

# 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

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## I. INTRODUCTION

In 2001, Revised Article 9 of the Uniform Commercial Code (UCC)<sup>1</sup> became effective in most United States jurisdictions.<sup>2</sup> With Revised Article 9, the drafters hoped to increase the certainty, objectivity, and uniformity that was often lacking in secured transactions under former Article 9.<sup>3</sup> However, the nonexistence of a clear standard in section 9-503(a), as to the sufficiency of a debtor name, highlights the continued inability of Revised Article 9 to provide enough commercial certainty for parties engaging in secured transactions.<sup>4</sup>

At first glance, the requirement that a financing statement provide the name of the debtor appears simple enough.<sup>5</sup> However, section 9-503(a) provides a somewhat circular test for determining the sufficiency of an individual debtor name<sup>6</sup> and an imprecise mandate for determining

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1. Unless otherwise indicated, all citations in this Article are to the 2009 version of the UCC found in *SELECTED COMMERCIAL STATUTES* (Carol L. Chomsky et al. eds., West 2009).

2. Margit Livingston, *Livingston on Trade Names on Article 9 Financing Statements*, EMERGING ISSUES ANALYSIS, Sept. 14, 2009, available at LexisNexis, 2009 Emerging Issues 4260.

3. See U.C.C. § 9-101 cmt. 4(h) (2009) (stating that Part 5 of Revised Article 9 was “substantially rewritten to simplify the statutory text and to deal with numerous problems of interpretation and implementation that [arose] over the years”).

4. See *id.* § 9-503(a)(1), (4)(A).

5. See 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) (a member of the Drafting Committee to revise Article 9 setting forth the opinion that in most transactions “filing should be as simple as child’s play” under Article 9’s revised filing provisions).

6. See U.C.C. § 9-503(a)(4)(A); see also Paul Hodnefield, *New Texas UCC Legislation*

the sufficiency of a registered-organization debtor name.<sup>7</sup> In the case of an individual, the financing statement must provide the individual name of the debtor.<sup>8</sup> Because no additional guidance is given,<sup>9</sup> filers may be required to evaluate documents and records listing inaccurate debtor names or different variations of a particular debtor's name.<sup>10</sup> In addition, filers must consider issues such as assumed names, nicknames, and name changes.<sup>11</sup> If the effectiveness of the financing statement is ever challenged, the practical result for the filer is uncertainty regarding whether a court will deem the individual name provided sufficient for the purpose of giving notice to subsequent creditors of the filer's security interest. In the case of a registered organization, the financing statement must list the name indicated "on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized."<sup>12</sup> Because the appropriate public record is not specified,<sup>13</sup> the name of a registered organization as set forth on any number of different public records could arguably comply with this standard.<sup>14</sup> As such, Revised Article 9 again introduces ambiguity and individual judgment where definitive guidance would best serve a UCC filer.

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*Changes Debtor Name Requirements*, CORP. SERVICE COMPANY, 1–2 (July 2007), <https://www.cscglobal.com/cscglobal/pdfs/TX-Legislation-Changes-UCC-Debtor-Name-Requirements.pdf> ("This rather circular requirement [of section 9-503(a)(4)(A)] provides no indication of what constitutes the correct name of an individual.").

7. See U.C.C. § 9-503(a)(1); see also Hodnefield, *supra* note 6, at 3 ("Revised Article 9 also contains some ambiguity concerning the source of registered organization names.").

8. U.C.C. § 9-503(a)(4)(A).

9. See, e.g., *Pankratz Implement Co. v. Citizens Nat'l Bank*, 130 P.3d 57, 65 (Kan. 2006) (acknowledging that section 9-503, as adopted in Kansas, "provides no specific rule or guidance concerning what constitutes a sufficient debtor 'name,'" and further noting that the terms "name," "name of debtor," "debtor's name," and "correct name" are not defined in Article 9).

10. See, e.g., *Genoa Nat'l Bank v. Sw. Implement, Inc. (In re Borden)*, 353 B.R. 886, 887–88 (Bankr. D. Neb. 2006) (noting that the debtor's legal name was "Michael Borden" and was stated as such on many legal documents, including the debtor's birth certificate, driver's license, real estate deeds, bank accounts, tax returns, and bankruptcy petition, but the shortened name "Mike Borden" was often signed on legal documents such as tax returns, security documents, and financial statements); *In re Gustafson*, 14 U.C.C. Rep. Serv. (Callaghan) 231, 232–33 (Bankr. W.D. Okla. 1973) (where the debtor's legal name was "Arthur J. Gustafson," but the debtor routinely used the incorrectly spelled name "Arthur J. Gustavsen," including in connection with secured-loan transactions, title to real estate, telephone listings, and employment).

11. See 9B WILLIAM D. HAWKLAND ET AL., UNIFORM COMMERCIAL CODE SERIES § 9-503:5 (2001) (discussing the practical problems that may hinder a filer's ability to determine a particular debtor's name); 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, 154–55 (2007) (discussing same); John K. Pearson & J. Scott Pohl, *If the Name Is Bubba, You'd Better Spell It Right*, AM. BANKR. INST. J., June 2006, at 24, 71, 72 (discussing same).

12. U.C.C. § 9-503(a)(1).

13. See *id.* §§ 1-201, 9-102, 9-503(a)(1) (none of which define the term "public record").

14. See Hodnefield, *supra* note 6, at 3.

Filers, therefore, face a great deal of uncertainty regarding the effectiveness of a filed financing statement used to perfect a security interest in debtor property.

The lack of a clear-cut test for determining sufficient debtor names not only affects UCC filers, but also aggravates UCC searchers. Subsequent creditors conducting due diligence before entering into a secured transaction with a particular debtor will generally attempt to identify any preexisting security interests to avoid taking a security interest in property that is already encumbered. As such, a subsequent creditor must search the filing-office records to disclose any prior liens affecting a proposed debtor's property.<sup>15</sup> Although the filing office indexes financing statements by the debtor name,<sup>16</sup> the lack of a clear-cut debtor-name standard means that searchers cannot rely on filers to use a standardized formation of a debtor name when filing a financing statement. Therefore, UCC searchers must consider all possible variants of a debtor name that any prior filers may have judged to be compliant with section 9-503(a), including the likelihood of multiple financing statements filed by a single filer using variants of a debtor name to reduce the risk of unintentionally providing an insufficient debtor name for perfection.<sup>17</sup> Differing search logic between filing offices in different jurisdictions compounds the uncertainty because broader search logic may return results that narrower search logic would fail to disclose.<sup>18</sup> Consequently, searchers have not been able to reap the intended benefits of Revised Article 9, which sought to eliminate the need for searchers to guess all potential variations of a debtor name in favor of an approach where searchers could reliably conduct a single search using the debtor's

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15. See, e.g., *Corona Fruits & Veggies, Inc. v. Frozsun Foods, Inc.*, 48 Cal. Rptr. 3d 868, 869 (Ct. App. 2006) (noting that the debtor's name is particularly important because financing statements are indexed under the name of the debtor and those who wish to find them search under the debtor's name).

16. U.C.C. § 9-519(c); see also *id.* § 9-503 cmt. 2 (noting that “[f]inancing statements are indexed under the name of the debtor”).

17. See Ingrid Michelsen Hillinger, *Ingrid Michelsen Hillinger on Peoples Bank v. Bryan Brothers Cattle Co.*, EMERGING ISSUES ANALYSIS, Dec. 16, 2007, available at LexisNexis, 2008 Emerging Issues 1542 (noting that filers can protect themselves by filing multiple financing statements under every possible name because wrong names on a financing statement do not count against the filer if one of them is correct and recommending that filers list all possible correct names).

18. See Livingston, *supra* note 11, at 146 (noting that the uniformity of Revised Article 9 is lost because of varying filing-office search logic); Ingrid Michelsen Hillinger, *Ingrid Michelsen Hillinger on Filed Financing Statement Search Systems*, EMERGING ISSUES ANALYSIS, Dec. 1, 2008, available at LexisNexis, 2008 Emerging Issues 3216 (noting that “state filing offices do not have uniform search logics, uniform searches or uniform search results” and that “courts in different states will develop different standards for evaluating the sufficiency of a filed financing statement”).

correct name.<sup>19</sup> Thus, like UCC filers, subsequent creditors searching for recorded financing statements also face a great deal of commercial uncertainty because the lack of a clear debtor-name standard functions as a roadblock to the ability of searchers to locate preexisting security interests. As such, the uncertainty over a sufficient debtor name for purposes of filing a financing statement creates a critical breakdown in the notice-filing system for both UCC filers and UCC searchers.

Years after the adoption of Revised Article 9, frustration with the ambiguity in the sufficiency-of-a-debtor-name standard in section 9-503(a) and the resulting commercial uncertainty in secured transactions has finally led to state-specific attempts to fix the problem. In 2007, Texas became the first state to enact a nonuniform amendment specifically aimed at eliminating any continuing ambiguity in the sufficiency-of-a-debtor-name standard.<sup>20</sup> Other jurisdictions have followed Texas's lead, with states such as Tennessee, Nebraska, and Virginia adopting nonuniform amendments as well.<sup>21</sup> The rise of state-specific nonuniform amendments supports the idea that even more states will soon follow with their own legislative attempts to address the problems surrounding the sufficiency of a debtor name under Revised Article 9.

This Article eschews the long-standing debate over the meaning of section 9-503(a) and the best practices for complying with the requirement to provide a sufficient debtor name. Instead, this Article argues that, as a practical matter, a uniform amendment to Revised Article 9 is both long overdue and necessary to prevent the proliferation of state-specific amendments from destroying uniformity in secured transactions across United States jurisdictions. Accordingly, Part II discusses the important role of the debtor name in secured transactions and the difficulties faced by UCC filers, UCC searchers, and courts when attempting to decipher the ambiguous sufficiency-of-a-debtor-name requirements under Revised Article 9. Part III goes on to critically analyze the nonuniform amendments enacted in various jurisdictions, which attempt to improve certainty for debtor-name issues. Finally, Part IV discusses the need for a uniform amendment and, to facilitate discussion about and development of a model uniform amendment for

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19. See Livingston, *supra* note 11, at 125; see also *Genoa Nat'l Bank v. Sw. Implement, Inc. (In re Borden)*, 353 B.R. 886, 888–89 (Bankr. D. Neb. 2006) (giving an example of the multiple searches required under former Article 9 and discussing the intended difference under Revised Article 9).

20. See S.B. 1540, Legis. Sess. 80(R) (Tex. 2007).

21. See *infra* Part III.B–C.

nationwide adoption, proposes a reasoned framework for addressing the existing sufficiency-of-a-debtor-name problems in Revised Article 9.

## II. DEBTOR NAMES UNDER REVISED ARTICLE 9

### A. *The Important Role of Debtor Names*

For creditors wishing to take and perfect a security interest in a debtor's personal property, filing a proper financing statement with the filing office of the appropriate jurisdiction is an essential part of the process, and no single piece of information in a financing statement may be more important than the debtor name. As a general rule, a financing statement must be filed<sup>22</sup> to perfect all security interests under Revised Article 9.<sup>23</sup> Other than certain specified exceptions,<sup>24</sup> filing a financing statement remains the most common method of perfecting most security interests.<sup>25</sup> The importance of perfection to a secured creditor, however, is unequivocal. Without proper perfection of a security interest, a secured creditor may lose priority over competing claimants to a debtor's property and may see the value of its security interest disappear.<sup>26</sup> The formal requirements for a financing statement are set out in section 9-502.<sup>27</sup> A financing statement must provide (1) the name of the debtor, (2) the name of the secured party (or a representative of the secured

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22. In general, the UCC requires filing of a financing statement with the filing office in the jurisdiction where the debtor is located. See U.C.C. §§ 9-301(1), -501(a) (2009).

23. *Id.* § 9-310(a); see also *Corona Fruits & Veggies, Inc. v. Frozsun Foods, Inc.*, 48 Cal. Rptr. 3d 868, 869 (Ct. App. 2006) (noting that a financing statement is generally required to perfect a security interest); *HAWKLAND ET AL.*, *supra* note 11, § 9-310:1 (noting that a financing statement is generally required "to perfect all security interests").

24. See U.C.C. § 9-310(b) (listing exceptions where filing a financing statement is unnecessary); *id.* § 9-312(b)-(g) (allowing perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money by alternative means such as perfection by control and temporary perfection without filing).

25. See *id.* § 9-310(a); see also *HAWKLAND ET AL.*, *supra* note 11, § 9-310:1 (noting that "filing remains the normal way to perfect most security interests"); *Livingston*, *supra* note 2 (discussing the fact that "creditors who wish to take and perfect a security interest in their debtors' personal property or fixtures under Article 9 of the Uniform Commercial Code must be mindful of the need to file a proper financing statement in the appropriate public record").

26. See U.C.C. § 9-322(a)(1) (showing the importance of filing first); *id.* § 9-322(a)(2) (noting that when one competing security interest is perfected and the other is not, the perfected security interest will have priority); *id.* § 9-322 cmt. 3 (discussing the general priority rules); see also *Livingston*, *supra* note 2 (noting that "[w]ithout proper perfection of their security interests, secured creditors will often lose priority over competing claimants to the debtor's property and will see their security interests stripped away by the trustee in the event of a debtor's bankruptcy").

27. U.C.C. § 9-101 cmt. 4(h); see *id.* § 9-502.

party), and (3) an indication of the collateral that the financing statement covers.<sup>28</sup> The debtor name, however, may be the single most critical piece of information on a financing statement and is an equally essential part of the UCC filing and search process.<sup>29</sup> The essential role of the debtor name developed largely because filing offices must index financing statements according to the name of the debtor.<sup>30</sup> Moreover, across all jurisdictions, those who wish to find recorded financing statements must conduct searches using the debtor name.<sup>31</sup> As a result, a UCC search can only “reliably disclose relevant security interests” if the financing statement, and therefore the filing-office index, accurately reflects the debtor name.<sup>32</sup> To give effective notice of a security interest, filers must therefore provide the debtor’s correct name. Accordingly, the debtor name plays an essential role in the UCC filing and search process.

Because of the central role of debtor names in the UCC filing and search system, filers of initial financing statements and searchers seeking to discover existing security interests must be mindful of the significance of appropriately identifying a debtor name. For a secured party, correctly determining the debtor name and spelling it accurately on the filed financing statement can mean the difference between having

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28. *Id.* § 9-502(a)(1)–(3).

29. *Id.* § 9-503 cmt. 2 (noting that “[t]he requirement that a financing statement provide the debtor’s name is particularly important”); *see also* Clark v. Deere & Co. (*In re Kinderknecht*), 308 B.R. 71, 74 (B.A.P. 10th Cir. 2004) (noting that the requirement that a financing statement provide the debtor’s name is particularly important); *Corona Fruits & Veggies, Inc. v. Frozsun Foods, Inc.*, 48 Cal. Rptr. 3d 868, 869 (Ct. App. 2006) (noting that the debtor’s name is particularly important because financing statements are indexed under the name of the debtor and those who wish to find them search under the debtor’s name); HAWKLAND ET AL., *supra* note 11, § 9-503:1 (noting that it is of critical importance to determine the debtor name and spell it correctly); Hillinger, *supra* note 17 (noting a court’s acknowledgement of the importance of the debtor’s name to the Article 9 filing system); Livingston, *supra* note 2 (noting that the change in Revised Article 9 making a financing statement presumptively misleading if it fails to identify the proper debtor name highlights the notion that the debtor’s name is the “essence of the financing statement”).

30. U.C.C. §§ 9-503 cmt. 2, -519(c); *see also Corona Fruits & Veggies*, 48 Cal. Rptr. 3d at 869 (noting that “[f]inancing statements are indexed under the name of the debtor”); HAWKLAND ET AL., *supra* note 11, § 9-503:1 (noting that “the index system for Article 9 filings is based on the debtor’s name”); Sigman, *supra* note 5, at 863–64 (noting that the debtor name is the key to discoverability of a filing and that section 9-506(b)–(c) of Revised Article 9 reflects the crucial nature of the debtor’s name and the “focus on discoverability in setting the boundaries for permissible error”); Livingston, *supra* note 2 (noting that because state filing-office indexes are based on debtor names and those searching for recorded financing statements search under the debtor name, “the debtor’s name is the gateway to the filing system and the single most significant bit of information on [a] financing statement”).

31. *See* Livingston, *supra* note 2; *see also Corona Fruits & Veggies*, 48 Cal. Rptr. 3d at 869 (noting that “the debtor’s true last name is crucial because the financing statements are indexed by recorded last names”).

32. Hodnefield, *supra* note 6, at 1.

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recourse against a debtor or walking away empty handed.<sup>33</sup> Errors and omissions in the debtor name may result in an unperfected security interest and the loss of priority to a subsequent secured party that properly files a financing statement.<sup>34</sup> Thus, every secured party has ample incentive to comply with section 9-503(a) and file a financing statement that appropriately identifies the debtor name. For searchers, the debtor name is equally important because it is the mechanism by which an interested party can search filing-office records to discover whether another creditor already holds a security interest in certain collateral of a particular debtor.<sup>35</sup> That is to say, any person searching for a preexisting security interest will search under the name of a prospective debtor to determine whether another filer has already encumbered any of the prospective debtor's property through the filing of a financing statement.<sup>36</sup> Thus, a filer's error in providing the debtor name may result in the failure of the financing statement to notify subsequent creditors of a prior security interest.<sup>37</sup> Identifying the debtor

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33. See Livingston, *supra* note 2 (noting that “[w]ithout proper perfection of their security interests, secured creditors will often lose priority over competing claimants to the debtor’s property and will see their security interests stripped away by the trustee in the event of the debtor’s bankruptcy”).

