

Ongoing Searching and Filing Issues Under Article 9

By

Norman M. Powell, Esquire*

Young Conaway Stargatt & Taylor, LLP
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19801
Phone: 302-571-6629
Email: npowell@ycst.com

* Norman M. Powell is a partner in the Delaware law firm Young Conaway Stargatt & Taylor, LLP, where his practice includes delivery of perfection, priority, and other security interest opinions, service as special Delaware counsel to bankruptcy-remote Delaware alternative entities, and representation of trusts and trustees in financing transactions. This article originally appeared in the *Uniform Commercial Code Law Journal*, 37 UCC L.J. 35 (2005), and was reprinted in the ABA Section of Business Law Committee on Commercial Financial Services Commercial Law Newsletter.

Uniform Commercial Code Revised Article 9 (“Article 9”) is in effect in all fifty states, the District of Columbia, and the U.S. Virgin Islands. The transition from Article 9 as previously in effect (“Former Article 9”) to Article 9 is nearly complete. This article focuses on certain searching and filing issues under Article 9 during the remainder of the transition period and beyond.¹ It provides practice tips on filing and searching, and discusses certain issues presented by the transition from Former Article 9 to Article 9, including the advent of electronic filing. Unless otherwise noted, all citations are to Article 9.

FILLING OUT THE FORMS

Aspirational nomenclature notwithstanding, Article 9, like any other article of the Uniform Commercial Code (the “UCC”), may be enacted in any given jurisdiction with non-uniform provisions. Many interested parties contact local counsel or consult compilations such as Hawkland’s Uniform Commercial Code Series, CCH’s Secured Transactions Guide, Matthew Bender’s Forms and Procedures Under the UCC, and Callaghan’s Uniform Commercial Code Reporting Service to learn of and better comply with such non-uniform provisions. Section 526 authorizes and requires each filing office to adopt rules to carry out the provisions of Article 9. Such rules are to be consistent with Article 9, and adopted and published in accordance with local law. Official Comment 3 to § 526 notes that model filing-office rules have been developed by The International Association of Commercial Administrators (“IACA”).²

Many jurisdictions have imposed non-uniform requirements through their administrative rules. These local variations may have serious consequences for filers. For example, Alaska’s administrative rules provide that a document is not entitled to be recorded unless “the information required for indexing is in English.” Alaska Admin. Code tit. 11, § 06.040(a)(6). In Illinois, the filing office requires that (i) a financing statement be typewritten or computer generated, (ii) the names and addresses of debtor and secured party be in capital letters, font size of at least 12 in Times New Roman style, and (iii) the filer must submit two copies and a self-addressed stamped envelope. Ill. Admin. Code tit. 14 § 180.12.

Provided a filer has complied with the format, tender, and other technical requirements of the relevant filing office, the grounds on which a filing may properly be rejected are few.³ Section 516(b) reflects the view that filing officers should not pass upon the legal effectiveness of filings, and grew out of concern that under Former Article 9 proper filings were sometimes rejected based on perceived shortcomings. Because § 516(b) constrains filing offices from passing upon the legal effectiveness of filings, the absence of rejection should not be taken as corroboration of sufficiency.

¹ Article 9 took effect in most jurisdictions on July 1, 2001, commencing a five-year transition period.

² IACA’s model rules are available at www.iaca.org.

³ See § 516(b), which Official Comment 3 to § 516 describes as “. . . an exclusive list of grounds upon which the filing office may reject a record.”

Beyond local non-uniformity, some filers have trouble with the mechanics of filing. A few basic rules and concepts are perhaps worth reviewing.

Initial filings

Put the debtor's name in the correct box. Box 1a is for organization debtors. Box 1b is for individual debtors. Put nothing other than or in addition to the debtor's name in the debtor's name box. "XYZ, LLC, a Delaware limited liability company" is incorrect, and will most likely render a filing ineffective. Likewise, "XYZ Investments, settlor of that certain trust u/a/d 3/15/05" is incorrect and probably ineffective.

Amendments

Each amendment must identify, by file number, the initial financing statement to which the amendment relates. § 512(a)(1) [both alternative A and alternative B]. Do not confuse amendments and correction statements. A correction statement can be filed only by the debtor. § 518(a) and Official Comment 2 thereto. A correction statement has no legal effect. § 518(c) and Official Comment 2 thereto.

