**Debtors’ Names**

Welcome to this podcast on Debtors’ Names brought to you by CALI. I am Professor Jennifer S. Martin. The topic of this podcast is how a secured creditor decides what debtor name it should use on a financing statement when perfecting its security interest. This topic primarily requires a careful reading of UCC § 9-503, § 9-506, and a basic understanding of how a secured party attaches its security interest in the first place.

Recall that pursuant to § 9-203 the creation of the security interest attaches a sort of invisible string between the debtor’s obligation to pay the creditor and the collateral. The attachment of the security interest entitles the creditor to possession of the collateral in the event that the debtor fails to pay. But a creditor needs to *perfect* its security interest in order to make it good against other claimants. The typical methods of perfection are: filing, possession, control, automatic perfection, and levy. While there are exceptions and rules as to the proper filing location, most secured creditors will file a *financing statement* with the office of the relevant State Secretary of State in order to perfect their security interest. So, for purposes of this podcast, we will focus primarily on filing.

A filing of a financing statement gives notice to other parties who might want to take an interest in the collateral, so long as they know to search the records. But, the most important information on a financing statement is that of the debtor’s name because the financing statement records are indexed using the debtor’s name only. That makes sense because the system must be one that enables searchers to potentially identify conflicting security interests prior to lending. So, it is very important for the filer to get the debtor’s name correct or the financing statement will never be found by a searcher. Sometimes a creditor will choose to file more than one financing statement if there is any doubt about an individual debtor’s name.

The rules of § 9-503 tell us what name is sufficient and § 9-506 sets a standard for when a financing statement is seriously misleading and therefore *ineffective* to perfect the security interest. There are different rules for registered organizations, non-registered organizations, trusts, personal representatives of decedents, individuals, and sole proprietorships. This podcast will go through each of the categories.

With respect to registered organizations, such as corporations, LLCs, and limited partnerships, § 9-503 directs that the financing statement use only the name listed on the public organic record for the organization, such as the name listed on a corporation’s articles of incorporation. Of note, a general partnership is not a registered organization even if it has filed an assumed name certificate. Do not include any trade name as only the name on the public organic record will suffice. For instance, if a company is registered as “Florida Sun Beach Corporation,” you would file under that name. This would be true even if the trade name is “Florida Sun.” Just use the registered name and no more. Moreover, don’t abbreviate words in the registered organization’s name, unless that abbreviation is used in the public organic record. For instance, don’t abbreviate the word Florida as “FL.”

Of course, not all business organizations are registered; most commonly, they are partnerships. These unregistered organizations are divided into two groups, those with names and those without names. If the organization has a name, then the financing statement must provide the organizational name of the debtor. For instance, if my friend Scott and I form a general partnership in the name of Burnham & Martin, a creditor wanting to file a financing statement would likely consult our partnership agreement and file in the name of Burnham & Martin, as opposed to filing in our individual names. If the organization does not have a name, the financing statement is sufficient if it provides the names of the partners, members, associates, or other persons comprising the debtor. In the event that my friend Scott and I form a general partnership, perhaps inadvertently, a creditor wanting to file a financing statement where we have not designated a name for our partnership would have to file a financing statement in the names of the general partners, here our individual names, Scott J. Burnham and Jennifer Sue Martin.

In the event that there is a trust holding the collateral, if the trust is a registered organization then the creditor should file in the registered name. For instance, a trust registered as the “Martin Family Children’s Trust” would necessitate a filing in that name. However, if the trust is not a registered organization, then the financing statement would list the name of the trust on the organic record for the trust or if the organic record does not have a name, then the name of the settlor or testator. For instance, even if the “Martin Family Children’s Trust” was not a registered trust, but the trust documents use that name, then that is the proper name for a financing statement. However, when we have unregistered trusts, the creditor must also in a separate part of the financing statement indicate that the collateral is held in the trust or if there is not a name for the trust, also provide additional information sufficient to designate the trust from other trusts that might have the same settlers or testators.

In the event that we have collateral being administered by a personal representative of a decedent, the financing statement must provide the name of the debtor (in this case, it will be the name of the decedent) and indicate that the collateral is being administered by a personal representative. The name of the decedent should be the same as indicated on the court order appointing the personal representative. So, if I was a personal representative of the estate of my grandmother, Dorothy Martin, a financing statement would need to list the debtor as the name of the decedent, Dorothy Martin, and indicate that the collateral is being administered by a personal representative.

As to individuals, the drafters provided two alternatives for individual debtor names under § 9-503 and each enacting state has to choose one of the alternatives. Alternative A, adopted by most states, directs that a filer should use the name of the debtor listed on an unexpired driver’s license of the state where the filing is to occur and if there is no driver’s license to use the surname and first personal name of the debtor. Under this alternative, we would use the name on the unexpired driver’s license, even if the driver’s license was misprinted, even if the debtor is commonly known by a nickname and even if the birth certificate has a different name. For instance, if the driver’s license lists “Santa Claus” then a correct filing would be in the name of “Santa Claus,” no matter how odd the name might seem. Also, if my driver’s license provides my name as “Jennifer Sue Martin,” then a filing is correct when using the full name, but a filing against “Jennifer S. Martin” would not suffice in an Alternative A jurisdiction. Alternative B directs that a filer should use the individual name of the debtor (a phrase as it turns out is not defined in 9-503), the surname and first personal name of the debtor, *or* the name listed on the unexpired driver’s license of the state where the filing is to occur. Again, even with Alternative B, nicknames are to be avoided. For instance, my father’s name is Dudley Richard Martin, but everyone knows him as Rick Martin. A filing in the name of Rick Martin would be seriously misleading.

But, what about sole proprietorships? Article 9 directs that we just use the individual name according to the individual name rules. So, for instance, if I operate a bookselling business on the side in the name of “Second Hand Books,” a sole proprietorship, then a creditor would file a financing statement in my individual name, “Jennifer Sue Martin,” which happens to be the name on my driver’s license.

There’s enough here that you might worry about getting this wrong. The consequence of failing to sufficiently provide for the debtor’s name in the financing statement makes it “seriously misleading” as a matter of law and, therefore, will not be effective to perfect the security interest. But, perhaps, all is not lost if the name is incorrect as there is one exception to this rule. A financing statement will not be seriously misleading if two things are true: first, a searcher could do a search of the financing statement records of the filing office under the debtor’s *correct* name; and second, such search would reveal the financing statement with the *incorrect* name using the filing office’s standard search logic. As you can see, in order to save an incorrect filing, the standard search logic of filing offices becomes very important. Don’t rely too much on this exception to the rule because the alphabetic indexing of the records is likely to only save small errors that don’t take the financing statement significantly out of alphabetic order. For instance, a creditor might name the debtor as “D R M Electronics Corporation” with spaces between the “D R M,” and no periods after the letters. If the true name is Dudley R. Martin Electronics Corporation the filing is seriously misleading. If the search logic in effect at the time using the correct name would not disclose the financing statement with the incorrect name, then the financing statement is seriously misleading and ineffective to perfect the security interest. Note that the Article 9 puts the burden on the filer to get the name right so that a searcher searching for that name will find it.

At this point, you should be able to identify the correct name to use for a debtor on a financing statement. You should also be able to describe when a secured creditor might want to make multiple filings.

I hope you’ve enjoyed this podcast on Debtor’s Names.

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