34. See *Genoa Nat’l Bank v. Sw. Implement, Inc. (In re Borden)*, 353 B.R. 886, 892 (Bankr. D. Neb. 2006) (deeming an error in a filed financing statement fatal, and rendering the financing statement ineffective, when it provided the name “Mike Borden” instead of “Michael Borden”); see also HAWKLAND ET AL., *supra* note 11, § 9-503:1 (noting that “failure to provide the name of [a] debtor in accordance with the rules of revised Section 9-503 will lead to the conclusion that the financing statement is insufficient”); Hodnefield, *supra* note 6, at 1 (noting that failure to “provide the correct name of the debtor on the financing statement . . . could result in an unperfected security interest”); Livingston, *supra* note 2 (noting that “[w]ithout proper perfection of their security interests, secured creditors will often lose priority over competing claimants to the debtor’s property and will see their security interests stripped away by the trustee in the event of the debtor’s bankruptcy”).

35. See U.C.C. § 9-503 cmt. 2 (noting that “those who wish to find financing statements search for them under the debtor’s name”); *id.* § 9-506 cmt. 2 (noting that a financing statement with a minor error or omission is not seriously misleading and provides adequate notice of the existing security interest if a search of the debtor’s correct name would nonetheless find the erroneous financing statement); see also Clark v. Deere & Co. (*In re Kinderknecht*), 308 B.R. 71, 74 (B.A.P. 10th Cir. 2004) (noting that “notice of a secured interest in property is accomplished by searching the debtor’s name”).

36. See U.C.C. § 9-503 cmt. 2.

37. See, e.g., *Sw. Implement*, 353 B.R. at 889 (discussing a situation where a search by a subsequent creditor did not disclose a prior financing statement filed under a nickname instead of the debtor’s full name); *Receivables Purchasing Co. v. R & R Directional Drilling, LLC*, 588 S.E.2d 831, 832–33 (Ga. Ct. App. 2003) (holding that the first filer lost its perfected security interest in certain collateral due to an error in filing a financing statement under the name “Net work Solutions, Inc.” instead of “Network Solutions, Inc.”); *Pankratz Implement Co. v. Citizens Nat’l Bank*, 130 P.3d 57, 59–62 (Kan. 2006) (finding the initial filer’s financing statement was rendered ineffective because it incorrectly listed the debtor name as “Roger House,” without a “d,” instead of “Rodger

name is, therefore, integral to ensuring commercial certainty and the continuing efficacy of the UCC filing and search process for both creditors filing an initial financing statement and subsequent parties searching for existing security interests.

*B. Sufficiency of a Debtor Name*

Given the vital role of the debtor name in the UCC filing and search process, Revised Article 9 curiously opts to provide little guidance to financing-statement filers and searchers for determining the debtor name. The lack of definitive guidance is particularly odd in light of the intent of Revised Article 9 to resolve problems of interpretation and to clarify the sufficiency-of-a-debtor-name standard by moving away from fact-intensive tests in favor of a more bright-line rule.<sup>38</sup> At first glance, the command of Revised Article 9 appears all too clear. A financing statement must “provide[] the name of the debtor.”<sup>39</sup> The clarity regarding debtor names, however, ends there. Instead of unambiguously defining the term “debtor name,”<sup>40</sup> Revised Article 9 only provides guidance in the form of sections 9-503 and 9-506, which address the sufficiency of a debtor name on a financing statement.<sup>41</sup> Sections 9-503 and 9-506 are intended to clarify when a debtor name is correct and when an incorrect name is insufficient.<sup>42</sup> Specifically, section 9-503 attempts to provide specific rules for determining when a financing statement sufficiently provides the name of a debtor.<sup>43</sup> Section 9-506 allows a financing statement substantially satisfying the requirements of

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House,” and a search of the debtor’s correct name did not disclose the financing statement).

38. See *Clark*, 308 B.R. at 75 (noting that section 9-503 of Revised Article 9 “was enacted to clarify the sufficiency of a debtor’s name,” that the “intent to clarify when a debtor’s name is sufficient shows a desire to foreclose fact-intensive tests,” and that a “clear cut test [requiring provision of the debtor’s legal name] is in accord with that intent”); *Pankratz*, 130 P.3d at 67 (noting the intent of Revised Article 9 to move toward a bright-line rule to lessen the need for “judicial hairsplitting”); U.C.C. § 9-101 cmt. 4(h) (noting that Part 5 of Revised Article 9 was “substantially rewritten to simplify the statutory text and to deal with numerous problems of interpretation and implementation that [arose] over the years”).

39. U.C.C. § 9-502(a)(1).

40. Revised Article 9 does not define or otherwise provide guidance regarding what constitutes a debtor name. See *id.* § 9-102 (which does not define “debtor name”); see also *Clark*, 308 B.R. at 75 (noting that the UCC, as adopted by Kansas, does not provide any detail regarding the name of an individual debtor, but “simply states that the ‘name of the debtor’ should be used”).

41. See U.C.C. §§ 9-503, -506; see also *id.* § 9-101 cmt. 4(h) (noting that “[s]ections 9-503 and 9-506 address the sufficiency of a name provided on a financing statement”).

42. *Id.* § 9-101 cmt. 4(h).

43. See *id.* § 9-503; see also HAWKLAND ET AL., *supra* note 11, § 9-503:1 (discussing the purpose of section 9-503).

Revised Article 9 to be effective despite minor errors, including errors in the debtor name, so long as the errors do not make the financing statement seriously misleading.<sup>44</sup> Unfortunately, section 9-503 only manages to set forth a confusing standard for certain debtor names—registered-organization debtors—while remaining completely silent for others—individual debtors.<sup>45</sup> Because of the uncertainty surrounding debtor names for purposes of filing an initial financing statement, the safe harbor of section 9-506(c) often stands as the only mechanism to prevent a flawed debtor name from rendering a financing statement ineffective.<sup>46</sup> Unfortunately, section 9-506(c) offers little in the way of additional certainty because it sets forth a stringent test to determine the applicability of the safe harbor<sup>47</sup> and fails to sufficiently define key components of that test.<sup>48</sup> Thus, while the debtor name is the key to the UCC filing and search process, Revised Article 9 fails to give filers and searchers sufficient direction regarding this integral piece of information, which makes the task of determining the correct debtor name much more difficult than it would otherwise appear.<sup>49</sup>

### 1. Individual Debtor Names

Section 9-503 sets forth the Revised Article 9 standard for determining whether a financing statement sufficiently provides the name of a debtor.<sup>50</sup> For an individual debtor, as opposed to a corporation or other organization, section 9-503(a)(4)(A) simply states that a financing statement sufficiently identifies the debtor name if “it provides the individual . . . name of the debtor.”<sup>51</sup> Neither Revised Article 9, nor the UCC provisions of general applicability, define what constitutes the

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44. U.C.C. § 9-506(a); accord HAWKLAND ET AL., *supra* note 11, § 9-506:1.

45. See U.C.C. § 9-503(a)(1), (4)(A); see also Hodnefield, *supra* note 6, at 3 (noting that Revised Article 9 creates ambiguity regarding both individual names and registered-organization names).

46. See U.C.C. § 9-506.

47. See HAWKLAND ET AL., *supra* note 11, § 9-503:1 (noting that section 9-506 contains very specific rules with respect to errors in debtor names and is not particularly forgiving with respect to most errors in a debtor name).

48. See *infra* Part II.B.3.

49. See John Kraemer, *Commercial Transactions*, 61 SMU L. REV. 657, 677 (2008) (noting that the problems facing secured parties in correctly naming a debtor stem from difficulty in determining the debtor's name); see also Hodnefield, *supra* note 6, at 1 (noting that there is “no standard for determining the name of an individual”); Livingston, *supra* note 2 (noting that getting the debtor's name right on a financing statement is more difficult than it would first appear).

50. See U.C.C. § 9-503.

51. *Id.* § 9-503(a)(4)(A).

individual name of a particular debtor or offer any further detail on how to determine a sufficient individual debtor name.<sup>52</sup> Academics, practitioners, and the judiciary have often acknowledged this lack of statutory direction.<sup>53</sup> As articulated by Paul Hodnefield, “Revised Article 9 offers no standard for determining the name of an individual.”<sup>54</sup> Rather, Hodnefield noted that section 9-503(a)(4)(A) provides a somewhat circular requirement that a financing statement sufficiently provides the name of an individual debtor if it provides the individual name of the debtor.<sup>55</sup> Likewise, the Tenth Circuit Bankruptcy Appellate Panel has lamented the fact that the UCC “does not provide any detail as to the name that must be provided for an individual debtor.”<sup>56</sup> Therefore, it is clear that Revised Article 9 fails to provide a functional standard for evaluating whether a particular individual name is sufficient for purposes of filing an effective financing statement. Based on the text of the statute alone, it appears that Revised Article 9 has not entirely eliminated the problems of interpretation regarding debtor names that existed under former Article 9.

The deficiencies in section 9-503(a) regarding individual debtor names not only engender theoretical debate, but also add to the practical uncertainty faced by those filing an initial financing statement or searching filing-office records. Because neither a clear standard for compliance nor effective statutory guidance exists, filers must exercise their best judgment regarding the name of an individual debtor and hope that a court deems such name sufficient if subsequently challenged.<sup>57</sup> While an individual’s name may seem obvious, many factors can complicate matters for financing-statement filers. For example, it is not uncommon for people to change their name, be known by more than one

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52. *See id.* §§ 1-201, 9-102 (neither of which define the name of a debtor); *see also* Pankratz Implement Co. v. Citizens Nat’l Bank, 130 P.3d 57, 65 (Kan. 2006) (acknowledging that section 9-503 provides no specific rule or guidance concerning what constitutes a sufficient debtor name and further noting that the terms “name,” “name of debtor,” “debtor’s name,” and “correct name” are not defined in Article 9).

53. *See, e.g.,* HAWKLAND ET AL., *supra* note 11, § 9-503:5 (noting that as with former Article 9, Revised Article 9 provides little guidance on how to handle different names used by a particular individual).

54. Hodnefield, *supra* note 6, at 1; *see also* U.C.C. § 9-503(a)(4)(A) (stating that a financing statement “sufficiently provides the name of the debtor” when “it provides the individual . . . name of the debtor”).

55. Hodnefield, *supra* note 6, at 1.

56. Clark v. Deere & Co. (*In re* Kinderknecht), 308 B.R. 71, 75 (B.A.P. 10th Cir. 2004).

57. *See* HAWKLAND ET AL., *supra* note 11, § 9-503:5 (discussing the difficulties of identifying an individual debtor name); Hodnefield, *supra* note 6, at 2 (stating that filers must use their “best judgment as to the correct debtor name and hope for the best”).

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name, use variants or derivatives of their name, or possess various forms of identification listing inconsistent names.<sup>58</sup> In addition, when conducting an investigation into the debtor's name, a filer may encounter documentation that lists an incorrect debtor name, identifies conflicting debtor names, or differs from the name generally used by the debtor.<sup>59</sup> With the lack of statutory guidance and the introduction of individual judgment, it is not hard to see why the debtor name selected by the filer of a financing statement, although reasonable, may ultimately differ from the name selected by a subsequent filer or searcher.<sup>60</sup> Accordingly, a filer risks losing priority to a debtor's property and a seemingly perfected security interest if a court subsequently deems the individual name used by the filer insufficient.<sup>61</sup>

Likewise, UCC searchers are not exempt from uncertainty arising from the lack of a clear sufficiency-of-a-debtor-name standard. Because subsequent creditors are charged with searching filing-office records to

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58. See HAWKLAND ET AL., *supra* note 11, § 9-503:5.

59. See, e.g., *Genoa Nat'l Bank v. Sw. Implement, Inc. (In re Borden)*, 353 B.R. 886, 887–88 (Bankr. D. Neb. 2006) (explaining that the debtor's legal name was "Michael Borden" and stated as such on many legal documents such as the debtor's birth certificate, driver's license, real estate deeds, bank accounts, tax returns, and bankruptcy petition, but the name "Mike Borden" was often signed on legal documents such as tax returns, security documents, and financial statements); *In re Gustafson*, 14 U.C.C. Rep. Serv. (Callaghan) 231, 232–33 (Bankr. W.D. Okla. 1973) (stating that the debtor's legal name was "Arthur J. Gustafson," but the debtor routinely used the name "Arthur J. Gustavsen," which was incorrectly spelled on his chauffer's license and subsequently used by him in connection with secured-loan transactions, title to real estate, telephone listings, and employment).

60. A number of cases highlight the types of problems that filers and searchers face when trying to determine an individual debtor's name. See, e.g., *Clark*, 308 B.R. at 72 (noting that the first filer listed the debtor's commonly used nickname "Terry," which was the name that the debtor signed on his Chapter 7 petition, instead of the debtor's full legal name of "Terrance"); *In re Gustafson*, 14 U.C.C. Rep. Serv. (Callaghan) at 232–33 (noting that the debtor obtained a chauffeur's license that erroneously spelled his name as "Gustavsen" instead of "Gustafson" and subsequently began using the incorrectly spelled name as a matter of convenience after unsuccessfully trying to get the error fixed, including routine use of the incorrect name for acquiring secured loans and taking and deeding of title to real estate); *Corona Fruits & Veggies, Inc. v. Frosun Foods, Inc.*, 48 Cal. Rptr. 3d 868, 869–71 (Ct. App. 2006) (noting that the first secured party filed a financing statement identifying the debtor as "Armando Munoz," apparently due to Latin American naming conventions, and the second secured party subsequently filed a financing statement identifying the debtor as "Armando Juarez" using American naming traditions); *All Bus. Corp. v. Choi*, 634 S.E.2d 400, 400, 405 (Ga. Ct. App. 2006) (noting that the first filer was deemed to have an unperfected security interest after filing a financing statement under the name "Gu, SangWoo" when a subsequent search under the name "Sang Woo Gu" failed to disclose the financing statement).

61. See, e.g., *Clark*, 308 B.R. at 76–77 (ruling that the bankruptcy court erred in finding that a financing statement that named the debtor by a commonly used nickname in lieu of the debtor's legal name was not seriously misleading and holding that the erroneous financing statement was ineffective because a search of the debtor's legal name failed to reveal any matches, thereby rendering the safe harbor of section 9-506(c), as adopted in Kansas, inapplicable).

locate preexisting security interests,<sup>62</sup> the lack of clarity regarding sufficient debtor names means that searchers have no idea what debtor name to search. Therefore, subsequent creditors attempting to determine whether a potential debtor's property is already encumbered must bear the risk that their efforts to search the filing-office records may fail to disclose the existence of a recorded financing statement where a prior filer used a different name or variant of the potential debtor's name. In such instances, a subsequent creditor runs the risk of entering into a secured transaction with a debtor under the erroneous belief that the debtor's performance is secured by a first-priority security interest in certain debtor property when another creditor may have already obtained a valid security interest in the same property. Disputes between filers and searchers in those exact circumstances are all too common.<sup>63</sup>

Unfortunately, like searchers and filers, courts interpreting and applying the sufficiency-of-an-individual-debtor-name provisions in Revised Article 9 have also struggled with the lack of statutory guidance.<sup>64</sup> Instead of providing clear guidance on what section 9-503(a)(4)(A) requires, courts appear to have done little more than identify insufficient debtor names.<sup>65</sup> The inability of filers to rely with any amount of certainty on the effectiveness of a recorded financing statement and subsequent creditors to trust that a particular search will disclose all relevant financing statements presents a stark contrast to the commercial certainty that was intended by the drafters of Revised Article 9.<sup>66</sup> The problems faced by filers and searchers are especially troublesome in light of the number and value of secured transactions involving individual debtors.<sup>67</sup> As such, it is clear that the existing

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62. See, e.g., *Corona Fruits & Veggies*, 48 Cal. Rptr. 3d at 869 (noting that the debtor's name is particularly important because financing statements are indexed under the name of the debtor and those who wish to find them search under the debtor's name).

63. Following the adoption of Revised Article 9, a number of court cases have centered on disputes between filers and searchers regarding competing claims to a debtor's property. These disputes largely involve similar facts whereby the searcher was unable to locate a previously filed financing statement when searching the filing-office records under the debtor's name. See, e.g., *Clark*, 308 B.R. at 76; *In re Gustafson*, 14 U.C.C. Rep. Serv. (Callaghan) at 232-33; *Corona Fruits & Veggies*, 48 Cal. Rptr. 3d at 870; *Choi*, 634 S.E.2d at 405.

64. See, e.g., *Clark*, 308 B.R. at 75 (noting the lack of statutory guidance); *Pankratz Implement Co. v. Citizens Nat'l Bank*, 130 P.3d 57, 65 (Kan. 2006) (acknowledging that section 9-503, as adopted in Kansas, "provides no specific rule or guidance").

65. Hodnefield, *supra* note 6, at 2.

66. See, e.g., *Pankratz*, 130 P.3d at 63 (noting that the intent of Revised Article 9 was to fix and make certain the name-of-the-debtor requirement).

67. See Hodnefield, *supra* note 6, at 2.

sufficiency-of-an-individual-debtor-name standard provides filers and searchers with little comfort or certainty in their secured transactions.