In Lieu Continuations

An in lieu continuation is an initial financing statement filed in specified circumstances and meeting specified requirements. The circumstances are that (i) the office in which it is to be filed is the proper office in which to file under Article 9, (ii) the pre-effective-date financing statement to which it relates was filed in another state or office, and (iii) the requirements discussed in the next sentence are met. § 706(a). The requirements are that the in lieu continuation (i) satisfy the requirements of Part 5 of Article 9 for an initial financing statement (e.g. provision of debtor's name and collateral description), and (ii) identify the pre-effective-date financing statement to which it relates by (a) indicating the office in which it was filed, (b) providing the dates of filing and file numbers (if any) of the financing statement and the most recent continuation thereof (interim continuations need not be mentioned), and (c) indicating that the pre-effective-date financing statement remains effective. § 706(c). When filing an in lieu continuation, consider getting and keeping a copy of the pre-effective-date financing statement to which it relates. Filing offices must maintain a record of information contained in a filed financing statement for at least one year after its effectiveness has lapsed. § 522(a). Records and information can be destroyed or purged thereafter. Thus, at a later date it may be impossible to prove the priority asserted in an in lieu continuation, which depends upon the effectiveness of an earlier filing that may be purged before the matter is contested.

TRUSTS AND TRUSTEES AS DEBTORS

The unique issues encountered when filing against trusts and trustees as debtors have been explored at length in these pages⁴. That article focused on the nuts and bolts of completing and filing financing statements with trusts or trustees as debtors. Of course, the threshold question of who is the debtor (for example, as between trust and trustee) is relevant not only for filing purposes, but also in establishing who should be granting the relevant security interest. Section 9-102(a)(28) defines the term debtor as, among other things, “a person having an interest . . . in the collateral” Because the answer to this question is beyond the scope of both Article 9 and the UCC generally, the inquiry begins with the analysis, under law other than the UCC, of who holds an “interest” in the trust estate.

Some trusts, such as Delaware statutory trusts,⁵ are separate legal entities distinct from their settlors and trustees, and under applicable law generally hold legal title to the trust estate (*see* Delaware Statutory Trust Act, 12 Del. C. §§ 3801(a), 3805(f)). In such cases, the debtor is the trust, the trust may be (and in the case of a Delaware statutory trust, is) a registered organization, and the filing should be made in the trust’s location⁶ as determined under the applicable subsection of § 9-307 (subsection (e) in the case of a Delaware statutory trust). The location of the settlor, trustee, or any other party is irrelevant.

Other trusts, such as Delaware common law trusts, do not feature the same separate legal entity status as Delaware statutory trusts and, under applicable law, the trustee generally holds legal title to the trust estate, in trust for the benefit of the designated beneficiary. In such cases, the trustee is the debtor, for the reason that it has an interest in the trust estate (*see* § 9-102(a)(28)), and the filing should be made in the trustee’s location as determined under the applicable subsection of § 9-307.

Still other trusts, while not registered organizations, may nevertheless hold legal title to the trust estate. In such cases, the debtor is the trust, and the filing should be made in the trust’s location as determined under § 9-307(b). If the trust has only one place of business, the trust is located at its place of business (§ 9-307(b)(2)). If the trust has more than one place of business, the trust is located at its chief executive office (§ 9-307(b)(3)).

⁴ *See Filings Against Trusts and Trustees Under Revised Article 9 – Thirteen Variations*, 35 UCC L.J. 91 (2002).

⁵ The entity formerly known as a “Delaware business trust” is now known as a “Delaware statutory trust” existing under the Delaware Statutory Trust Act, 12 Del. C. § 3801 *et seq.*, which was formerly known as the “Delaware Business Trust Act” (*see* 73 Del. Laws 329 (2002)).

⁶ Except with respect to filings relating to fixtures (§ 9-301(3)(A)), timber to be cut (§ 9-301(3)(B)), and as-extracted collateral (§ 9-301(4)),⁶ Article 9 provides for filing in the debtor’s location, without regard to the location of the collateral to which the filing relates (§ 9-301(1)). Security interests in goods covered by a certificate of title (§ 9-303), deposit accounts (§ 9-304), and letter-of-credit rights (§ 9-306) are perfected by methods other than filing.

