8646, 2006) [hereinafter Murray, *Recent Cases 2006*].

⁴⁶ Ricotta & Walker, *supra* note 12, at 67. One article even raises the novel issue of how a creditor would file against the musician formerly known as Prince, who legally changed his name to a symbol not found in any standard printed language. Pearson & Pohl, *supra* note 42, at 72 n.9.

⁴⁷ Livingston, *supra* note 6, at 114, 145-46, 153; Ricotta & Walker, *supra* note 12, at 67.

⁴⁸ Edwin E. Smith, *A Summary of the 2010 Amendments to Article 9 of the Uniform Commercial Code*, in ASSET BASED FINANCING IN TODAY’S ECONOMY 93 (Practicing Law Inst., Com-

For this reason, it can be difficult for filers under Revised Article 9 to rely on even an official government document to provide a name that will guarantee perfection.⁴⁹ In practice, one attorney recommends that creditors obtain copies of each individual debtor's driver's license, birth certificate, and passport, retaining copies of these documents to demonstrate due diligence.⁵⁰ She also recommends filing financing statements against all possible names listed on the various state records.⁵¹ The practice of filing against multiple variations of an individual debtor's name is relatively common, and it is considered wise whenever there is uncertainty as to the debtor's legal name.⁵²

There have been several relatively recent cases in which a secured creditor mistakenly filed against a debtor's nickname, and the usual outcome is that a nickname is insufficient.⁵³ Difficulties can also arise when the filer is not familiar with the naming traditions of the debtor's culture.⁵⁴ The ordering of individual names varies according to cultural tradition.⁵⁵ An example of this phenomenon is found in the case of *All Business Corporation v. Choi*.⁵⁶ The secured party incorrectly listed the individual debtor's name as "Gu, SangWoo," when the debtor's actual name was "Sang Woo Gu."⁵⁷ This error was seriously misleading and resulted in the secured creditor's failure to perfect.⁵⁸

*Standard Search Logic Varies Between Offices; Some Logics Are
More Effective Than Others*

Under Revised Article 9, each filing office can select or develop its own standard search logic. The effect of U.C.C. § 9-506(c) (1998) is that high stakes ride on the programming of the computerized "stan-

mercial Law & Practice Course Handbook Series No. 28870, 2011) [hereinafter Smith, *Summary of 2010 Amendments*].

⁴⁹ Ricotta & Walker, *supra* note 12, at 67.

⁵⁰ Thorne, *supra* note 34, at 53.

⁵¹ *Id.*

⁵² Murray, *Recent Cases 2006*, *supra* note 45, at *626.

⁵³ See *In re Kinderknecht*, 308 B.R. 71 (B.A.P. 10th Cir. 2004); *In re Larsen*, 72 U.C.C. Rep. Serv. 2d (CBC) 187 (Bankr. S.D. Iowa Mar. 10, 2010); *In re Borden*, 63 U.C.C. Rep. Serv. 2d (CBC) 801 (D. Neb. Aug. 20, 2007); *In re Berry*, No. 05-14423, 2006 WL 3499682 (Bankr. D. Kan. Dec. 1, 2006). See also U.C.C. § 9-503 cmt. 2(d) (2010) ("[A] 'nickname' that does not constitute the debtor's name, does not sufficiently provide the name of the debtor under this section.").

⁵⁴ Livingston, *supra* note 6, at 152.

⁵⁵ U.C.C. § 9-503 cmt. 2(d) (2010).

⁵⁶ 634 S.E.2d 400 (Ga. Ct. App. 2006).

⁵⁷ *Id.* at 401.

⁵⁸ *Id.* at 405.

dard search logic” in use in a particular filing office. The effectiveness of the U.C.C. § 9-506(c) (1998) safe harbor provision is contingent on “the breadth and flexibility of the computerized search logic employed by individual filing offices.”⁵⁹ The stakes are high because most courts are willing to “drop[] the hammer on the filing creditor who has made an error in the debtor’s name”⁶⁰ Practitioners note that different filing offices use different “standard search logics” and that varying search logics yield vastly different results.⁶¹ This would seem to run counter to the uniformity otherwise promoted by the U.C.C.

The drafters of Revised Article 9 appear to have contemplated the problems associated with irregular standard search logics but viewed them as costs justified by other perceived benefits of Revised Article 9. Harry Sigman acknowledged in a 1999 article that, “a filing office may modify its search logic from time to time . . . [and] this might have the effect of rendering undiscoverable (under a search using the correct name) a filing providing an erroneous name that was previously discoverable.”⁶²

The Most Commonly Used Standard Search Logic is Inefficient

Most filing offices have adopted entirely, or with slight variations, a model search logic promulgated by the International Association of Commercial Administrators (IACA).⁶³ The IACA model search logic is publicly available online.⁶⁴ Some practitioners complain that this widely adopted search logic is not ideal and that it produces undesirable outcomes.⁶⁵ Attorney Deborah Thorne complains that, “the standard search logic now used has led to a large number of ‘seriously misleading’ financing statements.”⁶⁶ One student researcher, calling

⁵⁹ Livingston, *supra* note 6, at 146. “Depending on the parameters and, particularly, the flexibility of the database’s search logic, a search request might reveal financing statements that contained certain types of errors in the debtor’s name but might not reveal financing statements with other types of errors.” *Id.* at 158.

⁶⁰ *Id.* at 129.

⁶¹ See Tu, *supra* note 17, at 87; Ricotta & Walker, *supra* note 12, at 68 n.6.

⁶² Sigman, *Twenty Questions*, *supra* note 5, at 862.

⁶³ Livingston, *supra* note 6, at 159 n.246 (2007); Ricotta & Walker, *supra* note 12, at 68.

⁶⁴ INT’L ASS’N OF COMMERCIAL ADM’RS, UNIF. COMMERCIAL CODE, ARTICLE 9: MODEL ADMIN. RULES § 503 (2010), available at http://www.iaca.org/downloads/2010Conference/STS/v14-2010_Model_Administrative_Rules.pdf.

⁶⁵ See Murray, *Recent Cases 2006*, *supra* note 45, at *627 (characterizing the IACA search logic as “strict”).

⁶⁶ Thorne, *supra* note 34, at 51.

the standard search logic in most states “rigid” and “unforgiving of even minor errors,” concludes that the interplay between Revised Article 9 and strict search logic functionally eliminates any safe harbor for minor errors in a debtor’s name.⁶⁷ The net result “is an appreciably greater risk that failure of perfection will result due to an incorrect spelling of the debtor’s name on the financing statement.”⁶⁸ One particular source of confusion in the popularly adopted IACA search logic is its treatment of punctuation. Researchers have noted that the commonly used search logic fails to differentiate between the word “and” and the ampersand symbol, does not recognize common abbreviations such as “Mfg.,” and automatically ignores hyphens, among other issues.⁶⁹ This is important because even a transcription error as seemingly insignificant as the omission of a hyphen can be enough to render a financing statement ineffective.

Furthermore, more forgiving search logics can be, and have been, developed. Many filing offices actually offer broader “non-standard” search logics for informational searches.⁷⁰ Non-standard search logics are not binding, but they can be helpful for searchers wishing to cast a wider net in a search for a particular debtor. A number of non-standard search logics reportedly return a greater quantity of results than the IACA’s model standard search logic.⁷¹ The practical effect of utilizing a “standard search logic” that returns relatively few results is an increased number of “seriously misleading” financing statements and increased pressure on secured parties to correctly ascertain the debtor’s legal name.

High Transaction Costs

Another frequent complaint about Revised Article 9 is that it has failed to rein in transaction costs. Searchers are often advised to conduct multiple searches of the filing system, searching under all potential formulations of a debtor’s name.⁷² Further, the complexities of the filing system often make it prudent for creditors to hire private search companies to assist them with searches.⁷³ This evidence suggests that

⁶⁷ Meghan M. Sercombe, Note, *Good Technology and Bad Law: How Computerization Threatens Notice Filing Under Revised Article 9*, 84 TEX. L. REV. 1065, 1069 (2006).

⁶⁸ Murray, *Recent Cases 2006*, *supra* note 45, at 628.