## 2. Registered-Organization Debtor Names

While section 9-503(a) is essentially silent on a standard for individual debtor names, it sets forth a slightly more detailed approach for determining when the name of a registered-organization debtor is sufficient. Under section 9-503(a)(1), a “financing statement sufficiently provides the name of” a registered-organization debtor “only if the financing statement provides the name of the debtor indicated on the public record of the debtor’s jurisdiction of organization which shows the debtor to have been organized.”<sup>68</sup> For purposes of Revised Article 9, a “registered organization” is broadly defined to include any entity that is organized under state or federal law so long as the appropriate jurisdiction maintains a public record showing that the entity was organized.<sup>69</sup> Thus, the definition of registered organization ordinarily includes any corporation, limited partnership, or limited liability company.<sup>70</sup> Stated another way, “virtually all debtors other than sole proprietorships and other individuals, general partnerships, decedent’s estates, trusts, and foreign corporations will be registered organizations” under Revised Article 9.<sup>71</sup>

At first glance, the requirements for determining a sufficient registered-organization name appear quite explicit.<sup>72</sup> The process for determining the correct debtor name for a registered organization, however, is not without some room for error. As an initial matter, filers can fail to file an effective financing statement by misspelling the debtor’s name or by relying on an incorrect name provided by the debtor.<sup>73</sup> Even so, the primary problem is that the test for determining a

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68. U.C.C. § 9-503(a)(1) (2009).

69. *Id.* § 9-102(a)(70).

70. *Id.* § 9-503 cmt. 2.

71. HAWKLAND ET AL., *supra* note 11, § 9-503:2.

72. *See id.* (noting that the standard for registered organizations “provides ‘no wiggle room’” and that a “financing statement must match exactly the name on the public record evidencing the existence of the registered organization”).

73. *See, e.g.,* Miller v. Van Dorn Demag Corp. (*In re* Asheboro Precision Plastics, Inc.), No. 03-11319C-7G, 2005 WL 1287743, at \*1–2, \*8 (Bankr. M.D.N.C. Mar. 1, 2005) (holding that the first filer’s financing statement was rendered ineffective due to use of the trade name “Wade Technical Molding, Inc.” instead of the debtor’s legal name “Asheboro Precision Plastics, Inc.,” even though the filer was allegedly induced into doing so by the debtor’s misrepresentation of its legal name); Receivables Purchasing Co. v. R & R Directional Drilling, LLC, 588 S.E.2d 831, 832–33 (Ga. Ct. App. 2003) (explaining that the first filer lost its perfected security interest in certain

sufficient registered-organization name contains some ambiguity. Although filers are directed to use the name on a public record showing the debtor to be organized, uncertainty regarding a sufficient registered-organization name arises because the term “public record” is undefined.<sup>74</sup> Presumably, the drafters of Revised Article 9 intended for section 9-503(a)(1) to require that filers list the name appearing on the registered organization’s filed formation document—the name on a corporation’s certificate of incorporation or charter—which is generally considered the best practice when the debtor is a registered organization.<sup>75</sup> Notwithstanding this established best practice, public records other than the filed formation document of a registered organization can arguably comply with this standard.<sup>76</sup> For example, the name of a registered organization as set forth on a state business-entity index or a state certificate of good standing would appear to comply with the plain language of the statute.<sup>77</sup> A state business-entity index will typically contain the name of all entities organized in the state and allow the public to search for the status of an organization or the availability of a business name.<sup>78</sup> Likewise, a certificate of good standing is typically

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collateral due to an error in filing a financing statement under the name “Net work Solutions, Inc.” instead of “Network Solutions, Inc.”).

74. See U.C.C. §§ 1-201, 9-102 (neither of which define “public record”).

75. See First Cmty. Bank of E. Tenn. v. Jones (*In re Silver Dollar, LLC*), 388 B.R. 317, 319–24 (Bankr. E.D. Tenn. 2008) (analyzing the sufficiency-of-a-registered-organization-name requirement and concluding that notwithstanding the lack of statutory guidance, a filer is required to provide one single name for a registered organization—the organizational name of the debtor and not a later registered assumed name); HAWKLAND ET AL., *supra* note 11, § 9-503:2 (interpreting section 9-503 to require the use of the name as it appears on a charter, certificate of incorporation, or other “basic constitutive document” when the debtor is a corporation, limited partnership, limited liability company, or another similar entity); Livingston, *supra* note 11, at 128 (concluding that for registered organizations, “the debtor’s correct name is clearly, and solely, its official registered name”); Sigman, *supra* note 5, at 861–62 (giving an example where the failure to provide the name on a corporate charter would be prima-facie insufficient but would be saved by the safe harbor of section 9-506(c)); Meghan M. Sercombe, Note, *Good Technology and Bad Law: How Computerization Threatens Notice Filing Under Revised Article 9*, 84 TEX. L. REV. 1065, 1067 (2006) (recognizing that Article 9 “requires that the name of the debtor as reflected in its articles of organization be provided on the financing statement”); Hodnefield, *supra* note 6, at 3 (stating that the drafters of Revised Article 9 intended for section 9-503(a)(1) to be satisfied by using the name on “the articles of incorporation or equivalent formation documents”).

76. See Hodnefield, *supra* note 6, at 3; see also Jones, 388 B.R. at 320 (describing a situation where the filer argued that a registered assumed name meets the requirement to provide the name indicated on the public record of the debtor’s jurisdiction of organization).

77. See Hodnefield, *supra* note 6, at 3 (noting that state business-entity indexes and certificates of good standings arguably comply with section 9-503(a)(1)).

78. *Id.* (noting that a state business-entity index “generally makes some or all of [its] data available to the public, often for free over the Internet,” and allows the public “to look up the status of an organization or search for [business] name availability”). For an example of an online state business-entity index, see *Corporations Search*, WASHINGTON SECRETARY OF STATE,

available to the public and can show that a particular entity is properly organized in the state.<sup>79</sup> In fact, as a matter of practice, many filers look to sources such as a state business-entity index or certificate of good standing, rather than the applicable filed formation documents, for the name of a registered organization.<sup>80</sup> Because the plain language of section 9-503(a)(1) leaves the applicable public record open to interpretation, a potential conflict may arise when different public records that arguably comply with section 9-503(a)(1) list different names for a particular registered organization.<sup>81</sup> Thus, with respect to the sufficiency of a registered-organization name, filers and searchers must still deal with some level of uncertainty due to the lack of precision in the statutory language of section 9-503(a)(1).

In addition, some courts have struggled to evaluate the sufficiency of a registered-organization name in real-life circumstances requiring the application of section 9-503(a)(1). For example, in *In re EDM Corp.*, a secured party filed a financing statement listing the debtor's legal name and a putative trade name—"EDM Corporation d/b/a EDM Equipment."<sup>82</sup> Because Revised Article 9 makes it clear that the inclusion of a trade name does not render a financing statement ineffective,<sup>83</sup> the first secured party ostensibly satisfied the requirement to provide a sufficient debtor name.<sup>84</sup>

After conducting a search of the filing-office records using the debtor name on file with the Secretary of State and failing to discover the first secured party's financing statement, a subsequent secured party also filed a financing statement, using the legal name "EDM Corporation"

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[http://www.sos.wa.gov/corps/corps\\_search.aspx](http://www.sos.wa.gov/corps/corps_search.aspx) (allowing the public to search for corporations registered with the Office of the Secretary of State) (last visited Sept. 7, 2010).

79. See Hodnefield, *supra* note 6, at 3.

80. *Id.*

81. Hodnefield notes that business indexes were not intended to provide the name of a registered organization for purposes of a financing statement and often have varying data-entry rules that modify entity names with abbreviations, omissions, or rearranged word order. *Id.* In addition, the name on a certificate of good standing can also be problematic because it often lists the name found in the state business index. *Id.* Consequently, the name may not always match the name set forth in the formation documents.

82. 68 U.C.C. Rep. Serv. (West) 139, 140 (Bankr. D. Neb. 2009).

83. See U.C.C. § 9-503(b)(1), (c) (2009); see also *Clark v. Deere & Co. (In re Kinderknecht)*, 308 B.R. 71, 74 (B.A.P. 10th Cir. 2004) (noting that the prevailing view is that the actual organizational name of a debtor is necessary and sufficient, whether or not the financing statement provides trade or other names of the debtor); HAWKLAND ET AL., *supra* note 11, § 9-503:7 (discussing trade names).

84. See Livingston, *supra* note 2 (noting that the first filer in *In re EDM Corp.* appeared to have complied with the requirement to provide a sufficient debtor name).

without referencing the trade name.<sup>85</sup> Based on these facts, it would appear that the first filer established priority over the subsequent filer.<sup>86</sup> Nonetheless, the court came to the surprising conclusion that the first financing statement was invalid and determined that the second filer had priority to the collateral.<sup>87</sup> The court apparently based its decision on the fact that a search of the filing office's database using the name "EDM Corporation" failed to reveal the first secured party's recorded financing statement.<sup>88</sup> The court admitted the difficulty of its decision because the first filer "acted in a manner that many would consider to be prudent"—filing under the debtor's legal name and another name by which the debtor was known.<sup>89</sup> Nonetheless, the court appeared to side with the second filer because the first filer's financing statement, although apparently sufficient under section 9-503, was not disclosed in a search of the debtor's legal name.<sup>90</sup>

In doing so, the court seemed to have mistakenly relied on the test set forth in section 9-506(c), which only applies to save a financing statement that fails to comply with section 9-503(a) from being rendered ineffective.<sup>91</sup> Thus, the court in *EDM Corp.* appears to have come to the illogical conclusion that a financing statement apparently satisfying the sufficiency-of-a-debtor-name requirements of section 9-503(a)(1) was in fact ineffective for failure to also satisfy section 9-506(c).<sup>92</sup> This

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85. *In re EDM Corp.*, 68 U.C.C. Rep. Serv. (West) at 141.

86. *See* Livingston, *supra* note 2.

87. *In re EDM Corp.*, 68 U.C.C. Rep. Serv. (West) at 143. The first secured party argued that the financing statement complied with Article 9 because it contained the debtor's legal name, EDM Corporation, as required by section 9-503(a), and that comment 2 to section 9-503 further allowed creditors to add a debtor trade name to the financing statement. *Id.* at 142–43. The subsequent secured party countered that the financing statement was invalid as seriously misleading because it was not revealed in a search using the debtor's correct legal name. *Id.* at 142.

88. *See id.* at 143.

89. *Id.*

90. *See id.* Presumably, the court felt that the searcher should not be responsible for the failure of a state's standard search logic to disclose an arguably effective financing statement.

91. Livingston, *supra* note 2 (noting that the court arguably applied section 9-506(c) incorrectly because it applies only if the secured party's financing statement fails to sufficiently provide the name of a debtor in accordance with section 9-503(a)); *see also* Hillinger, *supra* note 17 (encouraging filers to provide all possible names because a wrong name does not count against the filer if one of the names given is correct).

92. *See In re EDM Corp.*, 68 U.C.C. Rep. Serv. (West) at 143–44 (commenting on the apparent illogic of its decision by specifically stating that the prior secured party acted in a manner that many would consider prudent and expressing surprise that the Secretary of State search engine would fail to find the financing statement); *see also* Livingston, *supra* note 2 (reasoning that "the court apparently felt trapped by [section] 9-506(c) and the 'single search' standard" because the subsequent secured party was unable to locate the first financing notwithstanding the fact that it apparently complied with the sufficiency-of-a-debtor-name requirements of section 9-503(a)).

apparently incongruous result, coupled with the ambiguity in the statutory language of the standard for sufficiency of a registered-organization name, accentuates again how the lack of a clear sufficiency-of-a-debtor-name standard can cause heartburn for parties engaging in secured transactions and create difficulties for courts resolving any resulting disputes.

### 3. Safe Harbor for Errors and Omissions

Notwithstanding the requirements of section 9-503(a) regarding the sufficiency of a debtor name, Revised Article 9 recognizes that certain mistakes in listing a debtor's name will not defeat the effectiveness of a filed financing statement. Thus, Revised Article 9 does not require perfection in satisfying the content requirement for a financing statement, and some mistakes may be excused.<sup>93</sup> Section 9-506 details the specific procedure for dealing with errors and omissions in a financing statement.<sup>94</sup> Under section 9-506(a), a financing statement that substantially satisfies the requirements of Part 5 of Revised Article 9 remains effective "even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading."<sup>95</sup> As applied to errors in a debtor name, the failure to comply with the debtor-name requirements of section 9-503(a) will not defeat the effectiveness of a filed financing statement so long as the error is not deemed to be seriously misleading.<sup>96</sup> Under former Article 9, determining whether an error was seriously misleading generally involved a case-by-case analysis of applicable case law.<sup>97</sup> Under

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93. See U.C.C. § 9-506 (2009).

94. See *id.*

95. *Id.* § 9-506(a); see also *Corona Fruits & Veggies, Inc. v. Frozsun Foods, Inc.*, 48 Cal. Rptr. 3d 868, 870 (Ct. App. 2006) (interpreting section 9-506(a) of the California UCC and noting that as a general rule, minor errors do not affect the effectiveness of the financing statement unless the errors render it seriously misleading to other creditors); *Livingston*, *supra* note 2 (noting that Revised Article 9, like former Article 9, continues to adhere to the substantial-compliance standard for measuring the adequacy of a financing statement and that financing statements are still effective so long as they give adequate notice to third parties of the existence of a security interest).

96. See U.C.C. § 9-506(a).

97. *HAWKLAND ET AL.*, *supra* note 11, § 9-506:1 (noting that under former Article 9, case law determined what was "seriously misleading"); see also *In re John's Bean Farm of Homestead, Inc.*, 378 B.R. 385, 389 (Bankr. S.D. Fla. 2007) (noting that most courts adopted a reasonably-diligent-searcher standard requiring the "court to determine, on a case-by-case basis, whether a hypothetical reasonable searcher would have been able to discover the non-conforming financing statement despite the error"); *Sercombe*, *supra* note 75, at 1067 & n.7 (noting that courts disagreed over whether to adopt "a bright-line rule that gave clear guidance or one that allowed fact-intensive inquiry" in the interest of fairness, with most courts adopting a "'reasonable searcher' standard")

Revised Article 9, errors in a debtor name are subject to a much more stringent test.<sup>98</sup> Specifically, section 9-506(b) generally deems any financing statement that fails to sufficiently provide the debtor name in strict accordance with section 9-503(a) seriously misleading.<sup>99</sup>

The only exception to this presumption is found in section 9-506(c), which provides a safe harbor to save financing statements with errors and omissions in the debtor name.<sup>100</sup> Under section 9-506(c), a financing statement with an error or omission in the debtor name will not be seriously misleading “[i]f 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.”<sup>101</sup> Thus, the act of listing an insufficient debtor name will not prove fatal if a search using the debtor’s correct name would nonetheless reveal the financing statement. Conversely, an erroneous debtor name makes a financing statement “seriously misleading” and precludes perfection if a search under the debtor’s correct name would not disclose the financing statement.<sup>102</sup> The apparent intent of the drafters in moving to a safe

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requiring a case-by-case analysis of whether a reasonable search by a diligent creditor would have disclosed the nonconforming financing statement); Hillinger, *supra* note 18 (discussing the reasonably-diligent-searcher standard under former Article 9, which required a case-by-case analysis, and noting that the drafters of Revised Article 9 viewed this standard as discretionary, fact-intensive, and ad hoc).

98. See HAWKLAND ET AL., *supra* note 11, § 9-503:1 (noting that section 9-506 contains very specific rules with respect to errors in debtor names and is not particularly forgiving with respect to most errors in a debtor name).

99. U.C.C. § 9-506(b); see also *In re John’s Bean Farm*, 378 B.R. at 390 (noting that an erroneous debtor name makes a financing statement “seriously misleading” and precludes perfection if a search under the debtor’s correct name would not disclose the financing statement); *In re FV Steel & Wire Co.*, 310 B.R. 390, 394 (Bankr. E.D. Wis. 2004) (noting that “[i]f a searcher searches under the exact corporate name of the debtor . . . and the search logic of the system does not reveal a trade name filing, the filing should be considered seriously misleading as a matter of law” (quoting BARKLEY CLARK & BARBARA CLARK, THE LAW OF SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE ¶ 2.09[1][b] (2003))); HAWKLAND ET AL., *supra* note 11, § 9-506:2 (noting that an error in the debtor name is seriously misleading if it is not provided in accordance with section 9-503); G. Ray Warner, *Using the Strong-Arm Power to Attack Name Errors Under Revised Article 9*, AM. BANKR. INST. J., Oct. 2001, at 22, 22 (noting that “a name error is fatal if a search under the correct name, using the filing office’s standard search logic, would not disclose the financing statement”); Livingston, *supra* note 2 (noting that Revised Article 9 takes a stronger stand than former Article 9, such that any error or failure to comply with section 9-503(a) results in a court presumptively deeming the financing statement seriously misleading).

100. See U.C.C. § 9-506(c).

101. *Id.*; see also HAWKLAND ET AL., *supra* note 11, § 9-506:2 (noting that some cases previously used a similar standard, but others were more forgiving and held valid financing statements that would not have been discovered by a search under a debtor’s correct name).

102. See, e.g., *In re John’s Bean Farm*, 378 B.R. at 390 (noting that “[u]nder revised Article 9 what debtor misnomer is ‘seriously misleading’ is statutorily defined as that which would not be discovered under the state’s standard search logic”).