Section 9-503 sets forth the rules for providing the debtor's name on the financing statement. Section 9-503(a)(1) provides the rule applicable where the debtor is a registered organization, and requires that the debtor's own name be used. Where the debtor is a trust which is not a registered organization, or is a trustee acting with respect to property held in trust, the applicable rules are found in § 9-503(a)(3). If there is a name specified for the trust in its organic documents, § 9-503(a)(3)(A) requires that such name be used. If no name is so specified, § 9-503(a)(3)(A) requires that the settlor's name be used, together with additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors. Section 9-503(a)(3)(B) requires, in connection with all filings involving trust or trustee debtors (other than trust debtors that are registered organizations, to which § 9-503(a)(3) is inapplicable – *see* § 9-503, Official Comment 2), that the financing statement indicate that the debtor is a trust or is a trustee acting with respect to property held in trust. This requirement may be met if the debtor's name as it appears in box 1a or 1b includes such indication (note, however, that no modification of or words additional to the debtor's name should appear in box 1a or 1b), or if the debtor's name as it appears in box 1a or 1b does not include such indication, if the appropriate item (trust or trustee acting with respect to property held in trust) is checked in box 17 of the national form of UCC1 financing statement addendum.

The remainder of the information called for in the subparts of box 1 (*viz.*, boxes 1c through 1g), is to be completed with information corresponding to the debtor, regardless of whether the trust's name (if it has one) or the settlor's name (if the trust has no name) appears in box 1a or box 1b. In no instance should the financing statement name the trustee in box 1a or 1b (the style widely used under Former Article 9), excepting only the unlikely case of an unnamed trust whose settlor and trustee are one and the same. As a practical matter, in any instance in which Article 9 requires that box 1a or 1b contain a name that might not be readily associated with the address which follows in box 1c, consider completing box 1c so as to specify a "care of" address. Thus, communications addressed to the trust by name or, if it has none, to the settlor, would be sent in care of the person readily associated with the address appearing in box 1c, better assuring proper delivery and routing than might occur should communications arrive at such address without such person's name.⁷

The chart appearing at the end of this article summarizes and provides step-by-step guidance for the completion of UCC1 financing statements relating to trusts and trustees as debtors. It includes nine variations where a trustee is the debtor, three variations where a trust which is not a registered organization is the debtor, and a single variation where a trust which is a registered organization is the debtor. Finally, the chart indicates where UCC1 financing statements prepared in each of the thirteen variations should be filed.

⁷ The address specified in box 1c must be that of the debtor. If, for example, the debtor is the trustee of an unnamed trust, Article 9 requires that the settlor's name appear in box 1a or 1b and that the trustee's address appear in box 1c. This suggestion is intended to avoid the confusion and delay which could accompany attempted delivery at the trustee's address of correspondence identifying only the settlor as addressee.

Delaware's role in corporate trust financings is such that a significant number of financing statements relating to trusts and trustees are filed in Delaware. In recent years, some Delaware practitioners have continued to observe confusion where trusts and trustees are debtors. It was decided that greater tolerance of certain imprecision was warranted. Effective January 1, 2005, Delaware Article 9 includes new, non-uniform Sections 9-203(j) and (k) dealing with instances in which the debtor is a trust (including a registered organization) or a trustee acting with respect to property held in trust. The former provides that a security agreement is properly authenticated if authenticated in the name of either the trust or the trustee by a person authorized to bind the debtor. The latter states that the debtor's security agreement creates or provides for a security interest whether in the name of the trust or the trustee. New Section 9-509(f) extends the concept introduced in new Sections 9-203(j) and (k), providing that if the debtor or secured party is a trust (including a registered organization) or a trustee acting with respect to property held in trust, and is otherwise entitled to file a record, authorization to file a record by an authorized person in the name of either the trust or the trustee is effective. New Section 9-516(e) provides that if the debtor is a trust (including a registered organization) or a trustee acting with respect to property held in trust, the information required by Section 9-516(b)(5) to appear on a financing statement with respect to the debtor (mailing address, type and jurisdiction of organization) may be provided with respect to either the trust or the trustee. *See* 74 Del. Laws 332 (2004).

DID YOU ACTUALLY FILE?