⁶⁹ Sercombe, *supra* note 67, at 1081.

⁷⁰ Livingston, *supra* note 6, at 160-61.

⁷¹ *Id.* at 161.

⁷² Tu, *supra* note 17, at 87.

⁷³ Sercombe, *supra* note 67, at 1086.

Revised Article 9 fails to limit transaction costs for searchers. Furthermore, when financial stakes become high enough, creditors have little choice but to obtain legal advice regarding the filing process to ensure that they do not make costly mistakes.⁷⁴ In addition, because federal tax liens are filed under the Internal Revenue Code and do not necessarily follow Article 9's naming rules, potential creditors are often forced to conduct multiple searches to reach federal tax liens, thereby losing the benefits of Revised Article 9's "single search standard."⁷⁵

The stress and uncertainty for Article 9 filers have apparently become so great that a separate market for "U.C.C. insurance" has arisen.⁷⁶ Reportedly, "UCC insurance provides indemnity insurance for the attachment, priority, and perfection of the lender's security interest and transfers the risk of failing to properly create, perfect, or attain the desired priority of, the lender's security interest to the insurer."⁷⁷ U.C.C. insurance is also available to cover misfiled financing statements.⁷⁸ States, asserting sovereign immunity, generally refuse any financial liability in the event of their misfiling financing statements.⁷⁹ The development of an insurance market illustrates the pressure and high stakes that filers endure under Revised Article 9.

In addition, Revised Article 9 has failed to eliminate the need for old-fashioned human judgment. Practitioners Ricotta and Walker note that "[b]ecause it is more difficult to ascertain the debtor's 'name' as required by [Revised Article 9] in the case of an unregistered organization or an individual, a searcher must continue to use his or her common sense and logic."⁸⁰ Despite its attempts to embrace electronic filing, Revised Article 9 may have inadvertently, through the creation of a complex and non-intuitive system of computerized search logic, made the individual human judgment of the searcher more important than ever.

⁷⁴ *Id.*

⁷⁵ Sigman, *Improvements (?)*, *supra* note 15, at 478; Sercombe, *supra* note 67, at 1087-88.

⁷⁶ See Murray, *Recent Cases 2006*, *supra* note 45; John C. Murray, *Is UCC Insurance the Answer to Limitation of Liability in UCC Searches?*, *PRAC. REAL EST. LAW.*, Sept. 2003 [hereinafter Murray, *UCC Insurance*].

⁷⁷ Murray, *UCC Insurance*, *supra* note 76, at 14.

⁷⁸ Murray, *Recent Cases 2006*, *supra* note 45, at 632.

⁷⁹ Murray, *UCC Insurance*, *supra* note 76, at 10.

⁸⁰ Ricotta & Walker, *supra* note 12, at 68.

The Filing System is Out of Step with Standard Business Practices

The requirements of Revised Article 9's filing system may also be out of step with common business practices. Reportedly, skilled searchers often locate even those financing statements that are deemed "seriously misleading" by U.C.C. § 9-506 (1998).⁸¹ However, regardless of the actual degree of difficulty in locating a financing statement, security interests do not perfect if they contain debtors' names which are technically labeled "seriously misleading."⁸² Perverse outcomes result when any reasonably adept searcher could locate a given filing statement, yet that filing statement is nonetheless labeled "seriously misleading." Also, it is a relatively common practice to hire more skilled private search companies to perform meticulous searches.⁸³ Many filings that are labeled "seriously misleading," and thus are ineffective under Revised Article 9, are nonetheless being discovered by searchers.

Lacking in Flexibility

Prior to the development of Revised Article 9, judges often penned decisions critical of searchers who failed to utilize the inherent flexibility provided by electronic searches.⁸⁴ It was once common to expect a thorough and diligent searcher to search through more than one formulation of a name and sometimes even in more than one database.⁸⁵ Revised Article 9 sought to simplify searches by instituting a "single search standard," requiring only one search under the debtor's "correct name."⁸⁶ Some writers have questioned whether Revised Article 9, in attempting to simplify searches, has swung the pendulum too far towards objectivity and thereby removed necessary flexibility from searches. Steven Weise clearly explains that under Revised Article 9, "The court has no discretion to determine that the incorrect name is 'close enough.' As a result the secured party can be dependent on the system of electronic search logic used by a particular state's filing office."⁸⁷ This lack of flexibility is evidenced by the fre-

⁸¹ Sercombe, *supra* note 67, at 1090-91.

⁸² See U.C.C. § 9-506(a) (1998).

⁸³ Sercombe, *supra* note 67, at 1086.

⁸⁴ See *id.* at 1072-73.

⁸⁵ *Id.*

⁸⁶ U.C.C. § 9-506(c) (1998).

⁸⁷ Weise, *Revised Article 9*, *supra* note 2.

quency with which simple clerical errors reportedly render security interests unenforceable.⁸⁸

*The “Single Search Standard” is Contrary to Otherwise
Pro-Creditor Tendencies of Article 9*

Margit Livingston makes a compelling case that Revised Article 9’s “single search standard” is overly strict.⁸⁹ The single search standard can have almost punitive consequences for unwary creditors. Lest we lose compassion for secured parties, it is important to remember that secured parties have often bargained for their position, giving up something of value in return for their rights in collateral. On the whole, Revised Article 9 is protective of creditors’ rights.⁹⁰ Yet, “[t]he Article 9 revisers clearly made a policy choice that despite the statute’s generally pro-secured party slant, precision with respect to the debtor’s name was essential to maintaining a viable filing system”⁹¹ A would-be secured creditor’s loss of its bargained-for security interest due to a clerical or transcription error can create an undeserved windfall for the debtor or for the bankruptcy trustee acting as a lien creditor.⁹²

Case Law Illustrating Criticisms of Revised Article 9

Edwin Smith, Chair of the Commercial Code Article 9 Committee,⁹³ has recently posited that most disputes under Revised Article 9 involve filing errors rather than actual uncertainty as to the debtor’s name.⁹⁴ This is seconded by another committee member, Harry Sigman, who reasons that most of the disputes involve “nicknames, or secured party spelling or typographical errors or secured party carelessness.”⁹⁵ These statements seem to reflect a view that careless filing under Revised Article 9 has been more problematic than Revised Article 9 itself. Regardless of who is to blame, the fact is that problems naming individual debtors have frequently arisen under Revised Arti-

⁸⁸ See, e.g., *In re Andrew Fuell & Tanya Fuell*, 64 U.C.C. Rep. Serv. 2d (CBC) 722 (Bankr. D. Idaho Dec. 13, 2007); *Pankratz Implement Co. v. Citizens Nat’l Bank*, 130 P.3d 57 (Kan. 2006).

⁸⁹ See Livingston, *supra* note 6, at 146, 150.

⁹⁰ *Id.* at 146-47.

⁹¹ *Id.* at 150.

⁹² See Murray, *Recent Cases 2006*, *supra* note 45, at *630.

⁹³ ULC, *Article 9 Committee*, *supra* note 1.

⁹⁴ Smith, *Summary of 2010 Amendments*, *supra* note 48, at 94.

⁹⁵ Sigman, *Improvements (?)*, *supra* note 15, at 466-67.

cle 9. The Uniform Law Commission notes the existence of more than a dozen court decisions involving the improper naming of individual debtors.⁹⁶ This estimate may be conservative.