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harbor based on a filing office's computerized search logic was to accomplish three goals: (1) eliminating fact-intensive tests and ad hoc determinations by courts,<sup>103</sup> (2) emphasizing that filers, not searchers, appropriately bear the responsibility for providing a sufficient debtor name,<sup>104</sup> and (3) ensuring that UCC searchers need only conduct a single search of the filing-office records under the debtor's "correct" name to discover all security interests affecting a particular debtor's property.<sup>105</sup>

Although the safe harbor found in section 9-506(c) may be intended to offset some of the risks facing filers and searchers attempting to divine the troublesome debtor-name requirements of section 9-503(a), some basic problems limit the ability of section 9-506(c) to fully realize the drafters' goals. As an initial matter, the foundation of the test to determine the applicability of section 9-506(c) requires a determination of the "debtor's correct name."<sup>106</sup> Unfortunately, this term is undefined, and Revised Article 9 offers no further guidance.<sup>107</sup> As an alternative, UCC filers and searchers could look to a debtor name that is "sufficient" under section 9-503(a) in the hopes that a court would deem a "sufficient" name the "correct" name. However, as discussed above, there is considerable ambiguity regarding what constitutes a sufficient debtor name.<sup>108</sup> Finally, many courts have interpreted the "correct" name to mean the debtor's "legal" name.<sup>109</sup> However, these courts generally

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103. See, e.g., Hillinger, *supra* note 18 (noting that the drafters of Revised Article 9 rejected the "discretionary, fact-intensive, ad hoc standard" under former Article 9).

104. See, e.g., Livingston, *supra* note 11, at 128 (discussing the policy rationale behind Revised Article 9 and the belief that it is more equitable and appropriate to demand accuracy from the filing creditor as opposed to "reasonable diligence" from a UCC searcher).

105. *Id.* at 125–26 (noting that under Revised Article 9, a third party need only conduct one search for any particular debtor).

106. See U.C.C. § 9-506(c) (requiring a search of the correct name to disclose the financing statement with the erroneous debtor name).

107. Neither Revised Article 9, nor the definitions of general applicability to the UCC, contain a definition for or further guidance about the debtor's correct name. See *id.* §§ 1-201, 9-102.

108. See *supra* Part II.B.1–2.

109. See, e.g., Clark v. Deere & Co. (*In re Kinderknecht*), 308 B.R. 71, 75–76 (B.A.P. 10th Cir. 2004) (discussing the need for a clear-cut method for searching a debtor's name in UCC filings and arguing that the logical starting point is to use the debtor's legal name); Genoa Nat'l Bank v. Sw. Implement, Inc. (*In re Borden*), 353 B.R. 886, 890 (Bankr. D. Neb. 2006) (noting that the requirement of an individual debtor's legal name on a financing system maintains the same standard applied to other debtor entities and establishes a clear-cut test for sufficiency, which is one of the stated purposes of Revised Article 9); Morris v. Snap On Credit, L.L.C. (*In re Stewart*), No. 04-16838, Adv. No. 05-5090, 2006 WL 3193374, at \*1 (Bankr. D. Kan. Nov. 1, 2006) (concluding that "the sole test of whether a financing statement is 'seriously misleading' is whether a searcher using the individual debtor's 'correct legal name,' presumably the name indicated on a birth certificate or a name otherwise maintained in the public records . . . could locate the financing statement in question"); Pankratz Implement Co. v. Citizens Nat'l Bank, 130 P.3d 57, 66–67 (Kan. 2006)

have not provided much guidance about what constitutes a debtor's legal name.<sup>110</sup> In doing so, these courts may have failed to recognize that determining a debtor's legal name may not be a simple task.<sup>111</sup>

The lack of definitive guidance regarding a debtor's correct name, which is the basis of determining the scope and applicability of the section 9-506(c) safe harbor, accentuates how the statute fails to provide satisfactory certainty for filers and searchers. Specifically, because the correct debtor name is undefined, searchers are unable to seize upon the intended benefit of running a single filing-office search using that "correct" name to locate all applicable financing statements affecting a particular debtor. Likewise, filers have no assurance that a search of the debtor's correct name will disclose a filed financing statement. As such, the lack of guidance regarding the meaning of "the debtor's correct name" may lead to disputes between competing secured parties about the application and scope of the safe harbor, including whether it in fact operates to save the effectiveness of a particular financing statement that otherwise provides an insufficient name.<sup>112</sup> Therefore, interested parties have little certainty about the practical effect of the section 9-506(c) safe harbor and whether courts will consistently apply the safe harbor in the event of a dispute.

In addition to the ambiguity stemming from the undefined term "debtor's correct name," the safe harbor lacks uniform application between jurisdictions because it is dependent on the standard search logic of a filing office, which may differ from state to state.<sup>113</sup> *In re John's Bean Farm of Homestead, Inc.* highlights how state-specific search standards may lead to surprising results if a filer fails to sufficiently list a debtor name on a financing statement and must instead rely on section 9-

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(discussing practical considerations that support requiring the use of the debtor's legal name).

110. See cases cited *supra* note 109.

111. See, e.g., *Morris*, 2006 WL 3193374, at \*1 (indicating that an individual debtor's legal name is the name indicated on that person's birth certificate or another name as maintained in some other undefined public record); Livingston, *supra* note 11, at 145-46 (noting that debtors may have multiple "legal" names).

112. See, e.g., *All Bus. Corp. v. Choi*, 634 S.E.2d 400, 405 (Ga. Ct. App. 2006) (determining that the safe harbor for minor errors and omissions did not apply because a search of the filing-office records for both of the debtor's correct names, which were deemed to be "Sang Woo Gu" and "CCO Check Cashing," did not disclose the erroneous financing statements, notwithstanding the first filer's argument that a simple stem search for "Gu" and "CCO" would have disclosed the prior filings).

113. See Livingston, *supra* note 11, at 146 (noting that the uniformity of Revised Article 9 is lost because of varying filing-office search logic); Hillinger, *supra* note 18 (noting "that state filing offices do not have uniform search logics, uniform searches or uniform search results" and that "courts in different states will develop different standards for evaluating the sufficiency of a filed financing statement").

506(c) to save its effectiveness.<sup>114</sup> There, the first filer argued that its recorded financing statement, which contained an incorrect debtor name, was not seriously misleading because the search of the filing-office records disclosed the filing.<sup>115</sup> The first filer based this argument on the fact that a search of Florida's Secured Transaction Registry Website resulted in the erroneous financing statement appearing sixty screens back from the initial search screen.<sup>116</sup> Because Florida indexes filed financing statements on the Secured Transaction Registry Website, every search will produce a screen containing twenty names in alphabetical order with the exact match or closest match appearing at the top of the list.<sup>117</sup> Searchers, however, can view additional names and financing-statement records by going backward or forward one screen at a time.<sup>118</sup>

Although the court ultimately held that the error in the debtor name made the financing statement seriously misleading,<sup>119</sup> the Florida search process accentuates how differences in state search logics may result in uncertainty in the filing and search process.<sup>120</sup> Specifically, filers and searchers are unable to rely on consistent filing-office search logics between jurisdictions.<sup>121</sup> As such, one filing office may have a more expansive or narrow search logic than that used by another filing office. Moreover, a filing office may change or modify its search logic over time, which may result in an undisclosed financing statement that would

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114. 378 B.R. 385, 386–87 (Bankr. S.D. Fla. 2007). The financing statement listed the debtor as “John Bean Farms, Inc.” instead of “John’s Bean Farm of Homestead, Inc.,” which was determined to be the correct legal name of the debtor, but because of the error in the debtor name, the court analyzed whether the error rendered the financing statement seriously misleading, or alternatively, whether the safe harbor of section 9-506(c), as adopted in Florida, excused the error. *Id.*

115. *Id.* at 393.

116. *Id.*

117. *Id.* at 388.

118. *Id.*; see also Hillinger, *supra* note 18 (noting that, in some sense, a Florida search results in the disclosure of “the entire UCC index of filed financing statements”).

119. *In re John’s Bean Farm*, 378 B.R. at 396 (determining that the Florida search logic leads to one result—a single screen on which names appear or alternatively one screen preceding or following the initial screen—and therefore a financing statement appearing sixty screens back from the initial screen is seriously misleading).

120. See Hillinger, *supra* note 18 (noting that Revised Article 9 may have done away with the ad hoc, case-by-case approach under former Article 9 but arguing that the UCC filing and search process remains a long way away from the desired certainty, objectivity, and uniformity of Revised Article 9).

121. See *id.* While many filing-office search logics disregard corporate endings, some courts have held that a financing statement providing the debtor’s name without the applicable corporate ending was insufficient because a search using the filing office’s standard search logic would not disclose the financing statement. See, e.g., Official Comm. of Unsecured Creditors for Tyringham Holdings, Inc. v. Suna Bros., Inc. (*In re Tyringham Holdings, Inc.*), 354 B.R. 363, 363, 368 (Bankr. E.D. Va. 2006).

otherwise have been disclosed before the change.<sup>122</sup> The effect of varying search logic between jurisdictions, coupled with the lack of clarity on how to determine a debtor's correct name for purposes of applying the section 9-506(c) safe harbor, serves as ample evidence of the failure of Revised Article 9 to provide adequate commercial certainty for secured parties.

#### 4. Problems Resulting from Deficiencies in Revised Article 9

In sum, the lack of a clear sufficiency-of-a-debtor-name standard in section 9-503(a) and doubt regarding the scope and consistent application of the safe harbor for debtor-name errors in section 9-506(c) not only create practical problems and a lack of commercial certainty for filers and searchers engaging in secured transactions, but also result in a breakdown in the effectiveness of the UCC filing and search process. Because the debtor name is at the heart of the UCC filing and search process,<sup>123</sup> the lack of a clearly defined method for determining a sufficient name when filing a financing statement produces a ripple effect of problems throughout the UCC filing and search process.

For filers, the problems begin with the requirement that a financing statement provide a sufficient name to perfect a security interest and ultimately give effective notice of that security interest to subsequent creditors.<sup>124</sup> When dealing with individual debtors, no statutory direction is set forth other than to provide the individual name of the debtor.<sup>125</sup> Because any number of possible variations or derivatives of a name may arguably comply with that standard, filers must use their best judgment.<sup>126</sup> The same is true with respect to sufficient registered-

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122. Sigman, *supra* note 5, at 862 (noting “that a filing office may modify its search logic from time to time,” which may render “undiscoverable . . . a filing providing an erroneous name that was previously discoverable”); *see also* Paul Hodnefield, *UCC Debtor Names—Corporate Endings Do Matter!*, CORP. SERVICE COMPANY, 2 (July 2007), <https://www.cscglobal.com/cscglobal/pdfs/UCC-Debtor-Names-Do-Matter.pdf> (suggesting that there is no guarantee that a financing statement currently saved by section 9-506(c) will remain sufficient because filing offices may change their search logic and, if the updated search logic fails to disclose the financing statement, it becomes seriously misleading).

123. *See* U.C.C. § 9-503 cmt. 2 (2009); Livingston, *supra* note 2.

124. *See* U.C.C. § 9-503(a) & cmt. 2.

125. *See* discussion *supra* Part II.B.1; *see also* Pankratz Implement Co. v. Citizens Nat'l Bank, 130 P.3d 57, 65 (Kan. 2006) (noting the lack of “specific rule[s] or guidance concerning what constitutes a sufficient debtor ‘name’”).

126. Hodnefield, *supra* note 6, at 2; *see also* HAWKLAND ET AL., *supra* note 11, § 9-503:5 (noting the practical difficulties in determining an individual debtor's name); Livingston, *supra* note 11, at 145–46 (noting that individual debtors can have “multiple ‘legal’ names”).

organization names. Notwithstanding the apparent consensus on the best practice for providing a sufficient registered-organization name,<sup>127</sup> multiple names as set forth on different public records, all arguably complying with the standard in section 9-503(a)(1), could potentially be construed as sufficient.<sup>128</sup> Faced with such a situation, a filer is ostensibly required to evaluate all of the possibilities and select a single sufficient debtor name for purposes of filing a financing statement to perfect a security interest.<sup>129</sup> In doing so, the filer bears the risk of inadvertently failing to perfect its security interest if the name ultimately fails to give proper notice of the security interest and the financing statement is deemed seriously misleading.<sup>130</sup> As a result, a filer may elect to file multiple financing statements under each possible debtor name to reduce the risk of unintentionally providing an insufficient name.<sup>131</sup> Even so, the risk of failing to provide a sufficient name is not entirely eliminated because without a definitive test, filers lack any certainty about what satisfies the sufficiency-of-a-debtor-name requirement and what does not.

Moreover, the application of the section 9-506(c) safe harbor, although intended to forgive minor filer errors in a debtor name, fails to give filers much comfort. Specifically, the threshold test for applicability of the safe harbor relies on yet another undefined standard without any additional guidance.<sup>132</sup> Accordingly, instead of having a definitive test for sufficiency of a debtor name and only being held responsible for affirmative errors or omissions such as spelling mistakes, filers face continued uncertainty about whether a filed financing statement will ultimately be rendered ineffective because a court disagrees with the filer's best judgment of a debtor name.

Subsequent creditors searching filing-office records for previously recorded financing statements affecting the property of a potential debtor also suffer because of the lack of a clear sufficiency-of-a-debtor-name standard. Because filing-office records are organized by debtor name,<sup>133</sup> the lack of a precise and dependable standard prevents searchers from obtaining effective notice of preexisting security interests. Specifically, searchers are unable to rely on filers to use a particular variation of an

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127. See HAWKLAND ET AL., *supra* note 11, § 9-503:2.

128. See Hodnefield, *supra* note 6, at 3.

129. See *id.*

130. See discussion *supra* Part II.B.2.

131. See Hillinger, *supra* note 17 (discussing filings under multiple variations of a debtor name).

132. See *supra* Part II.B.3.

133. U.C.C. §§ 9-503 cmt. 2, 9-519(c) (2009).

individual or registered-organization name when filing an initial financing statement and may often encounter multiple financing statements intended to cover a single debtor but which provide different variations of the debtor's name.<sup>134</sup> As such, searchers are handicapped by having to guess at the debtor name used by a prior filer. Moreover, searchers are unable to locate all possibly applicable financing statements by conducting a single search of the filing-office records under the debtor's correct name, as intended by Revised Article 9.<sup>135</sup> Without certainty in the search process, subsequent creditors must continue to bear the burden of conducting more in-depth searches under any possibly sufficient name to mitigate the risk of unknowingly taking a subordinated position to a prior filer. Searchers, therefore, cannot fully rely on the notice-filing system promulgated under Revised Article 9 to actually give notice of a prior security interest in a potential debtor's property. In addition, subsequent creditors must deal with the fact that the lack of a definitive test for determining the scope and applicability of section 9-506(c) may result in the safe harbor being inconsistently applied to save the effectiveness of a financing statement with an error in the debtor name.<sup>136</sup> Therefore, subsequent creditors, like filers of initial financing statements, often enter into secured transactions with an abundance of uncertainty regarding the effectiveness and relative priority of a particular security interest.

In addition to causing great uncertainty for both filers and searchers engaging in secured transactions, the lack of a definitive sufficiency-of-a-debtor-name standard appears to increase the likelihood of disputes arising between competing secured parties. Because individual judgment must be used in the absence of a clear sufficiency-of-a-debtor-name standard, filers may use one debtor name for purposes of filing a financing statement while subsequent secured parties may use another

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134. See Hillinger, *supra* note 17 (discussing filings under multiple variations of a debtor name).

135. See Livingston, *supra* note 11, at 125–26.

136. Some courts have refused to stringently apply the single-search standard, which results in additional uncertainty for searchers about the exact scope of their obligations under Revised Article 9. See, e.g., *Miller v. Van Dorn Demag Corp. (In re Asheboro Precision Plastics, Inc.)*, No. 03-11319C-7G, 2005 WL 1287743, at \*11 (Bankr. M.D.N.C. Mar. 1, 2005) (holding that the filer should have the opportunity to prove a fraud claim based on the debtor's alleged misrepresentation of its name to the filer, even though an error in the debtor name, which resulted in the failure of the financing statement to be disclosed by a subsequent UCC search, invalidated the financing statement); *In re Summit Staffing Polk Cnty., Inc.*, 305 B.R. 347, 353–56 (Bankr. M.D. Fla. 2003) (holding that even under Revised Article 9, there is some obligation on the part of a searcher to exhibit reasonableness in conducting a UCC search and, where a filing-office search allows the searcher to view additional pages of results, the searcher should check the immediately preceding and succeeding pages).

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debtor name when attempting to locate existing security interests.<sup>137</sup> Without a clear-cut standard, alignment between filers and searchers with respect to a debtor name can never be attained. Instead of providing greater commercial certainty, Revised Article 9 arguably facilitates a disconnect between filers and searchers by failing to provide adequate guidance on a sufficient debtor name.

Because of this, the filing and search process breaks down and results in disputes instead of providing a clear and concise procedure for taking and giving notice of security interests. As a result, litigation often ensues between filers who believe they have complied with the sufficiency-of-a-debtor-name requirements and subsequent creditors who were unable to discover a previously recorded financing statement after searching the filing-office records.<sup>138</sup> Courts must then attempt to resolve the disputes between competing parties by interpreting the same ambiguous provisions of Revised Article 9 that initially troubled filers and searchers. Unfortunately, courts have not been able to provide filers and searchers with the guidance that is lacking under the statutory language of Revised Article 9.<sup>139</sup> The end result then is continued commercial uncertainty for both filers and searchers when engaging in secured transactions.