Article 9 provides that communication to a filing office of a record meeting all the requirements of applicable § 9-516(b), or acceptance of a record by the filing office, constitutes filing. § 9-516(a). Thus, a wrongfully rejected record is effective as a filed record (except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files). § 9-516(d). If a filing office refuses to accept a record, it is required to communicate to the person that presented the record the fact of and reason for the refusal, and the date and time the record would have been filed had the filing office accepted it. Filers should keep such communications – the date and time of wrongful rejection *is* the date and time of filing for such a record. Of course, a prudent filer may continue in her efforts to cause an appropriate financing statement to appear in the filing office records.

In the case of a wrongfully rejected record, nothing appears in the public record.⁸ In the case of a written record, if the filer requests an acknowledgment of the filing, the filing office must send an image of the record showing its file number and the date and time of the filing. Alternatively, if the filer furnishes a copy of the record, the filing office may note upon the copy the file number and the date and time of the filing of the record, and send the copy to the filer. § 9-523(a). This first alternative offers the filer an opportunity to verify that information in the written record was entered correctly into the filing office's database, while the second alternative does not.

⁸ Some filing offices may be able to establish the date, and perhaps the time, of rejection by reviewing computer records of their work flows, but the capturing of such data is generally serendipitous, and it is often purged after a few months or a year.

In the case of a record other than a written record, the filing office must communicate to the filer an acknowledgment that provides (i) the information in the record, (ii) the file number assigned to the record, and (iii) the date and time of the filing of the record. § 9-523(b). Thus, the filer has an opportunity to verify that information in the record was entered correctly into the filing office's database.

ARTICLE 9 ISN'T EVERYTHING

An Article 9 Section 523 search report typically indicates that it discloses all federal tax liens filed in the searched office naming the indicated debtor. But the debtor's location for federal tax purposes may differ from its location for Article 9 purposes, and its name for federal tax purposes may be rendered with greater variation than its name for Article 9 purposes. Thus, a statement that a search report contains all indicated federal tax liens, while accurate, can easily be misunderstood.

Federal tax liens are created upon the neglect or refusal to pay taxes due after demand. 26 U.S.C. § 6321. They are perfected – valid against a purchaser, secured party, mechanic's lien or judgment lien creditor - upon filing of a federal tax lien notice in the proper office. 26 U.S.C. § 6323(a). The requisite filing occurs on IRS Form 668 in the state in which the property is located (as determined under federal law) 26 C.F.R. § 301.6323(f)-1(d). Real property is located in the state in which it is situated. 26 U.S.C. § 6323(f)(2)(A). Personal property (tangible and intangible, regardless of physical location) is deemed located at the taxpayer's residence (principal executive office for corporations and partnerships) at the time the notice of lien is filed. 26 U.S.C. § 6323(f)(2)(B). Within the proper jurisdiction, a notice of tax lien must be filed in the office designated for the filing of IRS notices of lien (determined under applicable state law). 26 U.S.C. § 6323(f)(1)(A). A filed notice of lien remains effective for ten (10) years, even if the taxpayer's location changes. 26 U.S.C. § 6323(g)(3). And the IRS may successively refile notices of lien in the taxpayer's old location every ten (10) years unless the taxpayer reports its new location to the IRS in the prescribed manner. 26 C.F.R. § 301.6323(g)-1(b). Thus, and particularly in the case of registered organizations, the proper jurisdiction and filing office in which to search may be different for UCC financing statements than for federal tax liens.

Added to the question of where to search for federal tax liens is the question of what to search. There is little basis on which to assume that the IRS must follow the strict debtor name rules of Article 9. For example, abbreviation of words appearing in a debtor's name, even if "fatal" to a search under the filing office's search logic, are permitted. In re Spearing Tool and Manufacturing Co., Inc., 292 B.R. 579 (Bankr. E.D. Mich. 2003). Reversed. In re Spearing Tool and Manufacturing Co., Inc., 302 B.R. 351 (E.D. Mich. 2003). It is worth noting that IRS procedure generally calls for following a corporate taxpayer's name with the descriptive words, "a corporation." Mather & Weisman, 638-2nd T.M., Federal Tax Collection Procedure, A-38 (2003).

WE'RE STILL IN THE TRANSITION PHASE

Financing statements filed and effective under Former Article 9 continue to be effective until the earlier of their natural lapse date or June 30, 2006. § 9-705(c). Thus, for the remainder of the transition period, a comprehensive search will include the debtor's current and former locations, and the locations of relevant tangible collateral, for at least the last five (5) years. See Official Comment 4 to § 9-705. The continued effectiveness of financing statements filed under Former Article 9 is assessed under Former Article 9. § 9-705(c). Thus, effectiveness is determined, and search queries should be drafted, in deference to the more liberal debtor name requirements of Former Article 9. *See* § 9-705(c) and Official Comment 4 thereto.

