

## Amendments to UCC Article 9 Take Effect July 1, 2013 in Many Jurisdictions

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*On July 1, 2013, amendments to Article 9 of the Uniform Commercial Code (UCC), which governs using personal property as collateral, will become effective in many jurisdictions. The changes to Article 9 will affect both existing and future transactions. This article summarizes the changes most likely to affect new transactions and the transition rules that will apply to bringing existing transactions into compliance with the new requirements.*

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It has been 12 years since major revisions to UCC Article 9 were enacted in all jurisdictions, the District of Columbia, and U.S. territories and possessions. The 2001 revisions made significant changes in the types of personal property and types of transactions covered by Article 9, in the rules for determining where to file a financing statement to perfect a security interest, and in the UCC forms to be filed. The transition from the rules in effect prior to the 2001 revisions to the 2001 revisions' requirements was complicated and, fortunately, almost all jurisdictions enacted the 2001 revisions at the same time, minimizing the problems that would have been created by having two very different sets of rules in effect.

In 2010, the governing bodies for the UCC proposed amendments to the official text of and comments to UCC Article 9. Unlike the 2001 revisions, the 2010 amendments are limited and are often intended to be clarifications of (rather than changes to) current law.

This article is based on the official text of the 2010 amendments. However, the UCC is not in fact uniform. For any specific transaction or question, the statute as enacted in the relevant jurisdiction, as well as that jurisdiction's filing office rules, UCC forms, and instructions to the forms, should be reviewed.

### **Effective Date of 2010 Amendments**

The 2010 amendments are not effective until enacted in a specific jurisdiction. The proposed effective date is July 1, 2013. While many jurisdictions have acted, and the 2010 amendments to Article 9 will be effective on July 1, 2013 in those jurisdictions, some jurisdictions have adopted the 2010 amendments with a delayed effective date, and others have not yet enacted the amendments. The lack of a uniform effective date will have a limited impact on UCC filings made after July 1, 2013, as discussed below.

## Changes Affecting Transactions

The provisions of the 2010 amendments that will have the most effect on transactions relate to UCC filings.

**Registered organizations.** The 2010 amendments will broaden the definition of registered organization (found in UCC 9-102) to provide that common law trusts that are formed for business purposes and required to file formation documents with their jurisdiction of formation (such as a Massachusetts business trust) are registered organizations and to confirm that statutory trusts are registered organizations. This change in the definition will in turn affect where a financing statement is required to be filed for such a trust due to the rules (found in UCC 9-301, 9-305(c) and 9-307) that apply differently to a registered organization (file in jurisdiction of organization) and to an organization that is not a registered organization (file in jurisdiction where the chief executive office is located). Because the 2010 amendments will not be in effect in all jurisdictions on July 1, 2013, in new transactions this change may require filing in both jurisdictions (chief executive office and organization) as to these types of trusts until all jurisdictions have the 2010 amendments in effect. For existing transactions, this change may trigger the need to take action to maintain perfection under the transition rules, as described below.

**Debtor name – individuals.** Because of uncertainties created by case law as to the correct name of an individual debtor, and the resulting non-uniform provisions on individual debtor names that were enacted in several jurisdictions, one of the major reasons for the 2010 amendments is to provide clearer rules on the correct name of an individual. The 2010 amendments provide two alternatives for a jurisdiction to choose from on this issue.

- Most jurisdictions have adopted “Alternative A,” which requires that the name appearing on a qualifying driver’s license (or other qualifying state-issued identification card) be used as the debtor’s name. Only if there is no qualifying license/identification card is an alternative (the individual’s surname and first personal name or the “individual name” of the debtor) sufficient. A qualifying license/identification card is the most recently issued unexpired license/identification card issued by the jurisdiction in which the UCC filing is being made. The use of the name on the license/identification card still leaves a number of questions for those preparing UCC filings to address, including how the name on the license/identification card is used to fill in the fields on the UCC form (e.g., identifying the surname, first personal name, and other names and initials), what to do if the license/identification card contains characters that are not permitted by the UCC filing system, the name to use if the filing jurisdiction is different from the license/identification card jurisdiction, and how to monitor changes (such as license expiration) in the individual debtor’s name that may require an amendment to an existing UCC filing to protect the security interest. In an Alternative A jurisdiction, UCC 9-502 will provide that a mortgage or deed of trust as a fixture filing need only show the individual’s surname and first personal name or the “individual name” of the debtor.
- A smaller number of jurisdictions have adopted “Alternative B,” which provides that any of the qualifying license/identification card name, the surname and first personal name, or the “individual name” of the debtor is sufficient. While Alternative B raises many of the same issues as Alternative A, it may be more forgiving in that it offers the secured party multiple paths to achieve the benefits of its bargained for perfection.
- Note that non-UCC liens (e.g., federal tax liens) generally have not been required to meet the UCC requirements as to correct debtor names, which should be taken into account in searching non-UCC records for liens.

**Debtor name – registered organizations.** The rules in UCC 9-503 have been changed to specify that the public record used to determine the correct name of a registered organization (such as a corporation, LLC or limited partnership) is the name in its organizational document (as amended) as filed with its jurisdiction of organization. Other public records, such as online databases, assumed name filings, and good standing certificates, which may contain a different name, are not the correct source.

**Changes to forms.** The 2010 amendments made some changes to the UCC forms. The changes that are most likely to cause errors in new filings are:

- *UCC-1 (initial financing statement).* The box to check to indicate that a filing is to be recorded in the real property records (e.g., as a fixture filing) has been moved from the UCC-1 itself to the addendum form (and grouped with other information relating to filings to be made in the real property records). The box can easily be overlooked due to this move.
- *UCC-3 (amendments including terminations and continuations).* The box to check to indicate that a filing is to be continued has been moved, so that it is no longer directly below the box to be checked for a termination.
- *UCC-5 (Information statement).* The 2010 amendments will change UCC 9-518 to allow an information statement (formerly called a correction statement) to be filed by either a debtor or by a secured party. The filing continues to have no legal effect on a previous UCC filing and is just a way for a debtor or secured party to place additional information on the public record (though they are not required to do so).
- The new forms should not be used in a jurisdiction where the 2010 amendments are not yet effective, and the existing forms will generally be rejected by a jurisdiction once the 2010 amendments are in effect in that jurisdiction (although some jurisdictions may have a limited transition period during which both existing and new forms will be accepted). The relevant jurisdiction's requirements should be checked before filings are submitted.

### Transition Rules

The changes in the definition of registered organization and in the debtor name rules will require that UCC filings made before the 2010 amendments became effective in a jurisdiction be brought into compliance with the 2010 amendments' requirements. The good news is that this generally will not need to be done until the existing filing is being continued or (in some cases) amended. The 2010 amendments also provide a proposed outside date (July 1, 2018) by which filings made prior to the effectiveness of the 2010 amendments in a jurisdiction must be brought into compliance with the 2010 amendments' requirements, though some jurisdictions may provide for a longer period.

While the transition period is in effect, UCC searches will need to take into account the place of filing and name rules under both the pre-2010 amendments and 2010 amendments versions of Article 9.

### Conclusion

While the 2010 amendments have limited effects on Article 9 of the UCC, there are some changes that affect existing and future transactions. Changes in the UCC forms, the new registered organization definition (and its effect on where to file against certain types of entities), the new debtor name rules, and the transition requirements are the key elements of the 2010 amendments to be aware of and implement.

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