An examination of cases decided under Revised Article 9 reveals that it is not uncommon for would-be secured parties, through carelessness or lack of diligence, to lose their perfected status due to failure to properly list an individual debtor's name. In all of the following cases, the individual debtor's name was found to be "seriously misleading" under U.C.C. § 9-506 (1998), and the security interest failed to be perfected as a result:

- a filing under the name "Roger House" (missing one letter) was seriously misleading, where the debtor's legal name was "Rodger House;"⁹⁷ and
- a filing under the name "Andrew Fuel" (missing one letter) was seriously misleading, where the debtor's legal name was "Andrew Fuell."⁹⁸

Other failures occurred when filers mistook the debtor's nickname for a legal name. Secured parties should be particularly cautious when the nickname *Mike* is involved:

- a filing under the name "Terry Kinderknecht" (nickname) was seriously misleading, where the debtor's legal name was "Terrance Kinderknecht;"⁹⁹
- a filing under the name "Mike Berry" (nickname) was seriously misleading, where the debtor's legal name was "Michael R. Berry, Jr.;"¹⁰⁰
- a filing under the name "Mike Borden" (nickname) was seriously misleading, where the debtor's legal name was "Michael R. Borden;"¹⁰¹ and
- a filing under the name "Mike D. Larsen" (nickname) was seriously misleading, where the debtor's legal name was "Michael D. Larsen."¹⁰²

Debtor names which are culturally unfamiliar to the filer also pose challenges. For example:

- a filing under the name "Gu, SangWoo" (omitted space) was seriously misleading, where the debtor's legal name was "Sang Woo Gu;"¹⁰³ and
- a filing under the name "Armando Munoz" (omitted last name) was seriously misleading, where the debtor's legal name was "Armando

⁹⁶ Uniform Law Commission, *UCC Article 9 Amendments (2010) Summary* (2010), [http://www.nccusl.org/ActSummary.aspx?title=UCC Article 9 Amendments \(2010\)](http://www.nccusl.org/ActSummary.aspx?title=UCC%20Article%209%20Amendments%20(2010)) (last visited Sept. 24, 2011) [hereinafter ULC, *2010 Amendments*].

⁹⁷ *Pankratz Implement Co. v. Citizens Nat'l Bank*, 130 P.3d 57 (Kan. 2006).

⁹⁸ *In re Fuell*, 64 U.C.C. Rep. Serv. 2d (CBC) 722 (Bankr. D. Idaho Dec. 13, 2007).

⁹⁹ *In re Kinderknecht*, 308 B.R. 71 (B.A.P. 10th Cir. 2004).

¹⁰⁰ *In re Berry*, No. 05-14423, 2006 WL 3499682 (Bankr. D. Kan. Dec. 1, 2006).

¹⁰¹ *In re Borden*, 63 U.C.C. Rep. Serv. 2d (CBC) 801 (D. Neb. Aug. 20, 2007).

¹⁰² *In re Larsen*, 72 U.C.C. Rep. Serv. 2d (CBC) 187 (Bankr. S.D. Iowa Mar. 10, 2010).

¹⁰³ *All Bus. Corp. v. Choi*, 634 S.E.2d 400 (Ga. Ct. App. 2006).

Munoz Juarez.”¹⁰⁴ The court remarked that cultural naming traditions, which may have helped to explain the filer’s mistake, are “legally irrelevant for U.C.C.–1 purposes and, if accepted, would seriously undermine the concept of lien perfection.”¹⁰⁵

In some cases it is difficult to justify the outcome, except to note that Revised Article 9 has been criticized for requiring especially strict compliance. In one such head-scratcher:

- a filing under the name “Richard Stewart” (omitted middle name and suffix) was seriously misleading, where the debtor’s legal name was “Richard Morgan Stewart IV.”¹⁰⁶ The court correctly noted in its decision that human judgment is irrelevant under Revised Article 9, even where, as here, it is easy to see that the filer’s mistake was a logical one.¹⁰⁷

Finally, courts have occasionally been reticent to enforce the stricter requirements of their state’s Article 9 laws, resulting in decisions that can be criticized as out-of-step with Revised Article 9:

- A filing under the name “Louie Dickerson” (filed under debtor’s middle name) was *not* found to be seriously misleading, where the debtor’s legal name was “Brooks L. Dickerson.”¹⁰⁸ The court erroneously applied a subjective test to determine whether the filing was seriously misleading, reasoning that because the secured creditor “had actual notice that Dickerson was known as both ‘Louie Dickerson’ and ‘Brooks L. Dickerson,’” the financing statement was not seriously misleading.¹⁰⁹ In a 2008 article, Steven Weise and his co-authors labeled this holding, which appears contrary to U.C.C. § 9-506 (1998), “unfortunate.”¹¹⁰
- In marked contrast to the three cases addressing the sufficiency of the nickname *Mike* which are noted above, one filing under the name “Mike Erwin” (nickname) was found *not* to be seriously misleading, where the debtor’s legal name was “Michael A. Erwin.”¹¹¹

Requiem for Unmodified Revised Article 9

Prior to the adoption of Revised Article 9, drafter Harry Sigman predicted that the Revised Article 9 filing system would be “as simple as

¹⁰⁴ *Corona Fruits & Veggies, Inc. v. Frozsun Foods, Inc.*, 48 Cal. Rptr. 3d 868 (Cal. Ct. App. 2006).

¹⁰⁵ *Id.* at 871.

¹⁰⁶ *In re Stewart*, No. 04-16838, 2006 WL 3193374 (Bankr. D. Kan. Nov. 1, 2004).

¹⁰⁷ *Id.* at *2.

¹⁰⁸ *Peoples Bank v. Bryan Bros. Cattle Co.*, 504 F.3d 549 (5th Cir. 2007).

¹⁰⁹ *Id.* at 559.

¹¹⁰ Steven O. Weise, Teresa W. Harmon & Lynn A. Soukup, 2007 *Commercial Law Developments*, in *THE U.C.C. AND BEYOND: CURRENT DEVELOPMENTS IN COMMERCIAL LAW* (ALI-ABA Continuing Legal Ed., ALI-ABA Course of Study No. SN086 ALI-ABA 179, 2008).

¹¹¹ *In re Erwin*, 50 U.C.C. Rep. Serv. 2d 933 (Bankr. D. Kan. June 27, 2003).

child's play."¹¹² Today, even Revised Article 9's strongest proponents will likely admit that the filing system has resulted in more complexities than Mr. Sigman anticipated. However, it is worth noting that Revised Article 9 is considered an improvement over the filing system that preceded it.¹¹³ Results under the regime that preceded Revised Article 9 unduly burdened searchers, gave rise to a good deal of litigation, and involved many ad hoc and case-specific decisions.¹¹⁴ Prior to the enactment of Revised Article 9, practitioners complained of "a myriad of state laws" which often triggered "hypertechnical" review.¹¹⁵

Even critics of Revised Article 9 are forced to admit that, although Revised Article 9 has its flaws, it has been a step in the right direction. Critics credit Revised Article 9 with simplifying the process of notifying third parties of security interests¹¹⁶ and with adding clarity and consistency to appellate decisions.¹¹⁷

III. THE GOALS OF THE 2010 AMENDMENTS TO ARTICLE 9

Correcting the Naming of Individual Debtors Is the Highest Priority of the 2010 Amendments

The process of drafting the 2010 Amendments began in 2008 with the formation of a Review Committee to examine the need for statutory changes to Revised Article 9.¹¹⁸ From the beginning, special attention was given to the problem of naming individual debtors.¹¹⁹ In fact, concern over proper naming of individual debtors "both forced the amendment process into being and occupied the bulk of the time and energy that went into that process."¹²⁰ Aware of the problems discussed in the previous section, the Review Committee concluded that:

[Revised] Article 9 does not tell us what the debtor's name is if the debtor is an individual. And courts, in interpreting §§ 9-503(a)(4)(A) and 9-506, have struggled in determining whether a particular financing statement that contains the debtor's name as reflected on his or her birth certificate, driver's license, passport or other identification, or even a debtor's

¹¹² Sigman, *Twenty Questions*, *supra* note 5, at 861.

¹¹³ Livingston, *supra* note 6, at 111-12.

¹¹⁴ *Id.* at 164.

¹¹⁵ *Id.* at 111-12.

¹¹⁶ *Id.* at 111.

¹¹⁷ Pearson & Pohl, *supra* note 42, at 70.

¹¹⁸ See ARTICLE 9 REVIEW COMM., STATUTORY MODIFICATION ISSUES LIST (2008), available at http://www.nccusl.org/Shared/Docs/UCC9/UCC9_IssuesList_June08.pdf; Smith, *Summary of 2010 Amendments*, *supra* note 48, at 91.

¹¹⁹ ARTICLE 9 REVIEW COMM., *supra* note 118.

¹²⁰ Sigman, *Improvements (?)*, *supra* note 15, at 457.

nickname or commonly used name, is the correct name of the debtor for the financing statement to be sufficient.¹²¹

The need to remedy these problems provided the impetus for the 2010 Amendments.