But the priority of conflicting claims to collateral is determined under Article 9. § 9-709(a). Thus, a lawyer opining as to perfection and priority under the law of the debtor's Article 9 location may be addressing pre-effective-date filings in other jurisdictions. A special rule covers the instance in which the relative priorities in dispute were established before the effective date of Article 9, in which case Former Article 9 determines priority (*See* § 9-709(a)).

Continuation of pre-effective-date financing statement

A financing statement filed before the effective date of Article 9 may be continued only by filing in the state and office designated by Article 9. The general rule provides that a continuation statement filed after the effective date does not continue the effectiveness of a financing statement filed under Former Article 9. An exception applies if Article 9 prescribes filing in the same jurisdiction and filing office as Former Article 9. *See* § 9-705 and Official Comment 5 thereto. If the proper jurisdiction or office for filing has changed, an initial financing statement in lieu of a continuation should be filed in the office prescribed by Article 9.

Amendment and termination of pre-effective-date financing statements

For financing statements filed in the jurisdiction and office required by Article 9, amendments and terminations should be filed in the same office. § 9-707(b) and (c). For financing statements not filed in the jurisdiction and office required by Article 9, an initial financing statement in lieu of continuation should be filed in the jurisdiction and office required by Article 9. Such an in lieu filing may initially reflect the amended information, or may be filed initially without change, and amended immediately thereafter. § 9-707(c)(2) and (3). As an alternative for termination of pre-effective-date financing statements filed in the Former Article 9 jurisdiction and office when Article 9 would require filing in a different place, a termination statement may be filed in the old office. This alternative is available only if the financing statement hasn't been "in lieued." § 9-707(e). Note as well that if the financing statement was filed in a local filing office under the second or third alternative of Former Article 9 § 401(1), that office may not be accepting termination statements unless it continues to be a filing office for real estate and fixture filings, etc.

Words with two meanings

Terms in a Former Article 9 security agreement collateral description should normally be interpreted as defined in Former Article 9 as in effect when the security agreement was executed. § 9-703 and Official Comment 3 thereto. Likewise terms in Former Article 9 financing statement collateral descriptions. But any continuation statement or in lieu initial financing statement may be ineffective as to collateral for which the description should have been revised in deference to the revised definitions of certain terms appearing in Article 9. § 9-705(f), § 9-504 and § 9-108, and § 9-706(c)(1). Secured parties are deemed authorized to make such amendments upon the effectiveness of Article 9. Article 9 Section § 9-708(2) and the Official Comment thereto.

ELECTRONIC FILING UPDATE

Delaware, the place for filing against a great many registered organizations, currently offers three (3) filing option: direct online filing, indirect XML entry via agent's website, and manual or paper-based filing.

Direct entry via website

Filers with access to the world wide web may visit www.state.de.us/sos. Scroll the table on the left side of the screen and, under the heading SERVICES, click "File UCC Documents." Follow the prompts to open an account. Key in all financing statement information. The screen is fairly intuitive, its data fields clearly labeled. The format, however, is not the same as that of the national paper-based filing form appearing at § 9-521. Delaware's website limits collateral descriptions to 24,000 characters (about 5 pages). Filing fees may be paid by Visa, Mastercard, or Discover, or through a payment account maintained with the Delaware Secretary of State.

Indirect XML entry via agent's website

Largely the same as direct entry, these filings are made by registered agents of the Delaware Secretary of State, and are typically submitted in "batches" to the Secretary of State.

Manual filing

Paper documents are submitted to the Delaware Secretary of State, whether by hand, overnight or other courier, or fax. All information on the form is keyed into the system by Secretary of State personnel. All attachments are imaged, not keyed.

Some Pros and Cons

In manual filing, the document prepared and approved by the filer is the record filed. In direct online and indirect XML filing, the document prepared and approved by

the filer is not the record filed. Instead, it is a “source document” to which a typist (whether the filer, in the case of direct entry via website, or an agent, in the case of indirect XML entry) refers when keying in the data which constitute the electronic filing. Without suggesting the rates of occurrence among filers, agents, and filing office personnel, it seems axiomatic that data entry and manipulation provides opportunity for human error and other variation. Least pernicious, though disconcerting to those not expecting it, filing office data systems may produce the data stored in electronic records in a format that differs from that the filer understood to have been submitted (*e.g.*, skipped lines between paragraphs in collateral description may not appear). At the other end of the spectrum, collateral descriptions or even debtor’s names may be rendered with imprecision.