The uncertainty faced by parties engaging in secured transactions, the apparent ineffectiveness of the notice-filing system, and the prevalence of litigation between competing secured parties all support the conclusion that the lack of guidance in Revised Article 9 on the sufficiency of a debtor name results in real problems. Because these problems stem from confusion around how to comply with the statutory requirement to provide a sufficient debtor name, the uncertainty facing interested parties in secured transactions could presumably be avoided, or greatly minimized, if the standard for determining sufficient debtor names was more clearly and precisely articulated by Revised Article 9.

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137. See, e.g., Official Comm. of Unsecured Creditors for Tyringham Holdings, Inc. v. Suna Bros., Inc. (*In re* Tyringham Holdings, Inc.), 354 B.R. 363, 364–65 (Bankr. E.D. Va. 2006) (noting that the first creditor filed under the name “Tyringham Holdings” without the applicable corporate ending and a search under the name “Tyringham Holdings, Inc.” did not disclose the first filer’s financing statement); Genoa Nat’l Bank v. Sw. Implement, Inc. (*In re* Borden), 353 B.R. 886, 887 (Bankr. D. Neb. 2006) (noting that one creditor filed under the name “Mike Borden” and another conducted a search under the name “Michael Borden”); All Bus. Corp. v. Choi, 634 S.E.2d 400, 404–05 (Ga. Ct. App. 2006) (noting that the first creditor filed under the name “CCO Check Cashing-Buford” and the second creditor filed under the name “CCO Check Cashing” after a search did not disclose the first filer’s financing statement).

138. See cases cited *supra* note 137.

139. See Hodnefield, *supra* note 6, at 2 (noting that court decisions have done little more than identify insufficient debtor names).

### III. LEGISLATIVE ATTEMPTS TO CLARIFY DEBTOR-NAME REQUIREMENTS

The years of confusion engendered by the lack of a clear debtor-name standard in section 9-503(a) and the lack of definitive guidance on how to comply with that standard has recently pushed state legislatures to action. On June 15, 2007, Texas became the first state to enact a nonuniform amendment to Revised Article 9 with the intent of ending the uncertainty surrounding the debtor-name requirements of Revised Article 9.<sup>140</sup> Tennessee followed suit and adopted its own nonuniform amendment, which became effective on May 1, 2008.<sup>141</sup> In addition, states such as Nebraska and Virginia have also recently passed similar legislative attempts to extinguish the ambiguity surrounding the sufficiency of a debtor name.<sup>142</sup> Based on the recent proliferation of state-specific attempts to address the debtor-name-related uncertainty in secured transactions under Revised Article 9, legislators finally appear to have started focusing on a solution for the problems that have plagued financing-statement filers and searchers for so long. Thus, other states are likely to continue to consider and pass nonuniform amendments in the coming years, which could result in the erosion of uniformity in secured transactions.<sup>143</sup>

#### A. *Texas Legislation*

Texas's nonuniform amendment to Revised Article 9 seeks to assist filers, searchers, and courts by adding a new safe harbor for individual debtor names and clarifying the existing sufficiency-of-a-debtor-name

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140. See S.B. 1540, Legis. Sess. 80(R) (Tex. 2007); see also Senate Research Ctr., *Bill Analysis*, TEXAS LEGISLATURE ONLINE, 1 (July 3, 2007), <http://www.legis.state.tx.us/tlodocs/80R/analysis/pdf/SB01540F.pdf> [hereinafter S.B. 1540 Bill Analysis] (noting that the purpose of S.B. 1540 is to enact nonuniform changes to clarify various interpretive and other issues that have arisen in the years since the effective date of Revised Article 9); Hodnefield, *supra* note 6, at 1 (noting that S.B. 1540 was the first legislative attempt to address uncertainty regarding the sufficiency of debtor names).

141. See S.B. 3732, 105th Gen. Assemb., Reg. Sess. (Tenn. 2008).

142. See S.B. 1100, 2009 Gen. Assemb., Reg. Sess. (Va. 2009); Legis. B. 851, 100th Leg., Reg. Sess. (Neb. 2008).

143. See Hodnefield, *supra* note 6, at 4 (noting that other states may follow Texas's lead in addressing debtor-name issues); Memorandum from Kelly Kopyt, Int'l Ass'n of Commercial Adm'rs, to the Joint Review Comm. on Article 9, 3-4 (February 2, 2009) [hereinafter IACA Memo], available at <http://www.law.upenn.edu/bll/archives/ulc/ucc9/2009feb2%20iaca%20memo.pdf> (noting that after Texas's enactment of a nonuniform amendment, it is only a matter of time until others follow).

standard for registered organizations. For individual debtor names, a new section 9.503(a)(4) has been added to the Texas Business and Commercial Code.<sup>144</sup> Section 9.503(a)(4) augments the existing standard for sufficiency of an individual debtor name by incorporating a safe harbor that unequivocally makes the name shown on an individual's driver's license or state identification certificate sufficient for purposes of filing a financing statement.<sup>145</sup> Specifically, a financing statement sufficiently provides an individual debtor name if it identifies "the individual's name shown on the individual's driver's license or identification certificate issued by the individual's state of residence."<sup>146</sup> Texas's new sufficiency standard does not replace the existing language, which indicates that a financing statement sufficiently provides the debtor name for an individual if it lists the individual name of the debtor.<sup>147</sup> As such, it appears to operate as a safe harbor or alternative standard for sufficiency.<sup>148</sup> Although other individual debtor names may still be sufficient, filers in Texas can now rely with certainty on the fact that a financing statement providing the name on an individual debtor's driver's license, or state identification certificate, will always satisfy the requirements of Revised Article 9.<sup>149</sup>

Turning to the ambiguity surrounding the sufficiency of a registered-organization name, the Texas amendment effectively confirms the consensus among practitioners that a sufficient debtor name should only be determined by referencing a registered organization's filed formation documents.<sup>150</sup> Under amended section 9.503(a)(1) of the Texas Business and Commercial Code, a financing statement sufficiently provides the debtor name of a registered organization

*only if* the financing statement provides the name of the debtor indicated on the debtor's formation documents that are filed of public record in the debtor's jurisdiction of organization to create the registered organization and that show the debtor to have been

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144. See TEX. BUS. & COM. CODE ANN. § 9.503(a)(4) (West Supp. 2009); see also Tex. S.B. 1540 (showing changes to text of section 9.503(a)); S.B. 1540 Bill Analysis, *supra* note 140, at 1 (discussing changes to section 9.503(a)).

145. See BUS. & COM. § 9.503(a)(4).

146. *Id.*

147. See *id.* § 9.503(a)(5)(A).

148. See Hodnefield, *supra* note 6, at 2.

149. See BUS. & COM. § 9.503(a)(4).

150. See *id.* § 9.503(a)(1).

organized, including any amendments to those documents for the express purpose of amending the debtor's name.<sup>151</sup>

Thus, the Texas amendment decisively resolves any ambiguity regarding the exclusive source of a sufficient debtor name for a registered organization and assures filers that providing the name set forth on an applicable formation document is the only way to provide a sufficient name for a registered organization under Revised Article 9.<sup>152</sup>

Under the Texas approach, filers now have significantly increased certainty about what section 9.503(a) requires for purposes of sufficiently providing a debtor name.<sup>153</sup> So long as a filer correctly lists the name on a driver's license—for an individual debtor—or the name on the formation document—for a registered-organization debtor—a court will not deem the filer's financing statement ineffective for insufficiency of the debtor name.<sup>154</sup> Notwithstanding the increased certainty afforded to filers of financing statements, the Texas amendment arguably does not provide equal benefits to a subsequent creditor who is searching for previously recorded financing statements covering a potential debtor's property. While the Texas amendment requires reference to a single definitive source for a sufficient registered-organization name, it is much less clear with respect to individual names.<sup>155</sup> Instead of providing a single definitive source for determining a sufficient individual debtor name, the Texas amendment has generally been interpreted as merely adding a new safe harbor for filers of financing statements.<sup>156</sup> As such, it

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151. *Id.* (emphasis added); see also S.B. 1540, Legis. Sess. 80(R) (Tex. 2007) (text of amendment); S.B. 1540 Bill Analysis, *supra* note 140, at 1 (discussing changes to section 9.503(a)).

152. See BUS. & COM. § 9.503(a)(1); see also Sigman, *supra* note 5, at 867 (noting that the intent of the sufficiency-of-a-registered-organization-name provision of Revised Article 9 is to “push secured parties to do what due diligence and good business practice would dictate anyway: confirm the debtor-supplied information by examining public records to be sure they know who the debtor is, what its status is, whether there are peculiarities in its articles, etc.”); Hodnefield, *supra* note 6, at 3 (arguing that the Texas amendment merely codifies what practitioners have always considered as the best practice for filing against registered organizations).

153. See Hodnefield, *supra* note 6, at 2 (noting that the Texas amendment allows filers to provide an individual name with greater certainty).

154. See BUS. & COM. § 9.503(a)(1), (4).

155. Section 9.503(a)(1) plainly states that “if the debtor is a registered organization” the name is sufficient “only if the financing statement” provides the name on the debtor's formation document. *Id.* § 9.503(a)(1). In contrast, section 9.503(a)(4) does not go so far as to provide that the name is sufficient “only if” the financing statement lists the name on the debtor's driver's license. See *id.* § 9.503(a)(4). Instead, an individual debtor name is sufficient not only if it provides the name on the debtor's driver's license, but also if it provides the individual name of the debtor. See *id.* § 9.503(a)(5)(A).

156. See, e.g., Hodnefield, *supra* note 6, at 1–2 (interpreting the Texas amendment to the individual debtor-name provisions as constituting a new safe harbor when the financing statement

appears that a filer can comply with the sufficiency-of-an-individual-debtor-name requirement by providing an individual debtor name that is either deemed sufficient under the new driver's license safe harbor<sup>157</sup> or the existing individual-name-of-the-debtor standard.<sup>158</sup> By not addressing the problems with the existing individual-name-of-the-debtor standard, the uncertainties that currently plague parties engaging in secured transactions will continue without resolution whenever a filer elects or otherwise fails to provide the name on a debtor's driver's license or state identification certificate.<sup>159</sup>

The practical effect is that filers in Texas now have a clearly defined method for determining a sufficient individual or registered-organization name with absolute certainty.<sup>160</sup> For individual debtor names, however, other interested parties do not similarly benefit. Because the Texas amendment only clarifies one possible way to provide a sufficient individual debtor name, subsequent creditors searching for recorded financing statements must still conduct multiple searches to mitigate the risk of failing to discover a prior lien affecting the property of a proposed debtor and guard against the possibility of a filer not using the name set forth on a debtor's driver's license.<sup>161</sup> In addition to conducting a search using the name on an individual's driver's license or state identification certificate, a searcher remains responsible for any other names that might be deemed sufficient under the uncertain individual-name-of-the-debtor test under section 9.503(a)(5)(A).<sup>162</sup> Moreover, searchers must presumably deal with the possibility that a debtor may have received a new driver's license that sets forth a different variation of the debtor's name following proper filing of a financing statement by a prior secured party. Thus, the party conducting a search for recorded financing statements now bears the primary risk of ambiguity in the sufficiency-of-

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lists the individual's name as shown on the individual's driver's license or identification but not operating to replace the existing individual-name requirements).

157. BUS. & COM. § 9.503(a)(4).

158. *Id.* § 9.503(a)(5)(A).

159. See Kraemer, *supra* note 49, at 677 (noting that while the Texas amendments offer some assistance with determining a debtor name, they do not resolve "the problem of misspellings, diminutives of name, and the like").

160. See BUS. & COM. § 9.503(a)(1) (stating that debtor name is sufficient *only if* it provides the name indicated on a registered organization's formation document); *id.* § 9.503(a)(4) (stating that the debtor name is sufficient if it lists the name on the driver's license or state identification certificate).

161. See Hodnefield, *supra* note 6, at 2 (noting that under the Texas amendment additional searches may be required to find all effective financing statements filed against a particular individual but arguing that the additional searches are a small price to pay for added certainty when dealing with Texas debtors).

162. See BUS. & COM. § 9.503(a)(4), (5)(A).

a-debtor-name provisions in Texas's version of Revised Article 9. Because the Texas amendment does not provide any additional guidance regarding what names may otherwise be deemed sufficient under section 9.503(a)(5)(A), it fails to relieve any of the ambiguity already facing searchers under Revised Article 9. In sum, Texas's nonuniform amendment resolves the uncertainty faced by initial filers of financing statements but neglects to address the commercial uncertainty faced by subsequent creditors trying to discover the presence of any prior lien holders.

### *B. Tennessee Legislation*

Although Tennessee ultimately adopted a nonuniform amendment that substantially follows the Texas model, Tennessee's legislation originally took a divergent approach. Effective as of May 1, 2008, Tennessee Senate Bill 3732 amended Tennessee's version of Revised Article 9 to mimic Texas's standard for registered organizations and specifically provide that a registered-organization name is sufficient only if the financing statement lists the name on such organization's formation document.<sup>163</sup> For individual debtor names, however, Tennessee's nonuniform amendment initially expanded upon Texas's safe harbor by identifying six different documents that would sufficiently provide an individual debtor name.<sup>164</sup> As amended, an individual debtor name as identified on any of the following documents would have been sufficient under the Tennessee UCC: (1) driver's license, (2) state-issued identification card, (3) birth certificate, (4) passport, (5) social security card, or (6) military identification card.<sup>165</sup> This approach appears to be in accord with proposed amendments by some academics that advance the idea that a broadened safe harbor is necessary because the pendulum has swung too far in favor of the searcher while holding the filer to an overly stringent standard.<sup>166</sup> Notwithstanding the superficial appeal of an

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163. S.B. 3732, 105th Gen. Assemb., Reg. Sess. (Tenn. 2008); *Bill Summary*, TENN. GEN. ASSEMB., <http://wapp.capitol.tn.gov/apps/billinfo/BillSummaryArchive.aspx?BillNumber=SB3732&ga=105> (last visited Sept. 8, 2010) [hereinafter S.B. 3732 Bill Summary] (discussing how Tennessee Senate Bill 3732 would change Tennessee's version of the UCC).

164. See Tenn. S.B. 3732; S.B. 3732 Bill Summary, *supra* note 163; see also Paul Hodnefield, *Tennessee Begins Another UCC Article 9 Transition Period*, A.B.A. SEC. BUS. L., 1 (July 2008), <http://www.abanet.org/buslaw/committees/CL190000pub/newsletter/200807/hodnefield.pdf> (discussing the safe harbor created by Tennessee Senate Bill 3732).

165. Tenn. S.B. 3732; S.B. 3732 Bill Summary, *supra* note 163.

166. See Livingston, *supra* note 11, at 154–65 (discussing the need for an expanded safe harbor and the adoption of a standardized search logic that is more flexible).

approach that sets forth a list of readily available documents for purposes of identifying a sufficient individual debtor name, the initial Tennessee amendment immediately came under fire for substantially increasing the burdens on those conducting lien searches.<sup>167</sup> In short, the multiple options available for a sufficient individual debtor name essentially would have required searchers to check each of the six documents and run multiple searches where the name differed.<sup>168</sup> Moreover, the addition of the expanded safe harbor failed to address the underlying ambiguities of the current sufficiency-of-an-individual-debtor-name standard, which would continue to exist.<sup>169</sup>

In light of this monumental shift of responsibility onto searchers, Tennessee legislators quickly enacted Senate Bill 372, effective as of June 13, 2008, to reduce the number of acceptable documents for identifying a sufficient individual debtor name.<sup>170</sup> In doing so, Tennessee essentially adopted the Texas model for individual names and amended section 9-503(a)(4) to state that an individual debtor name is sufficient “if the financing statement provides the individual’s name shown on the individual’s driver’s license or identification license issued by the individual’s state of residence.”<sup>171</sup> The Tennessee amendment makes it clear that the driver’s license and state identification license are not the exclusive means of sufficiently providing an individual debtor name.<sup>172</sup> Tennessee Senate Bill 372 and the Official Comments to section 9-503 indicate that the legislature intended to provide “a safe harbor” such that “an individual’s name, as shown on the individual’s driver’s license or state-issued identification license, shall always be a sufficient name . . . for financing statement purposes.”<sup>173</sup> However, the safe harbor “is not the exclusive means of establishing that the debtor’s name is sufficient,” and “[a]n individual debtor’s name may also be established by [other means].”<sup>174</sup> As such, searchers must presumably

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167. Hodnefield, *supra* note 164, at 2.

168. *Id.*; Paul Hodnefield, *Survey of 2008 Article 9 Legislation*, CSC FLASH NEWSLETTER, 1–2 (April 2008), [http://www.complianceflash.com/archives/2008\\_04/pdf/article2.pdf](http://www.complianceflash.com/archives/2008_04/pdf/article2.pdf).

169. *See* Tenn. S.B. 3732.

170. *See* S.B. 372, 105th Gen. Assemb., Reg. Sess. (Tenn. 2008); *see also* TENN. CODE ANN. § 47-9-503(a)(4) (West Supp. 2010) (codified version of Tennessee Senate Bill 372).