Several States Had Taken Initiative by Attempting to Address the Naming Problems Themselves

In the near decade that passed between the widespread adoption of Revised Article 9 and the promulgation of the 2010 Amendments, several states took it upon themselves to proactively adopt non-standard state statutes which attempted to remedy the perceived problems with Revised Article 9.¹²² These states included Texas,¹²³ Tennessee,¹²⁴ and Virginia,¹²⁵ all three of which enacted legislation creating a safe harbor for the sufficiency of the individual debtor's name as reflected on his or her driver's license. Nebraska considered, but ultimately abandoned, legislation which would have modified U.C.C. § 9-506(c) to provide that no financing statement containing an individual debtor's last name would be seriously misleading.¹²⁶

The passage of non-uniform state Article 9 law was significant in the eyes of the Commercial Code Article 9 Committee for two reasons. First, it illustrated the states' desire for new legislation to correct perceived problems with Article 9.¹²⁷ Second, the passage of non-uniform laws threatened one of the underlying goals of the Uniform Commercial Code – reliably uniform commercial laws across the country.¹²⁸ Further, the IACA threatened to develop its own non-uniform amendments if the American Law Institute and Uniform Law Commission did not act promptly.¹²⁹ Reportedly, members of the American Law Institute and Uniform Law Commission would have been reluctant to

¹²¹ ARTICLE 9 REVIEW COMM., *supra* note 118, at 1-2. In fact, the sufficiency of the individual debtor's name is the first issue addressed in the Review Committee's report. *Id.*

¹²² *See id.* at 2; *see also* Tu, *supra* note 17.

¹²³ Tu, *supra* note 17, at 111 (citing TEX. BUS. & COM. CODE ANN. § 9.503(a)(4) (West Supp. 2009)).

¹²⁴ *Id.* at 115 (citing TENN. CODE ANN. § 47-9-503(a)(4) (West Supp. 2010)).

¹²⁵ *Id.* at 116 n.178 (citing VA. CODE ANN. § 8.9A-503(a)(4) (West Supp. 2010)).

¹²⁶ *Id.* at 116-17 (citing Neb. Legis. B. 851, 100th Leg., Reg. Sess. (Neb. 2008); Neb. Legis. B. 308A, 100th Leg. 2d Sess. (Neb. 2008)).

¹²⁷ *See* Smith, *Summary of 2010 Amendments*, *supra* note 48, at 90.

¹²⁸ *See Id.*

¹²⁹ *See* Sigman, *Improvements (?)*, *supra* note 15, at 458; Smith, *Summary of 2010 Amendments*, *supra* note 48, at 90.

amend Revised Article 9 so rapidly had it not been for pressure from the states and the IACA.¹³⁰ Harry Sigman, characterizing states' attempts to correct Article 9 as "poorly thought-through and poorly drafted," has stated bluntly, "It was the prospect that non-uniform and perhaps downright foolish provisions would spread around the country that forced the UCC's sponsors to deal with the issue and institute this amendment process."¹³¹ The following section addresses the substantive changes to U.C.C. § 9-503 which are proposed as a part of the 2010 Amendments.

IV. THE 2010 AMENDMENTS TO U.C.C. § 9-503

The Text of the 2010 Amendments to U.C.C. § 9-503

U.C.C. § 9-503 (2010) (NAME OF DEBTOR AND SECURED PARTY)¹³²

(a) [**Sufficiency of debtor's name.**] A financing statement sufficiently provides the name of the debtor:

(1) except as otherwise provided in paragraph (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name;

(2) subject to subsection (f), if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative;

(3) if the collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) provides, as the name of the debtor:

(i) if the organic record of the trust specifies a name for the trust, the name so specified; or

(ii) if the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) in a separate part of the financing statement:

(i) if the name is provided in accordance with subparagraph (A) (i), indicates that the collateral is held in a trust; or

(ii) if the name is provided in accordance with subparagraph (A) (ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

¹³⁰ Sigman, *Improvements (?)*, *supra* note 15, at 458; Smith, *Summary of 2010 Amendments*, *supra* note 48, at 90.

¹³¹ Sigman, *Improvements (?)*, *supra* note 15, at 467-68.

¹³² NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9 49-53 (2010).

[Alternative A]

(4) subject to subsection (g), if the debtor is an individual to whom this State has issued a [driver's license] that has not expired, only if it provides the name of the individual which is indicated on the [driver's license];

(5) if the debtor is an individual to whom paragraph (4) does not apply, only if it provides the individual name of the debtor or the surname and first personal name of the debtor; and

(6) in other cases:

(A) if the debtor has a name, only if it provides the organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

[Alternative B]

(4) if the debtor is an individual, only if:

(A) it provides the individual name of the debtor;

(B) it provides the surname and first personal name of the debtor; or

(C) subject to subsection (g), it 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; and

(5) in other cases:

(A) if the debtor has a name, only if it provides the organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

[End of Alternatives]

(b) **[Additional debtor-related information.]** . . . [Identical to U.C.C. § 9-503(b) (1998).]

(c) **[Debtor's trade name insufficient.]** . . . [Identical to U.C.C. § 9-503(c) (1998).]

(d) **[Representative capacity.]** . . . [Identical to U.C.C. § 9-503(d) (1998).]

(e) **[Multiple debtors and secured parties.]** . . . [Identical to U.C.C. § 9-503(e) (1998).]

(f) **[Name of decedent.]** . . . [Omitted.]

[Alternative A]

(g) **[Multiple driver's licenses.]** 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.

[Alternative B]

(g) **[Multiple driver's licenses.]** If this State has issued to an individual more than one [driver's license] of a kind described in subsection (a)(4)(C), the one that was issued most recently is the one to which the subsection (a)(4)(C) refers.

[End of Alternatives]

(h) **[Definition.]** . . . [Omitted.]

The 2010 Amendments and Naming Individual Debtors

Notably, U.C.C. § 9-503(a) (2010) provides two alternative approaches to naming individual debtors. The two alternatives, Alternative A and Alternative B, reportedly exist as the result of a compromise in the drafting process.¹³³ To state briefly the essence of each alternative, “Alternative A” states that if an individual debtor holds an unexpired driver’s license in the state of filing, any financing statement filed against the debtor in that state should bear the name of the debtor exactly as it appears on the driver’s license.¹³⁴ “Alternative B” leaves intact the Revised Article 9 instruction to file under a debtor’s “individual name,” but adds safe harbor provisions for both the debtor’s first personal name and surname and the debtor’s name as it appears on an unexpired state driver’s license.¹³⁵ Alternatives A and B are discussed in more detail below. The debtor’s driver’s license figures more prominently in both alternatives than it did in Revised Article 9.

The Drafting Committee’s rationale for choosing to emphasize the driver’s license makes sense. A driver’s license is widely presumed to be accurate proof of an individual’s identity and clearly specifies one distinct formulation of the individual’s name. Furthermore, in most cases, the debtor will have already produced his or her driver’s license as identification when seeking to obtain secured financing.¹³⁶ Additionally, penalties for fraudulently tampering with driver’s licenses already exist outside the U.C.C. framework. Of course, the emphasis on the driver’s license is not without its drawbacks. The Uniform Law Commission itself notes that “[a] state considering adopting Alternative A should in particular consider whether the state’s driver’s license database is compatible with its Uniform Commercial Code database as to characters, field length and the like.”¹³⁷

¹³³ Sigman, *Improvements (?)*, *supra* note 15, at 471.

¹³⁴ See U.C.C. § 9-503(a)(4) (2010) (Alternative A); see also ULC, *2010 Amendments*, *supra* note 96; Uniform Law Commission, *Why States Should Adopt 2010 Amendments to UCC Article 9*, [http://www.nccusl.org/Narrative.aspx?title=Why States Should Adopt 2010 Amendments to UCC Article 9](http://www.nccusl.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%202010%20Amendments%20to%20UCC%20Article%209) (last visited Oct. 22, 2011) [hereinafter ULC, *Why States Should Adopt*].

¹³⁵ See U.C.C. § 9-503(a)(4) (2010) (Alternative B); see also ULC, *2010 Amendments*, *supra* note 96; ULC, *Why States Should Adopt*, *supra* note 134.