Delaware hopes to offer electronic filing with filers keying in all information traditionally appearing on the “face” of the financing statement form, but transmitting collateral descriptions electronically in pdf format. In conjunction with that initiative, Delaware plans to offer acknowledgement copies (and filed records) that will be identical in format and content to what was filed. These innovations, which may be available later this year, will limit the risk of human error to the keying of (presumably) shorter data fields for the financing statement “face” data.

GETTING THE DEBTOR’S NAME RIGHT

Under Article 9, “. . . a financing statement is sufficient only if it . . . provides the name of the debtor.” § 9-502(a)(1). As regards individual debtors, Article 9 provides that “A financing statement sufficiently provides the name of the debtor. . . (4) . . . (A) if the debtor has a name, only if it provides the individual . . . name of the debtor. . . .” § 9-503(a). For the avoidance of doubt, Article 9 explicitly provides that “Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with 9-503(a) is seriously misleading.” § 9-506(b). One determines whether the statement of a debtor’s name is seriously misleading by applying what is sometimes referred to as the search logic test: “If a search of the records of the filing office under the debtor’s correct name, using the filing office’s standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with 503(a), the name provided does not make the financing statement seriously misleading.” § 9-506(c).

The degree of precision required by Article 9 can be achieved by the careful filer who verifies a registered organization’s name by reference to the appropriate documents relating to its formation and existence. And while the requirements of Article 9 are equally straightforward with respect to individual debtors, these requirements seem to be based on an unwarranted assumption that interested parties can reasonably determine, precisely and unequivocally, individual debtors’ names.

What is an individual debtor's name?

A great deal of attention has been paid this past year to a decision which held, "For a financing statement to be sufficient under Kansas law, the secured creditor must list an individual debtor by his or her legal name, not a nickname." Clarke v. Deere and Co. (In re Kinderknecht), 308 B.R. 71, 73 (10th Cir. BAP 2004). That leaves the question, what is an individual's legal name? The uniform form of UCC1 financing statement which appears in Article 9 calls for "DEBTOR'S EXACT FULL LEGAL NAME." § 9-521(a). The subparts of box 1b are labeled "INDIVIDUAL'S LAST NAME, FIRST NAME, MIDDLE NAME, and SUFFIX." § 9-521(a). One wonders what differences there might be among names, correct names, legal names, and exact full legal names.

Delaware and many other states recognize the common law right of any person to change his or her name so long as the change of name is not made for an improper purpose. This right is abrogated only as to individuals subject to supervision of the State's Department of Corrections, who may only effect a name change by prescribed judicial procedure. The judicial procedure for name change is available to, but optional for, all other persons. *See* 10 Del C. Ch. 59.

If you can't know what it is, how can you put it in box 1b? Delaware adopted non-uniform text in § 506(a) which renders § 503(a) inapplicable to individual debtors. But no other state has deviated from the uniform text of Article 9 in this regard. When filing against individual debtors in other jurisdictions, interested parties might shift their focus from "what is the debtor's name" to "what names might be effective? As mentioned above, IACA has promulgated Model Administrative Rules ("MARS") under Article 9. MARS provide standard rules for search logic. MARS have been adopted in most states, albeit with some non-uniformities. Under the uniform text of Article 9, only if a search of the official records using the debtor's legal name and the official search logic would disclose a financing statement containing a debtor name other than the debtor's legal name is that financing statement not rendered ineffective because of the name variation. MARS search logic ignores punctuation, accents, capitalization, spaces, and other "noise words," and ignores words or abbreviations indicating the nature of an organization (e.g., Co. or Corp.), but does not ignore common variations and abbreviations, typographical errors, or misspellings.

Thus, filers might consider filing under each name that might be deemed the debtor's legal name, but ignore variants that will be ignored by MARS (the second component of this recommendation assumes a filer knows what the relevant MARS is or will be - neither Article 9 nor its official commentary definitively indicates whether the relevant search logic is that in place when the record at issue is filed, at the time the search which either finds or doesn't find it is conducted, or at some other time.)