171. TENN. CODE ANN. § 47-9-503(a)(4); *see also id.* § 47-9-503(f) (defining the phrase “identification license issued by the individual’s state of residence” as meaning “the photo identification license authorized by [Tennessee Code] § 55-50-336” or, if the individual is not a resident of Tennessee, “an equivalent state-issued identification license issued by the state of the individual’s residence in lieu of a driver’s license”).

172. *See id.* § 47-9-503(a)(5)(A).

173. Tenn. S.B. 372.

174. *Id.*

remain mindful of other names that might also be sufficient under the existing individual-name-of-the-debtor test.<sup>175</sup> Therefore, Tennessee's nonuniform amendment, like the Texas legislation, increases commercial certainty for those filing financing statements but overlooks any revisions aimed at similarly assisting searchers in identifying preexisting liens.

### C. Other State Legislation

In addition to Texas and Tennessee, other states have also enacted nonuniform amendments aimed at clarifying the sufficiency-of-a-debtor-name provisions in Revised Article 9. In both Nebraska<sup>176</sup> and Virginia,<sup>177</sup> nonuniform amendments have recently been adopted. While Virginia largely followed the model advanced by Texas and ultimately adopted by Tennessee,<sup>178</sup> Nebraska initially tested a unique approach before ultimately reverting to the preamendment form of the statute.<sup>179</sup>

Notwithstanding Nebraska's recent decision to abandon its nonuniform amendment in favor of retaining the preamendment language, Nebraska's efforts to provide added certainty for parties engaging in secured transactions highlights the potential pitfalls of state-specific nonuniform amendments. Specifically, Nebraska's nonuniform amendment sought to amend the scope of the section 9-506(c) safe harbor instead of addressing the underlying ambiguity in the sufficiency-of-a-debtor-name requirements of section 9-503(a).<sup>180</sup> Before the enactment of its nonuniform amendment, Nebraska's safe harbor was

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175. See TENN. CODE ANN. § 47-9-503(a)(5)(A).

176. Legis. B. 851, 100th Leg., Reg. Sess. (Neb. 2008); Legis. B. 308A, 100th Leg., 2d Sess. (Neb. 2008).

177. S.B. 1100, 2009 Gen. Assemb., Reg. Sess. (Va. 2009); VA. CODE ANN. § 8.9A-503(a)(4), (a)(5)(A), (f) (West Supp. 2010).

178. Like Texas and Tennessee, Virginia adopted an amendment that adds a safe harbor for financing statements providing the name of an individual debtor as set forth on the debtor's driver's license or state-issued identification card. See VA. CODE ANN. § 8.9A-503(a)(4); see also *id.* § 8.9A-503(f) (defining what constitutes a state-issued identification card). In addition, financing statements that provide the "individual . . . name of the debtor" will continue to be sufficient. See *id.* § 8.9A-503(a)(5)(A). The Virginia amendment departs from the Texas and Tennessee model for the sufficiency-of-a-registered-organization-name standard, where no changes were made. See *id.* § 8.9A-503(a)(1).

179. See Neb. Legis. B. 851 (enacting Nebraska's nonuniform amendment to the UCC); Neb. Legis. B. 308A (delaying the effective date of Nebraska's nonuniform amendment to the UCC); Legis. B. 751, 101st Leg., 2d Sess. (Neb. 2010) (repealing Nebraska's nonuniform amendment and returning section 9-506(c) to its original uniform text); NEB. REV. STAT. U.C.C. § 9-506(c) (West Supp. 2010) (reflecting Nebraska's decision to revert to the preamendment version of the UCC).

180. See Neb. Legis. B. 851 (amending section 9-506(c) without amending section 9-503(a)).

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consistent with the uniform text of the UCC and only applied where a search of the debtor's correct name would still disclose the financing statement containing the error.<sup>181</sup> As modified by Nebraska's nonuniform amendment, the scope of the safe harbor was expanded so that a financing statement that otherwise provided an insufficient debtor name would not be deemed seriously misleading

[i]f a search of the records of the filing office under the debtor's correct name, or, in the case of a debtor who is an individual, the debtor's correct last 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).<sup>182</sup>

In doing so, Nebraska's nonuniform amendment apparently intended to provide added security to filers by broadening the application of the existing safe harbor for debtor-name errors and omissions so that any financing statement correctly listing an individual debtor's last name would be saved from ineffectiveness for failure to sufficiently provide the debtor name in accordance with section 9-503(a). Because a financing statement wholly lacking a first name would presumably be disclosed in a search so long as the last name of the individual was properly listed, the Nebraska legislation essentially removed any incentive for a filer to list the correct first name of a debtor.<sup>183</sup> Stated another way, all mistakes in the first name of an individual debtor would be excused under Nebraska's nonuniform amendment.<sup>184</sup> In addition, it appeared that any mistakes in an individual debtor's last name would continue to be excused so long as a search using the correct last name

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181. See *id.*; see also U.C.C. § 9-506(c) (2009) (text of the uniform version of the safe harbor).

182. See Neb. Legis. B. 851 (emphasis added).

183. Paul Hodnefield, *Nebraska UCC Legislation May Create New Due Diligence Burden*, CSC FLASH NEWSLETTER, 2 (March 2008), [http://www.complianceflash.com/archives/2008\\_03/pdf/article2.pdf](http://www.complianceflash.com/archives/2008_03/pdf/article2.pdf); see also James M. Pfeffer, *What's in a Name? Individual Debtor Names in Financing Statements*, NEB. LAW., July 2008, at 5, 6 (noting that errors in first names, middle names, or both, of an individual debtor, or the use of nicknames, would not make a financing statement seriously misleading); Donald L. Swanson, *The UCC Drafters and Courts Got It Right: Allocating Risks of Error for Individual Debtor Search Issues Under UCC Revised Article 9*, NEB. LAW., July 2008, at 9, 11 (noting that under the Nebraska legislation a filer does not have any incentive to even put a first name on the financing statement); *Article 9 Amendments Affecting Debtor Name Sufficiency Requirements*, NAT'L CORP. RES., 2 (March 2010), [http://www.nationalcorp.com/pdfs/Debtor\\_Name\\_Sufficiency\\_Mar\\_2010.pdf](http://www.nationalcorp.com/pdfs/Debtor_Name_Sufficiency_Mar_2010.pdf) [hereinafter *Article 9 Amendments*] (noting that any financing statement with a last name could be deemed sufficient under the Nebraska legislation); Hodnefield, *supra* note 168, at 2 (noting that the effect of the Nebraska legislation is that the first and middle names no longer have any impact on sufficiency and any financing statement that matches the last name of the debtor will need to be reviewed).

184. See sources cited *supra* note 183.

still disclosed the financing statement.<sup>185</sup> Therefore, under the nonuniform amendment, those searching for recorded financing statements in Nebraska would be required to bear a tremendous burden when conducting due diligence on potential debtors—a searcher was essentially charged with reviewing all of the recorded financing statements that resulted from a search of a particular last name.<sup>186</sup> Otherwise, the search would be incomplete and may have resulted in the searcher failing to discover a financing statement that would be saved by operation of amended section 9-506(c).<sup>187</sup>

While Nebraska's nonuniform amendment may not have imposed much of an incremental burden on searchers seeking to identify financing statements affecting debtors with unique last names, the burden would have risen exponentially for transactions involving debtors with very common last names.<sup>188</sup> Moreover, searchers attempting to determine whether any filed financing statements affect the property of a proposed debtor could ostensibly have been required to divine the applicability of a filed financing statement that only listed a last name. Thus, Nebraska's nonuniform amendment managed to increase certainty for filers—but only at significant expense to those that must search the Nebraska filing-office records.

After enacting its nonuniform amendment in 2008 and delaying its effectiveness on more than one occasion, the Nebraska legislature appears to have finally recognized the undue burden that its nonuniform amendment imposed on searchers. As a result, it passed Legislative Bill 751 in 2010 to return section 9-506 back to its original form and to repeal Legislative Bill 851.<sup>189</sup> Nonetheless, Nebraska's foray into legislation aimed at addressing debtor-name uncertainty provides a real-world example of the types of problems that could face filers and searchers if state legislatures continue to enact nonuniform amendments and state-specific requirements.

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185. See Neb. Legis. B. 851.

186. See Pfeffer, *supra* note 183, at 6; Swanson, *supra* note 183, at 11; Hodnefield, *supra* note 183, at 2.

187. See sources cited *supra* note 186.

188. See sources cited *supra* note 186.

189. See Legis. B. 751, 101st Leg., 2d Sess. (Neb. 2010).

#### IV. THE NEED FOR A UNIFORM AMENDMENT TO ADDRESS AMBIGUITY IN DEBTOR-NAME REQUIREMENTS AND A PROPOSED FRAMEWORK

As evidenced by the increasing number of states that have passed legislation aimed at clarifying the sufficiency-of-debtor-name requirements and the disparate approaches advanced by those states,<sup>190</sup> a uniform amendment to Revised Article 9 is necessary to ensure continued consistency and commercial certainty in secured transactions across jurisdictions. Absent such a uniform amendment, any increased certainty for filers and searchers resulting from state-specific amendments may be nullified by possibly incongruous standards between jurisdictions. In fact, interested parties like the American Law Institute, the Uniform Law Commission, and the National Conference of Commissioners on Uniform State Laws have increasingly expressed similar concerns regarding the prevalence of state-specific amendments to Revised Article 9 and have stressed the need for uniformity.<sup>191</sup>

As such, two things are clear. First, the deficiencies in the current sufficiency-of-a-debtor-name standard have resulted in significant problems for parties in secured transactions and must be addressed by a clear-cut test. Second, a uniform model should be developed for adoption across all jurisdictions to prevent the rise of state-specific requirements regarding the sufficiency of a debtor name. While the idea of developing a model uniform amendment to address debtor-name problems has gained significant traction in recent years,<sup>192</sup> the primary hurdle appears to be the inherently slow and deliberate process of reaching an agreement on a proposed model uniform amendment for consideration and adoption by each state. Based on the relatively speedy adoption of Revised Article 9 in 2001,<sup>193</sup> state legislatures would

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190. See *supra* Part III.

191. The American Law Institute and the Uniform Law Commission formed a joint review committee in the spring of 2008 to examine practical problems in the operation of Revised Article 9, including sufficiency-of-debtor-name issues, and to draft modifications to address those issues. See *Current Projects: UCC Article 9 Review Committee*, AM. L. INST., [http://www.ali.org/index.cfm?fuseaction=projects.proj\\_ip&projectid=21](http://www.ali.org/index.cfm?fuseaction=projects.proj_ip&projectid=21) (last visited Sept. 8, 2010); *Article 9 Review Comm., Statutory Modification Issues List*, AM. L. INST., 1 (June 24, 2008), [http://extranet.ali.org/directory/files/UCC9\\_IssuesList.pdf](http://extranet.ali.org/directory/files/UCC9_IssuesList.pdf). In addition, Nebraska's controversial legislation to amend Revised Article 9 was delayed for the sole purpose of allowing the National Conference of Commissioners on Uniform State Laws to have more time to create a model approach for all states. See Hodnefield, *supra* note 168, at 2–3; *Article 9 Amendments*, *supra* note 183, at 2.

192. See sources cited *supra* note 191.

193. John A. Sebert, *Foreword* to SELECTED COMMERCIAL STATUTES, *supra* note 1, at vii (noting that “state legislatures quickly enacted [Revised Article 9]” and that “nationwide enactment was accomplished in just three years”).

ostensibly act quickly to adopt a uniform solution to resolve debtor-name problems if an appropriate model uniform amendment were available.

To contribute to the development of an appropriate model uniform amendment, this Article advances a proposed framework for an amendment to Part 5 of Revised Article 9 that centers on (1) the incorporation of a bright-line individual debtor-name standard that requires reference to a single exclusive source to evaluate sufficiency, (2) the clarification of the registered-organization debtor-name standard to eliminate ambiguity and align the existing language with the intent of the drafters of Revised Article 9 and accepted best practices, and (3) the revision of the safe harbor for financing statements with minor errors and omissions in debtor names to reduce the likelihood of inconsistent or overbroad application.

*A. Adoption of an Exclusive Source for Individual Debtor Names*

Any model uniform amendment must begin with a solution for the problems caused by the lack of direction in the current sufficiency-of-an-individual-debtor-name standard. Because the current individual-debtor-name standard allows room for individual judgment,<sup>194</sup> all interested parties—filers and searchers—would benefit from the adoption of a bright-line test that requires filers to provide an individual's legal name exactly as set forth on such individual's birth certificate.<sup>195</sup> Because all parties would be directed to a single individual debtor name, the exclusive-source approach provides a clear-cut and objective test by essentially eliminating the possibility of disparate points of view on a sufficient individual debtor name and the problems arising from such lack of consensus. Accordingly, this exclusive-source approach finally makes good on the intent of Revised Article 9 to provide a clearer and less arbitrary set of rules for purposes of evaluating the effectiveness of a

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194. See *supra* Part II.B.1.

195. Courts have discussed the benefits of a clear-cut test for determining the sufficiency of an individual debtor name and the intent of Revised Article 9 to move away from subjectivity and towards a bright-line rule. See *Pankratz Implement Co. v. Citizens Nat'l Bank*, 130 P.3d 57, 66–67 (Kan. 2006). Moreover, courts, commentators, and academics have often noted that the name of an individual as set forth on a birth certificate would appear sufficient regardless of whether another variant of that name is also sufficient. See *Morris v. Snap On Credit, L.L.C. (In re Stewart)*, No. 04-16838, Adv. No. 05-5090, 2006 WL 3193374, at \*1 (Bankr. D. Kan. Nov. 1, 2006); HAWKLAND ET AL., *supra* note 11, § 9-503:5. Therefore, a clear-cut test mandating use of the name on a birth certificate provides a definitive test that eliminates subjectivity in favor of an objective test that simply requires reference to the name on an easily obtainable document.

filed financing statement.<sup>196</sup> Moreover, the exclusive-source approach appears to support the initial intent of the drafters of Revised Article 9 by maintaining an appropriate balance of accountability between filers and searchers<sup>197</sup> and improving the efficiency and effectiveness of the UCC notice-filing system.<sup>198</sup>

### 1. An Exclusive Source Provides Unsurpassed Certainty

By mimicking the format of the existing sufficiency-of-a-debtor-name test for registered organizations, the exclusive-source approach for individual debtor names would provide unsurpassed certainty by eliminating individual discretion from the equation and replacing it with a bright-line test requiring reference to a single definitive document for a sufficient individual debtor name. For registered organizations, section 9-503(a)(1) unequivocally mandates that the debtor name is sufficient *only if* the financing statement sets forth the name indicated on the public record evidencing the existence of the organization.<sup>199</sup> In doing so, the registered-organization test for sufficiency makes it clear that only the exact name on an easily obtainable public source is sufficient.<sup>200</sup>

Likewise, section 9-503(a) should be amended to add a similar test for determining the one and only sufficient debtor name for individuals. Specifically, the existing standard for individual debtor names in section 9-503(a)(4) should be deleted. In its place, section 9-503(a) should provide that a financing statement sufficiently identifies an individual debtor only if it sets forth the debtor's name exactly as the name appears on the debtor's birth certificate. While birth certificates may not be as readily obtainable as a registered organization's formation documents,<sup>201</sup> requiring filers to check such a document would not appear to be an undue burden.<sup>202</sup>

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196. See U.C.C. § 9-101 cmt. 4(h) (2009) (noting that Part 5 of Revised Article 9 was substantially rewritten to deal with numerous problems of interpretation and implementation); Hillinger, *supra* note 18 (discussing the intent of Revised Article 9 to create a clearer, less arbitrary set of rules for evaluating perfection).

197. See *infra* Part IV.A.2.

198. See *infra* Part IV.A.3.

199. U.C.C. § 9-503(a)(1); see also HAWKLAND ET AL., *supra* note 11, § 9-503:2 (noting that there is “no wiggle room”).

200. See Harry C. Sigman, *The Filing System Under Revised Article 9*, 73 AM. BANKR. L.J. 61, 72 (1999) (analyzing the sufficiency-of-a-registered-organization-name provision of Revised Article 9 and concluding that it enables “filers and searchers to rely with certainty on the debtor's exact name obtained from an objective and publicly available source”).

201. Pfeffer, *supra* note 183, at 7.

202. See *Morris v. Snap On Credit, L.L.C. (In re Stewart)*, No. 04-16838, Adv. No. 05-5090,

With such a requirement in place as the initial test for sufficiency, filers would have no wiggle room in selecting a sufficient debtor name. If the filer was unable to follow the unambiguous mandate to provide the exact name set forth on an individual debtor's birth certificate, the error would result in a court deeming the financing statement presumptively seriously misleading.<sup>203</sup> The filer would then have the burden of proving the error did not make the financing statement seriously misleading because a search using the applicable filing office's computerized search logic would disclose the financing statement notwithstanding the error.<sup>204</sup> If the financing statement was still disclosed, the error would not be seriously misleading.<sup>205</sup> If, however, the financing statement was not disclosed by such a search, the financing statement would be rendered ineffective.<sup>206</sup> Considered as a whole, the adoption of an exclusive-source approach appears to greatly clarify the Revised Article 9 process for evaluating the sufficiency of a debtor name and the effectiveness of a financing statement.