¹³⁶ Smith, *Summary of 2010 Amendments*, *supra* note 48, at 96.

¹³⁷ ULC, *2010 Amendments*, *supra* note 96; ULC, *Why States Should Adopt*, *supra* note 134.

Alternative A - The "Only If" Approach

Alternative A, U.C.C. § 9-503(a)(4)-(6) (2010) (Alternative A), is known as the "only if" approach.¹³⁸ This is because, assuming an individual debtor holds an unexpired in-state driver's license, "the debtor's name on the financing statement will be sufficient 'only if' the name provided is the name on the driver's license."¹³⁹ Financing statements must list the debtor's name as it is indicated on the driver's license (even if the driver's license is erroneous).¹⁴⁰

In an Alternative A state, a filing against a debtor without an unexpired in-state driver's license can be accomplished by filing against either "the individual name of the debtor" (in the same fashion, and with the same set of issues, as under Revised Article 9) or "the surname and first personal name of the debtor."¹⁴¹ However, before resorting to these alternatives, filers should be aware that in some circumstances a state-issued identification card can serve the same purpose as a driver's license.¹⁴²

Alternative B - The "Safe Harbor" Approach

Alternative B, U.C.C. § 9-503(a)(4)-(5) (2010) (Alternative B), is known as the "safe harbor" approach.¹⁴³ Alternative B provides three ways for filers to effectively name individual debtors.¹⁴⁴ The first technique, U.C.C. § 9-503(a)(4)(A) (2010) (Alternative B), retains the old Revised Article 9 language. A filing statement sufficiently provides the name of the debtor if it "provides the individual name of the debtor."¹⁴⁵ Presumably this language would be construed by the courts in the same way as the nearly identical language in Revised Article 9.¹⁴⁶ However, Alternative B provides two additional "safe harbors" which are not found in Revised Article 9. First, a filing statement may "pro-

¹³⁸ Smith, *Summary of 2010 Amendments*, *supra* note 48, at 94.

¹³⁹ *Id.*; see also U.C.C. § 9-503(a)(4) (2010) (Alternative A).

¹⁴⁰ U.C.C. § 9-503 cmt. 2(d) (2010).

¹⁴¹ U.C.C. § 9-503(a)(5) (2010) (Alternative A); see also Smith, *Summary of 2010 Amendments*, *supra* note 48, at 95; ULC, *2010 Amendments*, *supra* note 96.

¹⁴² If a state issues both driver's licenses and non-driver's license identification cards from the same office, an identification card can be used to establish the debtor's name for filing purposes as long as it is not possible for a person to hold both a driver's license and an identification card simultaneously. ULC, *2010 Amendments*, *supra* note 96.

¹⁴³ Smith, *Summary of 2010 Amendments*, *supra* note 48, at 95.

¹⁴⁴ *Id.*

¹⁴⁵ U.C.C. § 9-503(a)(4)(A) (2010) (Alternative B).

¹⁴⁶ See U.C.C. § 9-503(a)(4)(A) (1998).

vide the surname and first personal name of the debtor.”¹⁴⁷ Second, a filing statement may provide the name of an individual exactly as it is indicated on a valid, unexpired driver’s license issued by that state.¹⁴⁸ Although Alternative B does not mandate that individual debtor names appear exactly as they do on unexpired state-issued driver’s licenses, this method of naming debtors will provide secured parties in Alternative B states with the greatest amount of certainty.¹⁴⁹

No Changes Have Been Suggested for U.C.C. § 9-506

The 2010 Amendments do not alter U.C.C. § 9-506 (1998). Thus, the “seriously misleading” test found in U.C.C. § 9-506 (1998) will remain in effect.

V. DO THE 2010 AMENDMENTS RESOLVE THE PROBLEMS WITH REVISED ARTICLE 9? (“DID THEY GET IT RIGHT?”)

Difficulties with Naming Individual Debtors

Alternative A,¹⁵⁰ the “only if” rule, answers critics who complained of the lack of a definitive source for determining an individual debtor’s legal name under Revised Article 9.¹⁵¹ Alternative A relies heavily on the individual debtor’s driver’s license.¹⁵² Under Alternative A, if an individual debtor holds a valid and unexpired driver’s license in the state of filing, a financing statement is only sufficient if it provides the debtor’s name as it is listed on the driver’s license.¹⁵³ In most cases, Alternative A will successfully resolve dilemmas over which government document contains the debtor’s legal name for filing purposes. The unexpired in-state driver’s license is king.¹⁵⁴ Alternative A also eliminates concerns over individual debtors’ use of potentially misleading nicknames and goes a long way toward giving filers a clue as to the correct configuration of names which are culturally unfamiliar. Thus, Alternative A cures much of the uncertainty that had developed under Revised Article 9.

¹⁴⁷ U.C.C. § 9-503(a)(4)(B) (2010) (Alternative B).

¹⁴⁸ U.C.C. § 9-503(a)(4)(C) (2010) (Alternative B).

¹⁴⁹ See *id.*; U.C.C. § 9-503 cmt. 2(d) (2010).

¹⁵⁰ U.C.C. § 9-503 (2010) (Alternative A).

¹⁵¹ See Ricotta & Walker, *supra* note 12, at 67; Sigman, *Improvements (?)*, *supra* note 15, at 464-65.

¹⁵² See U.C.C. § 9-503(a)(4) (2010) (Alternative A).

¹⁵³ U.C.C. § 9-503(a)(4)-(5) (2010) (Alternative A).

¹⁵⁴ See U.C.C. § 9-503(a)(4) (2010) (Alternative A).

However, the presence of Alternative B,¹⁵⁵ the so-called “safe harbor” rule, is troubling. Alternative B keeps alive the confusion associated with naming individual debtors under Revised Article 9, and its presence will detract from the standardization and jurisdictional uniformity that the Uniform Commercial Code otherwise promotes.

As discussed above, Alternative B retains Revised Article 9 language to the effect that a financing statement sufficiently identifies an individual debtor if “it provides the individual name of the debtor.”¹⁵⁶ This is virtually identical to the problematic language of U.C.C. § 9-503(a)(4)(A) (1998) (“if the debtor has a name, only if it provides the individual or organizational name of the debtor”). Conceivably, where a state has adopted Alternative B and a secured party has filed under U.C.C. § 9-503(a)(4)(A) (2010) (Alternative B), the 2010 Amendments will yield results identical to those under Revised Article 9. For this reason, filers in Alternative B states might be advised to avoid filing under U.C.C. § 9-503(a)(4)(A) (2010), and should instead take advantage of one of the two Alternative B “safe harbors.”¹⁵⁷

Alternative B adds two methods of naming individual debtors which function as “safe harbors,” guaranteeing the sufficiency of individual debtors’ names.¹⁵⁸ The first Alternative B safe harbor is for financing statements that provide “the surname and first personal name of the debtor.”¹⁵⁹ The language of this first Alternative B safe harbor is only slightly more clear than the “individual or organizational name of the debtor” language of U.C.C. § 9-503(a)(4)(A) (1998). In some situations the “surname” and “first personal name” of the debtor will be clear to the filer. However, there will remain difficult cases reminiscent of the filer who was unfamiliar with the naming traditions associated with the name “Sang Woo Gu” and erroneously filed against “Gu, SangWoo.”¹⁶⁰ It is doubtful that this filer would have been helped considerably by a rule calling for the “surname” and “first personal name” of the debtor. In cases such as this, Edwin Smith writes, “determining from the driver’s license which name is the debtor’s surname and

¹⁵⁵ U.C.C. § 9-503 (2010) (Alternative B).

¹⁵⁶ U.C.C. § 9-503(a)(4)(A) (2010) (Alternative B).

¹⁵⁷ See U.C.C. § 9-503(a)(4)(B)-(C) (2010) (Alternative B).

¹⁵⁸ *Id.*

¹⁵⁹ U.C.C. § 9-503(a)(4)(B) (2010) (Alternative B).

