

Pennsylvania Enactment of the 2010 Amendments to UCC Article 9

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On June 27, 2013, Governor Corbett signed into law Senate Bill 381, which enacted as Act 30 of 2013 the 2010 Amendments (the "**2010 Amendments**") to Article 9 of the Uniform Commercial Code.

Most states have adopted the 2010 Amendments. The 2010 Amendments have an effective date in Pennsylvania (and other states) of July 1, 2013.

The major areas of revision relate to the following topics, as more fully described below:

- Individual debtor filings
- Entity debtors and trust/trustee filings
- Changed jurisdictions
- New forms
- Electronic transactions
- Transition rules

Individual debtor filings

The 2010 Amendments seek to clarify prior ambiguity regarding "correct" individual debtor names and offer two options for each state with respect to identifying individual debtor names. Each state has adopted one of the following options:

Option A - The "Only If" Rule

Option A, which was selected by Pennsylvania as well as 39 other jurisdictions as of July 17, 2013, provides that the name of an individual debtor identified on a financing statement is adequate only if it sets forth the name of the individual as shown on the individual's unexpired driver's license. In Pennsylvania, this includes, "*a driver's license which has not expired under 75 Pa.C.S. 1510(a) (relating to issuance and content of driver's license) or an identification card under 75 Pa.C.S. 1510(b).*"

Option B - Safe Harbor

Under Option B, individual names that are sufficient under current law will remain sufficient under the safe harbor. Option B also provides that just the debtor's surname and first personal name will be sufficient, and the name on the driver's license will also be sufficient. This option provides greater flexibility for the filer. But again, Option B was not adopted in Pennsylvania.

Practice Tips:

- Care should be taken if a driver's license or identification card lists a nickname or deviates from other legal documents such as "Bill" for "William". In this case, if the driver's license or identification card lists "Bill" as the person's name, "Bill" would be the proper identification on the financing statement and searches for existing liens should identify "Bill", and as a good practice, "William" as well. Likewise, the best practice when ordering this search would be to identify "Bill" as a starting place and any variations on that name.
- We recommend obtaining a photocopy of the individual debtor's driver's license or identification card. Acceptable identification cards are those issued by the Pennsylvania Department of Transportation. Be certain the license or card is current and not expired.
- We recommend obtaining a photocopy of the individual debtor's driver's license or identification card prior to ordering any UCC searches on individual debtors.
- In the unlikely event that a Pennsylvania individual debtor does not possess a driver's license or identification card, then the financing statement will be sufficient if it indicates the debtor's individual name or surname and first personal name.
- Obtaining a driver's license copy is also good practice in those states that have elected Option B.
- Care should be taken to verify which Option a state has elected when ordering searches or filing financing statements in jurisdictions other than Pennsylvania.
- Confirm and document Option A or B and the source of individual identification (driver's license/identification card/other) in each state.
- When filing continuation or amendment statements, be sure to verify that the current individual debtor name does not require amendment.

Entity debtors and Trust/Trustee filings

While the 2010 Amendments do not change the rules concerning where to file a perfected financing statement, they do provide clarification in two areas:

- The definition of "Registered Organization" has been revised to encompass different types of entities, including business trusts.
- Clarification is provided with respect to the determination of correct debtor entity names. The proper entity debtor name can be found in a *"record that is available to the public for inspection and is: (1) a record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record."*

Practice Tips:

- In Pennsylvania, the articles of incorporation for a corporation, certificate of organization for a limited liability company, certificate of limited partnership for a limited partnership - including any amendments - is the key to determining the correct name for UCC (Financing Statement, Continuation or Termination) purposes.
- A new filing may be needed when a business trust changes its location by virtue of becoming a registered organization in a jurisdiction other than its place of business. The 2010 Amendments provide for methods and

timeframes for moving relevant financing statements to new jurisdictions.

- When filing continuation or amendment statements, be sure to verify that the current entity debtor name does not require amendment.

Changed Jurisdictions

The 2010 Amendments add 9-316(h), which provides a 4-month window of continued perfection after a debtor moves to a new jurisdiction for not only existing collateral, but also collateral acquired during the 4-month window. A new UCC-1 (financing statement) filing must be made in the debtor's new jurisdiction during the 4-month window.

Practice Tips:

- This change affords secured parties a 4-month window to check the debtor's filing jurisdiction - alleviating some monitoring burden, particularly with respect to inventory, accounts receivable and other "floating" liens.

New Forms

New versions of forms UCC-1 Financing Statement, UCC-1AD Financing Statement Addendum, UCC-1AP Financing Statement Additional Party Addendum, UCC-3 Financing Statement Amendment, UCC-3AD Financing Statement Amendment Addendum, UCC-3AP Financing Statement Additional Party Amendment Addendum, UCC-5 Information Statement, and UCC-11 Information Request have been adopted by most states, including Pennsylvania. The forms will indicate a revision date on or after April 20, 2011.

Practice Note:

Care should be taken to use the new forms going forward in those states which have adopted the 2010 Amendments. The Corporation Bureau of the PA Department of State has the new forms available on their website at <http://www.dos.state.pa.us/portal/server.pt/community/corporations/12457/forms/571880>. The Corporation Bureau indicates on its website that it will accept the pre-2011 forms up to July 31, 2013.

Electronic Transactions

The 2010 Amendments clarify issues related to electronic chattel, paper, and the assignment of and exercise of remedies regarding promissory notes and payment intangibles. These topics will not be addressed in this memorandum, however, if you believe you need specific guidance on these topics, please contact an attorney at Barley Snyder.

Transition Rules

While the 2010 Amendments have a July 1, 2013 effective date, they also contain certain transition rules:

- The 2010 Amendments will not affect any legal action or proceeding commenced before the effective date.
- Under UCC 9-805(b) of the 2010 Amendments, a financing statement filed before July 1, 2013 that is effective to perfect under the prior version of Article 9 will remain effective until the earlier of (x) the time such financing statement would have lapsed under the old law or (y) June 30, 2018. The secured party can maintain perfection by amending the name of the debtor when it files a continuation statement.

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