The primary benefit of clarifying the process for evaluating the sufficiency of an individual debtor name by adopting an exclusive-source approach is the resulting improvement in commercial certainty for both filers and searchers. In addition to increased commercial certainty, a clear-cut test provides practical benefits such as simplifying the drafting of financing statements, simplifying the parameters of UCC searches, reducing the likelihood of disputes and litigation, and eliminating fact-intensive tests.<sup>207</sup> For example, under the exclusive-source approach, financing-statement filers can simply request a debtor's birth certificate and copy the individual's name exactly as it appears on that document. Filers will no longer have to evaluate all of the different names and

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2006 WL 3193374, at \*1 (Bankr. D. Kan. Nov. 1, 2006) (suggesting use of the name on a birth certificate for an individual debtor); HAWKLAND ET AL., *supra* note 11, § 9-503:5 (suggesting use of the name on a birth certificate for an individual debtor).

203. See U.C.C. § 9-506(b).

204. See *id.* § 9-506(c).

205. See *id.*

206. See *id.*

207. In concluding that a clear-cut test mandating that only one name, the debtor's legal name, would be sufficient, the Supreme Court of Kansas appears to recognize that the use of a single sufficient name is supported by the intent of Revised Article 9 because it forecloses fact-intensive tests, increases commercial certainty, simplifies the drafting of financing statements, simplifies the parameters of UCC searches, and reduces litigation about the sufficiency of a particular name. *Pankratz Implement Co. v. Citizens Nat'l Bank*, 130 P.3d 57, 66 (Kan. 2006). While the Supreme Court of Kansas does not go so far as to explain how to determine a debtor's legal name, its analysis highlights the benefits of definitively requiring a financing statement to provide a single debtor name as set forth on a specified source or document as opposed to having a subjective standard where more than one name may ultimately be deemed sufficient.

documentation that an individual may have and make an educated guess regarding what name or names could be sufficient.<sup>208</sup> Moreover, filers will be able to rely on the fact that only the name set forth on an individual's birth certificate will be sufficient and, therefore, will no longer feel compelled to file multiple financing statements using different debtor-name variants to mitigate uncertainty over whether a court will deem a particular financing statement ineffective for failure to provide a sufficient individual debtor name.<sup>209</sup> By removing all individual judgment and discretion from the equation, the process of filing a financing statement is greatly simplified.

UCC searchers will also benefit from the presence of a single exclusive source for individual debtor names. Because the name on a debtor's birth certificate is the only sufficient individual debtor name, UCC searchers will finally be able to conduct one search. Instead of guessing at all of the possible variations of a particular debtor's name and searching each of those names to reduce the likelihood of failing to learn of preexisting security interests, searchers will be able to rely on a single search using the exact name that appears on an individual's birth certificate.<sup>210</sup> If a financing statement is not disclosed by such a search, the UCC searcher may assume that no effective security interests encumber a particular debtor's property. Accordingly, the exclusive-source approach not only simplifies the requisite parameters of UCC searches, but also allows searchers to rely with near absolute certainty on the results of such searches to disclose relevant security interests.

In light of the improved clarity and simplicity regarding individual debtor names under the exclusive-source approach, the number of disputes between filers and searchers would ostensibly be reduced.

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208. See HAWKLAND ET AL., *supra* note 11, § 9-503:5 (discussing the difficulties of identifying a debtor's name); Livingston, *supra* note 11, at 145–46 (noting that debtors can have multiple names); Hodnefield, *supra* note 6, at 2 (noting that filers are left to use their best judgment regarding a debtor's name).

209. See Hillinger, *supra* note 17 (noting that filers can protect themselves by filing multiple financing statements under every possible name).

210. The ability of searchers to rely on a single search of a particular debtor's name as opposed to guessing at possible variations is uniformly supported by interpretations of the intent of Revised Article 9. See, e.g., Pankratz, 130 P.3d at 63, 66 (noting the intent of Revised Article 9 to eliminate the need for multiple searches using variations of a debtor name and discussing the benefit to searchers of a clear-cut individual-debtor-name standard that would ensure that searchers need only conduct a search of a single debtor name without having to guess at any number of debtor name variations that might exist); Sigman, *supra* note 200, at 73 (noting that Revised Article 9 “does not burden searchers with the obligation to dream up every potential error and name variation and perform searches under all possibilities” but instead allows searchers “to rely on a single search conducted under the correct name of the debtor and penalizes filers only for errors that result in nondisclosure of the financing statement in a search under the correct name”).

Filers and searchers would be unambiguously directed to use the exact name on a debtor's birth certificate. With such a definitive test in place, the exclusive-source approach would appear to eliminate the likelihood of a filer using one variant of a debtor name for purposes of filing and a searcher using another variant of that same debtor name when searching the filing-office records. As such, the exclusive-source approach appears to foreclose the possibility of competing claims to a debtor's property arising due to discrepancies in the interested parties' judgment about a sufficient individual debtor name.

Even if a dispute or litigation were to arise under the exclusive-source approach, courts would benefit from having meaningful statutory guidance and a comprehensible standard to consistently apply. Instead of having to make the fact-specific evaluations required under former Article 9<sup>211</sup> or being required to interpret the curiously silent test under the current provisions of Revised Article 9,<sup>212</sup> courts would finally have a bright-line test and process for evaluating the sufficiency of an individual debtor name.<sup>213</sup> Therefore, the exclusive-source approach would foreclose fact-intensive tests by courts in favor of the straightforward directive to simply determine whether the debtor name on a financing statement is the same as the name on the debtor's birth certificate.

In sum, the exclusive-source approach provides unsurpassed certainty for all interested parties by utilizing a bright-line test that greatly simplifies the statutory process for evaluating the sufficiency of a debtor name and the effectiveness of a financing statement. In doing so, the exclusive-source approach appears to be supported by judicial interpretations advocating for a clear-cut test.<sup>214</sup> Some courts have also indicated that such a clear-cut test actually requires filers to provide an individual debtor's legal name.<sup>215</sup> While these courts have not defined or

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211. See Hillinger, *supra* note 18 (discussing the case-by-case analysis under former Article 9).

212. See Pankratz, 130 P.3d at 65 (noting the lack of a specific rule or guidance concerning what constitutes a sufficient debtor name under Revised Article 9).

213. A number of courts have discussed the need for a clear-cut test under Revised Article 9 and the intent of Revised Article 9 to move in that direction. See, e.g., Clark v. Deere & Co. (*In re* Kinderknecht), 308 B.R. 71, 75–76 (B.A.P. 10th Cir. 2004) (recognizing that a clear-cut standard is supported by a number of practical considerations); Pankratz, 130 P.3d at 67 (noting the intent of Revised Article 9 to move toward a bright-line rule “to lessen the need for judicial hairsplitting”).

214. See cases cited *supra* note 213.

215. See, e.g., Clark, 308 B.R. at 75 (concluding that the debtor's legal name must be used to make a financing statement sufficient); Genoa Nat'l Bank v. Sw. Implement, Inc. (*In re* Borden), 353 B.R. 886, 890 (Bankr. D. Neb. 2006) (noting that the requirement of an individual debtor's legal name on a financing statement maintains the same standard applied to other debtor entities and establishes a clear-cut test for establishing sufficiency, which is one of the stated purposes of Revised Article 9); Pankratz, 130 P.3d at 66 (concluding that a legal name is necessary to

otherwise provided guidance on what constitutes an individual's legal name,<sup>216</sup> the exclusive-source approach builds upon the concept by definitively identifying that the legal name set forth on a birth certificate is the only sufficient individual debtor name. Accordingly, any ambiguity regarding an individual's legal name or how to treat individuals with multiple legal names is eliminated. Moreover, a model uniform amendment that adopts an exclusive-source approach would not only provide a definitive test for filers, searchers, and courts, but also achieve the goal of Revised Article 9 to simplify the statutory text and deal with problems of interpretation and implementation relating to sufficiency of debtor names.<sup>217</sup> Therefore, the exclusive-source approach provides the greatest amount of certainty for filers and searchers by eliminating individual judgment and the possibility of more than one debtor name being deemed sufficient.

## 2. An Exclusive Source Provides Clarity Without Increasing the Burden on Searchers

The exclusive-source approach also provides certainty in a manner that is consistent with the principals of Revised Article 9 because it keeps responsibility for financing-statement errors on the filing party instead of inappropriately shifting the burden onto searchers. With the adoption of Revised Article 9, the burdens in litigation for errors in debtor names were shifted from the UCC searcher to the UCC filer.<sup>218</sup> Instead of presuming a financing statement with a debtor-name error effective unless proven seriously misleading, Revised Article 9 made it clear that once an error in the debtor name is established, the financing statement is

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sufficiently provide an individual debtor name).

216. See cases cited *supra* note 215.

217. See U.C.C. § 9-101 cmt. 4(h) (2009) (noting that Part 5 of Revised Article 9 was “substantially rewritten to simplify the statutory text and to deal with numerous problems of interpretation and implementation that have arisen over the years”); see also *Clark*, 308 B.R. at 75 (noting that section 9-503 of Revised Article 9 “was enacted to clarify the sufficiency of a debtor’s name,” that “the intent to clarify when a debtor’s name is sufficient shows a desire to foreclose fact-intensive tests,” and that a clear-cut test requiring provision of the debtor’s legal name is in accord with that intent).

218. See *Hillinger*, *supra* note 18 (noting that Revised Article 9 alters the burdens in litigation); see also *In re Johns Bean Farm of Homestead, Inc.*, 378 B.R. 385, 390 & n.13 (Bankr. S.D. Fla. 2007) (noting that “[p]ost-revision case law is fairly well settled that the burden is squarely on the creditor to correctly identify the name of the debtor” and that Revised Article 9 has “altered the burdens in litigation”).

ineffective unless the filing party proves that the error does not make the financing statement seriously misleading.<sup>219</sup>

In addition, Revised Article 9 replaced the reasonably-diligent-searcher standard of former Article 9 by what has been dubbed a “single search standard.”<sup>220</sup> Because former Article 9 required a reasonable search of filer financing statements, searchers bore primary responsibility for locating any preexisting liens because it was necessary to establish and prove the reasonableness of the scope of the search.<sup>221</sup> A searcher being evaluated under the discretionary reasonably-diligent-searcher standard<sup>222</sup> could plausibly be required to conduct multiple searches on different debtor-name variations, interpret search results, and follow up regarding possibly applicable liens.<sup>223</sup> Because an error in the name of an individual debtor makes the financing statement presumptively misleading, Revised Article 9 seeks to reduce the burden on searchers by effectively requiring only a single search of a particular individual’s name.<sup>224</sup> If that search does not result in any matches, then under Revised Article 9, the searcher may assume there are no filed financing

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219. See Hillinger, *supra* note 18 (contrasting former Article 9, where financing statements with errors were presumed valid, with Revised Article 9, which only requires a person challenging the sufficiency of the financing statement to show an error in the debtor name, shifting the burden to the filer to prove that the financing statement is nevertheless sufficient).

220. See, e.g., Sigman, *supra* note 200, at 73 (noting that Revised Article 9 allows searchers to rely on a single search conducted under the correct name of the debtor); Hillinger, *supra* note 18 (noting that Revised Article 9 replaced the reasonably-diligent-searcher standard with a clearer standard based on the computerized search logic of the applicable filing office); Livingston, *supra* note 2 (comparing the Revised Article 9 single-search standard to the prerevision reasonably-diligent-searcher standard).

221. See, e.g., *Armstrong v. Dakota Bank & Trust Co. (In re Knudson)*, 929 F.2d 1280, 1283 (8th Cir. 1991) (noting that human judgment was relevant under former Article 9 and holding that determinations of whether an error was seriously misleading were based on whether a hypothetical “reasonably diligent searcher” could discover the erroneous filing); *Clark*, 308 B.R. at 74–75 (noting that before Revised Article 9, courts had struggled with the issue of whether debtor names in financing statements were sufficient to put third parties on notice, with many courts typically applying a reasonably-diligent-searcher test).

222. See *Dietrich-Post Co. of Wash. v. Alaska Nat’l Bank of the N. (In re McCauley’s Reprographics, Inc.)*, 638 F.2d 117, 119 (9th Cir. 1981) (noting that courts applying the standard use a “flexible, ad hoc approach to determine, by an essentially factual inquiry, the extent to which an error in the financing statement would be misleading to one undertaking a reasonable search”); Hillinger, *supra* note 18 (noting that the drafters of Revised Article 9 rejected the “discretionary, fact-intensive, ad hoc standard” under former Article 9).

223. See, e.g., *Genoa Nat’l Bank v. Sw. Implement, Inc. (In re Borden)*, 353 B.R. 886, 889 (Bankr. D. Neb. 2006) (giving an example of the multiple searches required under former Article 9 and discussing the intended difference under Revised Article 9); Sercombe, *supra* note 75, at 1067 & n.7 (discussing how courts applied former Article 9’s reasonably-diligent-searcher standard).

224. See, e.g., Livingston, *supra* note 2 (interpreting Revised Article 9 to only require a UCC searcher to conduct a single search by entering the individual’s correct name into a search of the applicable filing-office records).

statements recorded against that particular debtor.<sup>225</sup> The shift in thinking evidenced by the foregoing revision to former Article 9 highlights the intent of the drafters of Revised Article 9 to squarely place responsibility for filing an effective financing statement on the appropriate party—the filer of the financing statement and not the party searching for a recorded financing statement.<sup>226</sup>

In contrast to the nonuniform amendments adopted by Texas, Tennessee, Virginia, and Nebraska, which increase certainty for filers by inappropriately shifting the burden of erroneous debtor names back onto the searching party,<sup>227</sup> the exclusive-source approach clarifies existing sufficiency-of-a-debtor-name ambiguities in a manner that is consistent with the intent of Revised Article 9 to ensure that financing-statement filers bear an appropriate amount of responsibility for debtor-name errors.<sup>228</sup> Specifically, the exclusive-source approach provides a clear

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225. See, e.g., *Chem. Bank v. Title Servs., Inc.*, 708 F. Supp. 245, 249 (D. Minn. 1989) (“Policy considerations behind the U.C.C. notice requirement support [the] conclusion that a searcher does not have a duty to hypothesize possible misspellings.”); *Sw. Implement*, 353 B.R. at 891 (noting that when the standard search logic of a filing office does not allow for expanded searches or wildcard functionality to cover all forms of a name, the searcher should not be required to separately search each possible name to ensure that all possibilities have been exhausted); *Livingston*, *supra* note 2 (interpreting Revised Article 9 to only require further investigation by searchers if a single search of the debtor’s “correct” name discloses any recorded financing statements).

226. See, e.g., *In re FV Steel & Wire Co.*, 310 B.R. 390, 394 (Bankr. E.D. Wis. 2004) (holding that a “rule that would burden a searcher with guessing at misspellings and various configurations of a legal name” would decrease the certainty desirable in commercial transactions and that the burden of filing under the correct name is properly on the filer); *Corona Fruits & Veggies, Inc. v. Frozsun Foods, Inc.*, 48 Cal. Rptr. 3d 868, 870 (Ct. App. 2006) (noting that the secured party, not the debtor or uninvolved third parties, has the duty of ensuring proper filing and indexing of the financing statement); *Receivables Purchasing Co. v. R & R Directional Drilling, LLC*, 588 S.E.2d 831, 833 (Ga. Ct. App. 2003) (interpreting the Revised Article 9 sufficiency-of-a-debtor-name standard and safe harbor for errors and omissions in a financing statement as operating to place the responsibility for debtor-name errors on the filer and stating that a “party filing a financing statement now acts at his peril if he files the statement under an incorrect name”); *Pankratz Implement Co. v. Citizens Nat’l Bank*, 130 P.3d 57, 62–69 (Kan. 2006) (noting that section 9-506 of the Kansas UCC places the burden on the filing creditor to list the debtor name correctly and that the searching creditor is under no obligation to conduct searches under variants of the debtor’s name and rejecting arguments seeking to place responsibility on the searchers to conduct a diligent search of past records to determine whether a prior lien exists); *Livingston*, *supra* note 11, at 128–29 (noting that because the secured party has the means to find out the debtor’s correct name before filing, “it is more efficient and equitable to require accuracy by the filing creditor than to demand ‘reasonable diligence,’ however defined, from searching creditors”); *Sigman*, *supra* note 5, at 862–63 (stating that Revised Article 9 “reflects a balance between the need for 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 and make searches under not only the correct name but also ‘foreseeable’ or ‘likely’ errors that a filer might have made”).

227. See *supra* Part III.

228. See, e.g., *Pankratz*, 130 P.3d at 62–69 (noting that filing creditors have the burden of correctly listing the debtor); *Livingston*, *supra* note 11, at 128–29 (noting that “it is more efficient

standard for both filers and searchers that maintains an appropriate allocation of burdens. Under the exclusive-source approach, filers would only be statutorily required to complete the simple task of filing under the debtor's correct legal name.<sup>229</sup>

Admittedly, under the present provisions of Revised Article 9, this was not just a simple task of spelling the debtor's name correctly, and matters were greatly complicated by uncertainty about what name or names might be sufficient.<sup>230</sup> However, by clarifying the statutory requirement so that it is only satisfied by providing the exact name on the individual debtor's birth certificate, the exclusive-source approach finally makes it simple for the filer to comply. As noted by many courts, it is not overly burdensome to require filers to take care in spelling a debtor's name correctly so long as it is clear what name must be spelled correctly.<sup>231</sup> With problems about the appropriate name resolved by an exclusive-source approach that unambiguously requires filers to use the exact name on an individual debtor's birth certificate, filers will only be charged with spelling that name correctly. Therefore, filers benefit from the added clarity of the exclusive-source approach and are not overly burdened when trying to comply with it.