¹⁶⁰ *All Bus. Corp. v. Choi*, 634 S.E.2d 400, 401 (Ga. Ct. App. 2006).

which name is the debtor's first personal name may not be as easy and may require the secured party to perform additional investigation."¹⁶¹

The second Alternative B safe harbor provides for the sufficiency of "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."¹⁶² This second safe harbor provides the most certainty for filers under Alternative B. Where the debtor holds a valid, unexpired, state-issued driver's license, filers in Alternative B states should be advised to use the debtor's name exactly as it appears on the driver's license.

It may be worthwhile to examine whether Alternative B provides any substantive improvements over Revised Article 9. U.C.C. § 9-503(a)(4)(A) (2010) (Alternative B) provides language virtually identical to that of Revised Article 9. The first safe harbor is nearly as problematic, because it does not specify hard-and-fast rules for determining a debtor's "surname" and "first personal name."¹⁶³ The second safe harbor (the driver's license option) is by far the safest option for filers in Alternative B states.¹⁶⁴ The driver's license safe harbor appears to provide some additional stability for filers. However, even this safe harbor may not offer any practical change from Revised Article 9. Harry Sigman's analysis of case law did not find a single case decided under Revised Article 9 holding that the name on the debtor's driver's license was seriously misleading.¹⁶⁵ In this sense, the "safe harbors" of Alternative B may only codify the case law that had developed under Revised Article 9. Alternative B may offer no real improvements over Revised Article 9. The decision to adopt Alternative B thus may only be a politely veiled decision on the part of some states to retain Revised Article 9.

Furthermore, the very presence of two alternatives for the sufficiency of financing statements is troubling. On the whole, the Uniform Commercial Code has been successful in encouraging uniformity between jurisdictions. Yet the adoption of the 2010 Amendments may create a minefield for secured parties who operate in multiple states. Alternatives A and B create two significantly different sets of rules for

¹⁶¹ Smith, *Summary of 2010 Amendments*, *supra* note 48, at 95. *See also* U.C.C. § 9-503 cmt. 2(d) (2010) (noting that a debtor's name might not be configured the same way on a driver's license as on a U.C.C.-1; human judgment will still be required).

¹⁶² U.C.C. § 9-503(a)(4)(C) (2010) (Alternative B).

¹⁶³ U.C.C. § 9-503(a)(4)(B) (2010) (Alternative B).

¹⁶⁴ U.C.C. § 9-503(a)(4)(C) (2010) (Alternative B).

¹⁶⁵ Sigman, *Improvements (?)*, *supra* note 15, at 474.

naming individual debtors.¹⁶⁶ For individual debtors who hold unexpired in-state driver's licenses, Alternative B allows filing under the debtor's individual name, first personal name and surname, or name as it appears on the driver's license.¹⁶⁷ In the same circumstance, just across the state line in an Alternative A state, the first two methods of filing could be seriously misleading, and filing under the name on the driver's license would be the only method of naming an individual debtor guaranteed to be effective.¹⁶⁸ This is apt to cause confusion and unexpectedly harsh results, particularly when filers who are accustomed to the flexible naming methods of Alternative B states attempt to file in more restrictive Alternative A states.

*Standard Search Logic Varies Between Offices - Some Logics Are
More Effective Than Others*

The 2010 Amendments fail to reduce uncertainty caused by variability in search logics. Because the 2010 Amendments do not reach U.C.C. § 9-506 (1998), the rule that all financing statements which are not discovered using the filing office's standard search logic are "seriously misleading" remains in effect. Earlier criticisms noting that the effectiveness of the U.C.C. § 9-506(c) (1998) safe harbor varies according to the flexibility of each filing office's computerized search logic will remain valid, even after adoption of the 2010 Amendments.¹⁶⁹

On one hand, in Alternative A states, the use of debtors' names as they appear on driver's licenses will significantly lessen the importance of standard search logic.¹⁷⁰ Where a searcher knows for sure that a debtor held an unexpired state driver's license at the time of a given filing, the searcher's burden will shrink to searching under the name which appeared on that driver's license. The filing office's standard search logic is unlikely to play a large role in the search. Still, even in Alternative A states, close scrutiny of standard search logic will not be extinct. Searchers in Alternative A states may have to conduct searches under several different formulations of a debtor's name when the debtor held a driver's license intermittently, the debtor changed his or her name, there is uncertainty about whether the debtor holds a

¹⁶⁶ See U.C.C. § 9-503(a)(4) (2010) (Alternative A); U.C.C. § 9-503(a)(4) (2010) (Alternative B).

¹⁶⁷ U.C.C. § 9-503(a)(4) (2010) (Alternative B).

¹⁶⁸ U.C.C. § 9-503(a)(4) (2010) (Alternative A).

¹⁶⁹ See Livingston, *supra* note 6, at 146; Ricotta & Walker, *supra* note 12, at 68 n.6.

¹⁷⁰ See U.C.C. § 9-503(a)(4) (2010) (Alternative A).

driver's license, when the debtor's driver's license could have expired, or the filing was made before the 2010 Amendments took effect. In other words, the standard search logic used by filing offices will retain some importance under Alternative A.

Yet standard search logic will be even more important in Alternative B states and may remain as crucial as it has proven to be under Revised Article 9. Alternative B's first option for naming individual debtors is virtually the same as Revised Article 9¹⁷¹ and will likely result in outcomes similar to those outcomes surveyed under Revised Article 9. Alternative B's safe harbors also depend to a degree on subjective judgments and search logic. Filing under U.C.C. § 9-503(a)(4)(B) (2010) (Alternative B) is subject to interpretation in regard to what constitutes a surname and a first personal name. Filing under U.C.C. § 9-503(a)(4)(C) (2010) (Alternative B) will involve the same challenges associated with Alternative A.¹⁷²

The Most Commonly Used Standard Search Logic is Inefficient

The 2010 Amendments do not address concerns about the sufficiency of the most commonly used standard search logic. The standard search logic in use in most jurisdictions is promulgated by the IACA.¹⁷³ A number of critics have concluded that the IACA's model search logic is unduly strict and produces an unnecessarily high number of "seriously misleading" financing statements via U.C.C. § 9-506(c) (1998).¹⁷⁴ It should be noted that the decision to adopt the IACA model search logic is up to each filing office individually, and neither the Uniform Law Commission nor the American Law Institute has control over or responsibility for the decisions of the filing offices as to which search logic they adopt. The relative efficiency of the most commonly used search logic appears not to have been raised at all in the process of developing the 2010 Amendments. Whether the 2010 Amendments should have attempted to address perceived inefficiencies in the IACA search logic is a policy issue ripe for discussion.

¹⁷¹ See U.C.C. § 9-503(a)(4)(A) (2010) (Alternative B); U.C.C. § 9-503(a)(4)(A) (1998).

¹⁷² For example, U.C.C. § 9-503(a)(4)(C) (2010) (Alternative B) may require searching under several different formulations of the debtor's name when the debtor held a driver's license at some points but not others, the debtor changed his or her name, there is uncertainty about whether a debtor currently holds a driver's license, or the debtor's driver's license may have expired.

¹⁷³ See INT'L ASS'N OF COMMERCIAL ADM'RS, *supra* note 64, § 503.

¹⁷⁴ See Sercombe, *supra* note 67, at 1069; Thorne, *supra* note 34, at 51.

In the meantime, both the IACA and individual filing offices would be wise to be conscious of the manner in which their standard search logics interact with U.C.C. §§ 9-503 and 9-506. One likely issue on the horizon, noted by Harry Sigman, is the potential for individual debtor names to include letters, symbols, and accent marks beyond the standard twenty-six-letter Roman alphabet.¹⁷⁵ The handling of characters outside the twenty-six-letter Roman alphabet, both by driver's license offices and filing offices, will affect the efficiency of the filing system in years to come. This may be an area of potential concern for filers, especially in light of existing criticisms of the IACA model search logic's treatment of punctuation.¹⁷⁶

High Transaction Costs

The 2010 Amendments will lessen transaction costs in some circumstances. The searchers who benefit the most will be searchers in Alternative A states who are looking for financing statements filed after Alternative A came into effect and filed against a debtor known to have held a valid, unexpired, in-state driver's license at the time of filing. These searchers' only responsibility will be determining the name on the debtor's driver's license at the time of filing and searching for that exact name.¹⁷⁷ This brings to mind one additional transaction cost which will be imposed on all searchers under the 2010 Amendments—that of determining the points at which the debtor has held an in-state driver's license and determining the name(s) on those driver's licenses.

In other circumstances, the transaction costs imposed on searchers will be similar to transaction costs under Revised Article 9. In Alternative B states, searchers will have to search under any formulation of the debtor's name which could constitute the "individual name of the debtor," the "surname and first personal name of the debtor," or the name on a driver's license held by the debtor.¹⁷⁸ The field of possible debtor names which might be sufficient under U.C.C. § 9-503(a)(4) (2010) (Alternative B) is no smaller than that of U.C.C. § 9-503 (1998). Searchers in Alternative B states will still be forced to conduct labor-intensive searches under multiple formulations of the debtor's name, a

¹⁷⁵ Sigman, *Improvements* (?), *supra* note 15, at 473.

¹⁷⁶ See, e.g., Sercombe, *supra* note 67, at 1081.

¹⁷⁷ See U.C.C. § 9-503(a)(4) (2010) (Alternative A).

¹⁷⁸ See U.C.C. § 9-503(a)(4) (2010) (Alternative B).

process which was heavily criticized under Revised Article 9.¹⁷⁹ The drafters of the 2010 Amendments have added a new warning to the Official Comments to U.C.C. § 9-503 (2010), making it abundantly clear that the 2010 Amendments will not be able to significantly lower transaction costs for searchers: “If there is any doubt about an individual debtor’s name, a secured party may choose to file one or more financing statements that provide a number of possible names for the debtor and a searcher may similarly choose to search under a number of possible names.”

Edwin Smith has acknowledged that even when a debtor holds a valid, unexpired state driver’s license, some further investigation and human judgment on the part of the searcher will still be required.¹⁸⁰ Thus, the drafters of the 2010 Amendments appear aware that increased reliance on driver’s licenses will not drastically lower transaction costs for filing system searchers.

Out of Step with Standard Business Practices

Reportedly, it is common practice for sophisticated creditors to hire private search companies to perform extensive searches of the filing system.¹⁸¹ Whether this business practice will change under the 2010 Amendments is yet to be determined by the market. However, the complexity of searches and the level of expertise required to conduct searches skillfully will only increase under the 2010 Amendments. By the same token, the need for filers and searchers to obtain outside legal advice may also increase. The 2010 Amendments will diminish jurisdictional uniformity and may subsequently increase the need for legal guidance.¹⁸² Furthermore, understanding how an individual debtor’s name should be formatted will become even more difficult under the 2010 Amendments. U.C.C. § 9-503(a)(4)(A) (2010) (Alternative B) is alone enough to retain the complexities of Revised Article 9, yet in other jurisdictions valid Article 9 filings will soon be taking place under U.C.C. § 9-503(a)(4)(B) (2010) (Alternative B), U.C.C. § 9-503(a)(4)(C) (2010) (Alternative B), U.C.C. § 9-503(a)(4) (2010) (Alternative A), and U.C.C. § 9-503(a)(5) (2010) (Alternative A). The

¹⁷⁹ See Ricotta & Walker, *supra* note 12, at 68.

¹⁸⁰ Smith, *Summary of 2010 Amendments*, *supra* note 48, at 94-95; accord Sigman, *Improvements (?)*, *supra* note 15, at 475.

¹⁸¹ Sercombe, *supra* note 67, at 1086.

¹⁸² See U.C.C. § 9-503(a)(4) (2010) (Alternative A); U.C.C. § 9-503(a)(4) (2010) (Alternative B).

complexities of the 2010 Amendments will likely increase the need for professional assistance when filing and searching under Article 9.

Lacking in Flexibility

Under Revised Article 9, courts have no discretion to determine whether a formulation of a debtor's name is "close enough."¹⁸³ The same will be true of the 2010 Amendments. The 2010 Amendments do not alter U.C.C. § 9-506 (1998). The test for whether a formulation of a debtor's name is seriously misleading will continue to depend on the results of a search using the standard search logic at the appropriate filing office.¹⁸⁴ However, the benefits of retaining U.C.C. § 9-506 (1998)'s objective standard for sufficiency of the debtor's name may actually outweigh the costs. Courts are not given discretion to determine whether a formulation of a debtor's name is "close enough" under either Revised Article 9 or the 2010 Amendments.¹⁸⁵ This prevents the wide-ranging subjectivity that ruled in earlier eras, when courts were criticized for issuing inconsistent and unpredictable rulings.¹⁸⁶ The decision to keep judicial discretion out of this aspect of Article 9 is wise. Although the 2010 Amendments are not without their flaws, both filers and searchers benefit from an objective standard for sufficiency of the debtor's name.

*Is the "Single Search Standard" Contrary to Otherwise
Pro-Creditor Tendencies of Article 9?*

Scholars generally view Article 9 as a pro-creditor law.¹⁸⁷ However, the 2010 Amendments to Article 9 retain the risk that a minor clerical or transcription error could prevent perfection of an otherwise valid security interest. For example, under either Alternative A or Alternative B, omitting a single letter from the debtor's name as it appears on a valid in-state driver's license would likely make a financing statement "seriously misleading" and thus prevent perfection.¹⁸⁸ Yet it would be difficult to eliminate this risk from Article 9 without removing the objectivity that allows both filers and searchers to know with certainty whether a particular formulation of a debtor's name is sufficient. As

¹⁸³ Weise, *Revised Article 9*, *supra* note 2.

¹⁸⁴ See U.C.C. § 9-506 (1998).

¹⁸⁵ See Weise, *Revised Article 9*, *supra* note 2.

¹⁸⁶ Sercombe, *supra* note 67, at 1072-73.

¹⁸⁷ See, e.g., Livingston, *supra* note 6, at 146-47, 150.

¹⁸⁸ U.C.C. § 9-506 (1998); U.C.C. § 9-503(a)(4) (2010) (Alternative A); U.C.C. § 9-503(a)(4) (2010) (Alternative B).

was the case with Revised Article 9, it appears that the retention of the “single search standard” in the 2010 Amendments is the result of a carefully measured balancing of benefits:

The observers from the lending community felt that, under either the ‘only if’ rule of Alternative A or the ‘safe harbor’ rule of Alternative B, the risk that debtor name changes may be more likely to occur than under current law was more than offset by the greater certainty of being able to look to the debtor’s driver’s license name.¹⁸⁹

Thus creditors should be reasonably happy with the 2010 Amendments. The continuing possibility that a clerical mistake may harm a secured party’s interests should be viewed not entirely as a negative, but as a trade-off. The costs of potential transcription mistakes remain allocated to the filer, who is also the party in the best position to avoid them. Meanwhile, both filers and searchers benefit from certainty provided by a more objective standard for sufficiency of the debtor’s name.

New Criticism of Article 9: Overreliance on Driver’s Licenses

The 2010 Amendments place increased emphasis on the debtor’s driver’s license.¹⁹⁰ The 2010 Amendments will not go into effect until July 1, 2013.¹⁹¹ However, the emphasis on the driver’s license as proof positive of an individual’s legal name has already been the subject of renewed criticism. Even proponents of the 2010 Amendments admit that, “the driver’s license cannot be followed slavishly . . . [and] a rule that contemplates use of the debtor’s driver’s license name is not without risk.”¹⁹² Known risks include the expiration and modification of driver’s licenses,¹⁹³ fraud, and counterfeiting.

The 2010 Amendments assume the accuracy of the name on a driver’s license. In turn, the accuracy of the name on a driver’s license is dependent on the procedures used to verify the identity of the individual receiving the license.¹⁹⁴ Although driver’s licenses are relatively reliable, their truthfulness is by no means certain. For example, sophistic attempts to counterfeit driver’s licenses are generally under-

¹⁸⁹ Smith, *Summary of 2010 Amendments*, *supra* note 48, at 96-97.

¹⁹⁰ U.C.C. § 9-503(a)(4) (2010) (Alternative A); U.C.C. § 9-503(a)(4)(C) (2010) (Alternative B).

¹⁹¹ ULC, *2010 Amendments*, *supra* note 96.