In addition, searchers are only required to run a single search of the name on an individual's birth certificate to identify all potential liens because all other names would be presumed "seriously misleading." Searchers will no longer need to guess at all possible variations of a debtor name and run multiple searches to mitigate the risk of failing to locate a filed financing statement under a variant of a debtor's name. Such a benefit for searchers is in alignment with the original, but unrealized, intent of Revised Article 9 to ensure that searchers need only

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and equitable to require accuracy by a filing creditor"); Darrell W. Pierce, *Revised Article 9 of the Uniform Commercial Code: Filing System Improvements and Their Rationale*, 31 UCC L.J. 16, 17 (1998) (noting that under Revised Article 9, "[c]ase law that has served to protect filers at the expense of searchers by giving effect to filings not readily retrievable by a search will be overturned," which will obviate "the need for complicated search logic and multiple name searches").

229. See, e.g., *In re Fuell*, 64 U.C.C. Rep. Serv. (West) 722, 726-27 (Bankr. D. Idaho 2007) (noting that there was "no apparent reason" for the creditor's failure to correctly provide the debtor's name in a financing statement); Official Comm. of Unsecured Creditors for Tyringham Holdings, Inc. v. Suna Bros., Inc. (*In re Tyringham Holdings, Inc.*), 354 B.R. 363, 368 (Bankr. E.D. Va. 2006) (noting that "it is not that difficult to ensure that a financing statement is filed with the correct name of the debtor" and that "[l]ittle more is asked of a creditor than to accurately record the debtor's name"); *Genoa Nat'l Bank v. Sw. Implement, Inc. (In re Borden)*, 353 B.R. 886, 891 (Bankr. D. Neb. 2006) (noting that requiring the debtor's legal name is not too great of a burden).

230. See *supra* Part II.B.1.

231. See cases cited *supra* note 229.

conduct a single search using the debtor's correct name.<sup>232</sup> Thus, the exclusive-source approach effectively clarifies section 9-503(a) for both filers and searchers without inappropriately shifting undue risk and burden onto the searcher. Accordingly, the exclusive-source approach ensures that the allocation of responsibility and burdens under the filing and search process is appropriately balanced between filers and searchers.

### 3. An Exclusive Source Facilitates the Notice-Filing System

The exclusive-source approach also serves to facilitate and improve the effectiveness of the notice-filing system promulgated by the UCC. Under Revised Article 9, the purpose of a recorded financing statement is to provide notice that a person may have a security interest in the specified collateral of a particular debtor.<sup>233</sup> With such notice of a potential security interest, further inquiry is required from the searching party to disclose the complete state of affairs.<sup>234</sup> Because of ambiguity in what constitutes a sufficient debtor name, the effectiveness of the notice-filing system has been compromised.<sup>235</sup>

Currently, financing-statement filers and subsequent searchers lack a clear and consistent standard for determining a sufficient debtor name.<sup>236</sup> Accordingly, a filer's determination of a sufficient debtor name could reasonably differ from the name identified by a subsequent searcher for the same debtor.<sup>237</sup> Because filers are not assured of a particular debtor name being sufficient to give notice of a security interest, they often resort to filing multiple financing statements under different variants of a

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232. See, e.g., *Pankratz*, 130 P.3d at 68 (noting the intent of Revised Article 9 to allow searchers to rely on one search of the correct debtor name); *Sigman*, *supra* note 200, at 73 (noting that Revised Article 9 “does not burden searchers with the obligation to dream up every potential error and name variation and perform searches under all possibilities” but instead allows searchers “to rely on a single search conducted under the correct name of the debtor”); *Sercombe*, *supra* note 75, at 1067–68 (interpreting Revised Article 9 as replacing the former reasonableness standard with a bright-line test requiring a single search under the debtor's correct name utilizing the filing office's standard search logic).

233. See U.C.C. § 9-502 (2009); see also *id.* § 9-502 cmt. 2 (noting a financing statement need not provide in-depth information and that the theory behind notice-filing is that the financing statement is only intended to indicate that a person may have a security interest in the indicated collateral).

234. See *id.* § 9-502 & cmt. 2; see also *id.* § 9-210 (setting forth a statutory procedure whereby a secured party may be required to make a disclosure at the debtor's request).

235. See *supra* Part II.B.1, 4.

236. See *supra* Part II.B.1, 4.

237. See *supra* Part II.B.1, 4.

particular debtor name to reduce the risk of unintentionally providing an insufficient debtor name. Thus, multiple financing statements may be filed to give notice of the same security interest in a debtor's property, which compromises the ability of such filings to give accurate notice of such interest to a subsequent creditor.<sup>238</sup> As a result, searchers cannot rely on a single search of a particular debtor name to fully disclose any existing security interests and must investigate multiple debtor-name variations when conducting due diligence.<sup>239</sup> Even with such efforts by both filers and searchers, it is not uncommon for filers to file under a debtor name that is unidentified by a searcher's investigation.<sup>240</sup> This inability of filers and searchers to rely on the use of the same debtor name to ensure giving proper notice of a security interest—in the case of a filer—and to receive notice of an existing security interest—in the case of a searcher—accentuates how the ambiguity in the sufficiency-of-a-debtor-name standard results in a breakdown in the effectiveness of the notice-filing system and that neither filers nor searchers are afforded much comfort or certainty when using the notice-filing system under the current provisions of Revised Article 9.

By providing an exclusive source for a sufficient individual debtor name, the notice-filing system's effectiveness in providing notice of recorded financing statements drastically improves. Because only one name will be sufficient, filers will know with absolute certainty what debtor name to provide on a financing statement. So long as the filer accurately provides that name, there will be no doubt about the sufficiency of the debtor name used. As a result of only one debtor name being sufficient for purposes of filing a financing statement, searchers will be able to reliably receive notice of preexisting security interests by conducting a single search of that debtor name. With consensus on a single sufficient debtor name, the need for multiple filings and multiple searches is virtually eliminated. Therefore, the exclusive-source approach increases the efficiency of the filing and search process while giving filers and searchers improved certainty regarding the effectiveness of financing statements and the identification of existing liens.

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238. See *supra* Part II.B.1, 4.

239. See *supra* Part II.B.1, 4.

240. See, e.g., *Clark v. Deere & Co. (In re Kinderknecht)*, 308 B.R. 71, 72–73 (B.A.P. 10th Cir. 2004); *In re Gustafson*, 14 U.C.C. Rep. Serv. (Callaghan) 231, 232–33 (Bankr. W.D. Okla. 1973); *Corona Fruits & Veggies, Inc. v. Frosun Foods, Inc.*, 48 Cal. Rptr. 3d 868, 869–71 (Ct. App. 2006); *All Bus. Corp. v. Choi*, 634 S.E.2d 400, 404–05 (Ga. Ct. App. 2006).

*B. Clarification of the Standard for Sufficient Registered-Organization Debtor Names*

In contrast to the sufficiency-of-a-debtor-name standard for individuals, the existing registered-organization provision of the UCC already adopts an exclusive-source approach and merely requires clarification of the existing language to end any ambiguity surrounding the initial intent of the drafters. As such, a model uniform amendment need only draw upon the approach set forth in Texas's nonuniform amendment for clarifying the requirements for a sufficient registered-organization name.<sup>241</sup> By amending the existing standard to eliminate any ambiguity about the single exclusive public record that filers must reference for a sufficient registered-organization name, filers and searchers would gain certainty because the names set forth on other arguably acceptable public records will be insufficient.<sup>242</sup> In addition, this approach aligns with generally accepted best practice and requires only a minor clarification of the existing standard as opposed to wholesale change.<sup>243</sup>

Currently, the standard for the sufficiency of a registered-organization name creates some ambiguity because multiple public records can arguably satisfy it.<sup>244</sup> With that said, commentators and practitioners have generally interpreted the intent of the language to require use of the name identified on the formation document filed with the applicable state of organization.<sup>245</sup> Given the general consensus on the intent of section 9-503(a)(1) and the accepted best practice of providing the name set forth on the applicable formation document, a uniform amendment need only ensure that the language of section 9-503(a)(1) unambiguously requires filers to provide the name of a registered organization as it appears on the entity's certificate of incorporation or like document. In doing so, a model uniform

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241. See TEX. BUS. & COM. CODE ANN. § 9.503(a)(1) (West Supp. 2009).

242. See Hodnefield, *supra* note 6, at 3 (discussing how the Texas amendment addresses ambiguity arising from the fact that the appropriate public record is undefined under Revised Article 9).

243. See Livingston, *supra* note 11, at 128 (concluding that “[f]or registered organizations, . . . the debtor’s correct name is clearly, and solely, its official registered name”); Sercombe, *supra* note 75, at 1067 (recognizing that Article 9 requires a creditor to provide the name of a debtor, as reflected in its articles of organization, on the financing statement).

244. See *supra* Part II.B.2.

245. See HAWKLAND ET AL., *supra* note 11, § 9-503:2; Hodnefield, *supra* note 6, at 3 (noting that using the name on a certificate of incorporation or like document is already recognized as best practice).

amendment should adopt an approach that is generally in accord with Texas's nonuniform amendment to the registered-organization standard for sufficiency of a debtor name.

Using Texas's amendment<sup>246</sup> as a model, section 9-503(a)(1) should be amended to simply provide that the debtor name of a registered organization is sufficient only if the financing statement identifies the name of the debtor as set forth on the formation document recorded with the applicable state of organization. The name on any other public record, such as a state business-entity index or a certificate of good standing, would not be sufficient,<sup>247</sup> subject to the safe harbor for minor errors or omissions in section 9-506(c).<sup>248</sup> Therefore, for corporations, the relevant formation document would be the articles of incorporation or charter. The debtor name of a limited liability company would be determined similarly by referencing the limited liability company's filed articles of organization.

Such an amendment makes it absolutely clear that filers are to reference a single exclusive source for the name of a registered organization and that all other names will be presumed "seriously misleading." Likewise, searchers must only conduct a single search of the registered-organization name as it appears on the applicable filed formation document to identify all of the security interests that already encumber a particular debtor's property. In doing so, filers and searchers will have improved certainty by virtue of eliminating the room for interpretation that currently exists. In addition, such an amendment reinforces the apparent intent of the drafters of Revised Article 9 and the best practice adopted by most practitioners.<sup>249</sup> Therefore, the amendment does not institute wholesale changes but rather offers a simple solution to fix the ambiguity in the original language of Revised Article 9 with little disruption to the existing filing and search process.

### *C. Revision of the Safe Harbor for Minor Errors and Omissions*

A model uniform amendment should also resolve the uncertainty arising from the ambiguous reference to the debtor's correct name, which is the basis of the test for determining the applicability and scope of the

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246. BUS. & COM. § 9.503(a)(1).

247. *See id.*; *see also id.* § 9.506(b) ("[A] financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9.503(a) is seriously misleading.").

248. *Id.* § 9.506(c).

249. *See HAWKLAND ET AL.*, *supra* note 11, § 9-503:2; Hodnefield, *supra* note 6, at 3.

safe harbor for errors and omissions in a debtor name under Revised Article 9. As it stands, section 9-506(c) provides that a financing statement containing an error or omission in the debtor name will not be seriously misleading “[i]f 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).”<sup>250</sup> The problem with the existing language in section 9-506(c) is that the term “correct name” is not defined in the UCC.<sup>251</sup> Accordingly, it is ultimately unclear what the correct name is for purposes of testing whether an error renders a financing statement seriously misleading.

To resolve the uncertainty surrounding the scope and application of the section 9-506(c) safe harbor, a model uniform amendment could replace the reference to the debtor’s correct name with a reference to a sufficient debtor name as required by section 9-503(a).<sup>252</sup> If this approach were adopted, a financing statement containing an error in an individual debtor name would be excused if a search of the filing-office records under the exact debtor name set forth on the debtor’s birth certificate using the filing office’s standard search logic would nonetheless disclose the financing statement.<sup>253</sup> Likewise, a financing statement with an error in a registered-organization name would not be seriously misleading if a search of the filing-office records under the name set forth on such organization’s formation document disclosed the financing statement.<sup>254</sup> If, however, the erroneous financing statement was not disclosed by such a search, the error would be fatal to the effectiveness of the financing statement. Instead of guessing the debtor’s correct name, interested parties would be directed to use the debtor name set forth on the applicable exclusive source for individuals and registered organizations. Therefore, the process of evaluating errors in a financing

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250. U.C.C. § 9-506(c) (2009) (emphasis added).

251. *See id.* §§ 1-201, 9-102 (neither of which define “correct name”).

252. In addition to amending section 9-506(c) to eliminate the undefined “correct name” test, it should be noted that the adoption of an exclusive source for sufficiency of debtor names under section 9-503(a) would ostensibly reduce the likelihood of disputes between filers and searchers and, therefore, the likelihood that an interested party would need to rely on section 9-506(c) to uphold the effectiveness of a financing statement with a debtor-name error. Specifically, with definitive guidance on what name to use, filers are less likely to need to rely on the safe harbor to resolve disputes over different names for a particular debtor. Therefore, the safe harbor can be used when there are minor errors, such as spelling mistakes, in a financing statement, instead of being invoked because of uncertainty over how to provide a sufficient debtor name.

253. *See supra* Part IV.A.

254. *See supra* Part IV.B.

statement would be clearly defined and could be consistently applied to increase commercial certainty.

Moreover, such an approach strikes an appropriate balance between ensuring that UCC searchers are not overly burdened by requirements to conduct multiple searches and recognizing that perfection is not expected or required by UCC filers. Unlike Nebraska's experimental approach, which broadened the scope of the safe harbor to the point that filers would have had little responsibility other than to get an individual debtor's last name right,<sup>255</sup> this approach aligns with the apparent intent of Revised Article 9. As an initial matter, the use of the term "correct name" in the existing safe harbor appears to imply that only one name should be used for purposes of determining its application.<sup>256</sup> Moreover, section 9-506(c) has roundly been interpreted as only requiring a single search on the part of UCC searchers,<sup>257</sup> which further supports that only one name should be used to determine the applicability of the safe harbor. Accordingly, a model uniform amendment advancing this approach, along with the adoption of an exclusive source for a sufficient debtor name, would clearly identify the one correct name as the debtor's legal name as set forth by the applicable exclusive source. Moreover, interested parties would have a clear and objective test for determining the applicability and scope of the safe harbor to save the effectiveness of an erroneous financing statement.

With the sufficiency standard clearly defined and the scope of the safe harbor adjusted to align with that standard, filers need only obtain the applicable exclusive source and spell the debtor's name correctly. Abiding by such a mandate should not overly burden filers who are in a more effective position than searchers to accurately identify a debtor.<sup>258</sup> If, however, a filer fails to do so, section 9-506(c) would still operate to excuse some errors and omissions. Specifically, section 9-506(c), as amended in accordance with the approach advanced above, will only apply where the filer's error does not impede the ability of searchers to obtain notice of the filer's security interest when conducting a single search of the filing-office records under the name that the filer was unambiguously directed to provide under the proposed amendment to section 9-503(a). Accordingly, the proposed model uniform amendment would ensure some continued accountability on the part of filers to get

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255. See *supra* Part III.C.

256. See U.C.C. § 9-506(c).

257. See, e.g., Livingston, *supra* note 11, at 127–28.

258. See sources cited *supra* note 229.

the debtor name right, while maintaining the responsibility of searchers to conduct a single search of the filing-office records for preexisting security interests. Therefore, the combination of adopting the exclusive-source approach for individual and registered-organization names and aligning the test for applicability of the section 9-506(c) safe harbor with this revised sufficiency-of-a-debtor-name standard appears to provide the needed clarity for filers and searchers in a way that maintains an appropriate balance of responsibility.

## V. CONCLUSION

The issue of debtor-name sufficiency has plagued filers, searchers, and courts since the inception of Revised Article 9. This has resulted in spirited discussion in legal circles and headaches for those seeking to comply with or interpret the requirements of section 9-503(a). Despite these problems, it took nearly seven years before states attempted to clarify the ambiguities and deficiencies of the sufficiency-of-a-debtor-name requirements. With the nonuniform amendment enacted by Texas, the flood gates have opened. With more states following Texas's lead by enacting nonuniform legislation, the already unclear UCC filing and search process has been further clouded by state-specific approaches to fix the problem. This flood of nonuniform legislation may portend the doom of uniformity and commercial certainty under Revised Article 9 unless a model uniform amendment is developed and adopted across all jurisdictions. The practical problems faced by filers and searchers, along with the rise of state-specific legislation to address such problems, highlight the need for a model uniform amendment.

To prompt discussion about and development of such an amendment, this Article advances a proposed framework that centers on the adoption of an exclusive source for determining sufficient debtor names for both individuals and registered organizations. Such an approach is a workable solution that addresses the current commercial uncertainty facing interested parties in secured transactions and is supported by a number of other considerations. In addition to providing definitive and unambiguous guidance regarding sufficient debtor names, the exclusive-source approach improves the effectiveness of the notice-filing system by identifying a single debtor name for purposes of organizing recorded financing statements, simplifying the search parameters for those conducting searches of filing-office records, and ensuring reliable and consistent search results. Finally, the exclusive-source approach is consistent with the idea that filers, not searchers, should bear the primary responsibility for giving notice of security interests. Therefore, the

exclusive-source approach effectively advances the dual goals of increasing commercial certainty in secured transactions while supporting the original intent of Revised Article 9.