¹⁹² Smith, *Summary of 2010 Amendments*, *supra* note 48, at 94-96.

¹⁹³ *Id.* at 96.

¹⁹⁴ Sigman, *Improvements (?)*, *supra* note 15, at 471-72.

stood to have been widespread for generations.¹⁹⁵ Furthermore, in the age of anxiety over terrorism, the Federal Bureau of Investigation has expressed concern over state procedures for verifying individuals' identity prior to issuing driver's licenses.¹⁹⁶ Before filing, secured parties would be wise to double-check the debtor's identity by cross-checking the debtor's driver's license against social security cards, birth certificates, and other relatively secure documents. This type of cross-checking is prudent, yet it detracts from the ease of identity verification trumpeted by the 2010 Amendments, particularly Alternative A. It may be that the driver's license should be viewed by secured parties only as a definitive formulation of the debtor's name, but not as proof of the debtor's identity. Proof of the debtor's identity will have to be obtained separately and by traditional means.

Concerned about over-reliance on driver's licenses, Harry Sigman worries that serious confusion will arise if the 2010 Amendments are adopted in a state where the local Department of Motor Vehicles uses either characters or a field size incompatible with the state's Article 9 filing system.¹⁹⁷ While Sigman's criticism is not a fatal flaw for the 2010 Amendments, states would be wise to examine their Department of Motor Vehicles systems and procedures carefully prior to allowing the 2010 Amendments to take effect. Sigman also expresses concern over the use of letters, symbols, and accent marks which are not found in the standard twenty-six-letter Roman alphabet.¹⁹⁸ A related rumor that a Native American group within the United States is already issuing driver's licenses using a non-standard alphabet¹⁹⁹ appears to be untrue.²⁰⁰ However, states enacting the 2010 Amendments would none-

¹⁹⁵ See, e.g., Donna Leinwand, *Tech-Savvy Teens Swamp Police with Fake IDs*, USA TODAY, July 2, 2001, <http://www.usatoday.com/news/nation/2001/07/02/fake-ids.htm>.

¹⁹⁶ *Fraudulent Identification Documents and the Implications for Homeland Security: Hearing Before the H. Select Comm. on Homeland Sec.*, 108th Cong. (2003) (statement of John S. Pistole, Assistant Director, Counterterrorism Division, FBI), available at <http://www.fbi.gov/news/testimony/fraudulent-identification-documents-and-the-implications-for-homeland-security> ("The FBI is concerned about the issuance of driver's licenses by states without adequate verification of identity.").

¹⁹⁷ Sigman, *Improvements* (?), *supra* note 15, at 471.

¹⁹⁸ *Id.* at 473.

¹⁹⁹ *Id.* at 473 & n.49 (citing *Cherokee syllabary*, WIKIPEDIA, Oct. 11, 2011, http://en.wikipedia.org/wiki/Cherokee_syllabary (last visited Oct. 22, 2011)).

²⁰⁰ Telephone Interview with Karen Gentry, Dir., Driver License Testing Div., Okla. Dep't of Pub. Safety (Oct. 25, 2011) ("All Oklahoma driver's licenses which are state-issued are issued through the Department of Public Safety."). Some Native American tribes may issue tribal identification cards using characters outside the twenty-six-letter Roman alphabet. *Id.*

theless be wise to avoid future issues of this type by proactively ensuring that any characters available on an in-state driver's license are also available in the state's U.C.C. filing system.

Name Changes and the 2010 Amendments

Individual debtors will inevitably change their names from time to time (as is common upon marriage and divorce), driver's licenses will expire periodically, and some drivers will hold multiple duplicative licenses. These are foreseeable hurdles that the 2010 Amendments must be prepared to overcome.

Alternatives A and B treat name changes identically. Under either alternative, a name change triggers the provisions of U.C.C. § 9-507(c).²⁰¹ This is an important consideration, because a name change could render a previously effective financing statement seriously misleading. U.C.C. § 9-507(c) (2010), after revisions as a part of the 2010 Amendments, now reads:

If 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 financing statement becomes seriously misleading under Section 9-506:

- (1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the filed financing statement becomes seriously misleading; and
- (2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after that event.

If, following a name change, a search for the debtor's new name using standard search logic fails to disclose a financing statement filed under the debtor's earlier name, the old financing statement immediately becomes "seriously misleading."²⁰² The effect of U.C.C. § 9-507(c) (2010) is that "[t]he financing statement would remain effective for collateral in existence on the date of the name change and for collateral acquired by the debtor during the four month period after the date of the name change."²⁰³ However, for such a financing statement to remain effective for new collateral beyond four months, the secured

²⁰¹ See Smith, *Summary of 2010 Amendments*, *supra* note 48, at 96; ULC, *2010 Amendments*, *supra* note 96.

²⁰² U.C.C. § 9-506 (1998); see also Smith, *Summary of 2010 Amendments*, *supra* note 48, at 96.

²⁰³ Smith, *Summary of 2010 Amendments*, *supra* note 48, at 96.

party *must* amend the financing statement to include the debtor's "new" name.²⁰⁴

Expired Driver's Licenses and the 2010 Amendments

Driver's license expiration dates are predictable. In most states, the expiration date of a driver's license is readily ascertainable by examining the face of the license itself. Secured parties can easily avoid pitfalls associated with expiring driver's licenses by keeping records of the expiration dates of their debtors' driver's licenses and requesting a copy of each newly renewed license to verify that the debtor's name has not changed. Secured parties should be aware that if the name on the debtor's license does change upon renewal, the change-of-name rules, discussed above, would apply.²⁰⁵

Multiple Driver's Licenses and the 2010 Amendments

State governments vary in their diligence with regard to confiscating old licenses upon issuance of a new license.²⁰⁶ Alternatives A and B both deal with the problem of multiple driver's licenses simply and elegantly, by declaring that where a state has issued more than one unexpired driver's license to a single individual, the license issued most recently in time controls for filing purposes.²⁰⁷ However, this poses a potential trap for filers. When secured parties are presented with a debtor's facially valid, unexpired driver's license, the secured party may lack the means to readily ascertain whether additional licenses are also in existence.

VI. CONCLUSION

The 2010 Amendments are scheduled to take effect on July 1, 2013.²⁰⁸ The 2010 Amendments have already been enacted in a significant number of jurisdictions. As of the completion of this Note, the 2010 Amendments have already been enacted in Connecticut, Indiana, Minnesota, Nebraska, Nevada, North Dakota, Rhode Island, Texas, and Washington, and introduced in the District of Columbia, Ken-

²⁰⁴ *Id.*

²⁰⁵ See U.C.C. § 9-507(c) (2010).

²⁰⁶ Sigman, *Improvements* (?), *supra* note 15, at 477.

²⁰⁷ U.C.C. § 9-503(g) (2010) (Alternative A); U.C.C. § 9-503(g) (2010) (Alternative B). See also Smith, *Summary of 2010 Amendments*, *supra* note 48, at 95.

²⁰⁸ ULC, *2010 Amendments*, *supra* note 96. See also Smith, *Summary of Article 9*, *supra* note 1, at 27.

tucky, Massachusetts, Oklahoma, and Puerto Rico.²⁰⁹ If the widespread adoption of Revised Article 9 is any indication, the 2010 Amendments will soon be adopted as Article 9 law in all, or nearly all, United States jurisdictions.

The 2010 Amendments to U.C.C. § 9-503 endeavor to streamline the naming of individual debtors by providing two alternatives, Alternative A and Alternative B. Alternative A is a good solution. It provides that if the debtor holds an unexpired, state-issued driver's license, the debtor's name as it appears on that driver's license should appear on financing statements. Alternative A improves upon many of the problems associated with naming individual debtors under Revised Article 9. On the other hand, Alternative B will be almost identical to Revised Article 9 in practical effect and retains nearly all of the problems associated with naming individual debtors under Revised Article 9. Overall, the 2010 Amendments may create more problems than they solve, because Alternative B is only a negligible improvement over Revised Article 9, and because the presence of two alternative systems will add confusion and detract from jurisdictional uniformity.

²⁰⁹ ULC, *Legislative Fact Sheet*, *supra* note 8.