CONCLUSIONS AND PRACTICE TIPS

When Filing:

1. Know and follow non-uniform requirements of local law or filing office administrative rules.
2. Get the debtor's name right, and put it (and only it) in the right box.
3. Remember that an in lieu continuation is an initial filing.
4. Get and keep copies of old filings being "in lieu" to prove their continued effectiveness and priority.
5. Whatever was properly communicated to the filing office is what's filed. This may or may not differ from what you asked your staff or third-party vendor to file, or from what appears in the filing office records.

Searching:

1. Places to search:
 - Debtor's Article 9 location at all relevant times.
 - Debtor's Former Article 9 location at all relevant times (until the transition period ends).
 - Tangible collateral's Former Article 9 location at all relevant times (until the transition period ends).
 - For non-Article 9 interests (e.g. federal tax liens), wherever applicable law indicates.
2. Names to search:
 - For filings effective under Article 9 – debtor's name.
 - For filings effective under Former Article 9 – variations on debtor's name.
 - For non-Article 9 interests, whatever variations applicable law indicates.

Legal Opinions:

1. What is the opinion based on?
 - The filed record?
 - The record revealed in a search?
 - The information intended to be filed?
2. What does the opinion say it's based on?
3. When opining as to priority of filings:
 - Consider sufficiency of search query.
 - Consider that the opinion law may govern the relative priority of post-effective date filings in such jurisdiction and pre-effective date filings in other jurisdictions.
 - When opining as to in lieu continuations, consider whether you're unwittingly opining under the laws of the "old" filing jurisdiction.

A final word of caution -

“An attorney’s failure to file a UCC financing statement in the manner necessary to perfect his client’s security interest constitutes malpractice as a matter of law.” Lory v. Parsoff, et al., 296 A.D.2d 535, 536, 745 N.Y.S.2d 218, 219 (2002).

Filings Against Trusts and Trustees Under Article 9 – Thirteen Variations

UCC 1 Financing Statement Box	Trust is Debtor and is a Registered Organization	Trustee is Debtor										Trust is Debtor and is not a Registered Organization				
		Trust with a Name					Trust without a Name					Trust with a Name		Trust without a Name		
		Individual Trustee	Registered Organization Trustee	Organization Trustee (other than Registered Organization)	Individual Trustee		Registered Organization Trustee		Organization Trustee (other than Registered Organization)		Individual Settlor	Organization Settlor	Individual Settlor	Organization Settlor	Individual Settlor	Organization Settlor (including Registered Organization)
					Individual Settlor	Organization Settlor	Individual Settlor	Organization Settlor	Individual Settlor	Organization Settlor						
Box 1a	A	A	A	A	N/A	Q	N/A	Q	N/A	Q	A	N/A	Q			
Box 1b	N/A	N/A	N/A	N/A	Q	N/A	Q	N/A	Q	N/A	N/A	Q	N/A			
Box 1c	B	C	C	C	C	C	C	C	C	C	B	B	B			
Box 1d	D	E	E	E	E	E	E	E	E	E	D	D	D			
Box 1e	F	N/A	G	G	N/A	N/A	G	G	G	G	F	F	F			
Box 1f	H	N/A	I	I	N/A	N/A	I	I	I	I	H	H	H			
Box 1g	J	N/A	K	N/A	N/A	N/A	K	K	N/A	N/A	J	J	J			
Box 10	N/A	N/A	N/A	N/A	S	S	S	S	S	S	N/A	S	S			
Box 17	N/A	L	L	L	L	L	L	L	L	L	T	T	T			
Where to File	M	N	P	O	N	N	P	P	O	O	R	R	R			

KEY			
A	Name of trust	K	Trustee's organizational ID #
B	Mailing address of trust*	L	Check second item (Trustee acting with respect to property held in trust)
C	Mailing address of trustee*	M	Trust's location per RA-9 § 307(e)
D	Tax ID # of trust	N	Trustee's location per RA-9 § 307(b)(1) or (c)
E	Tax ID # of trustee	O	Trustee's location per RA-9 § 307(b)(2), (b)(3), or (c)
F	Trust's type of organization	P	Trustee's location per RA-9 § 307(e) or (f)
G	Trustee's type of organization	Q	Name of settlor
H	Trust's jurisdiction of organization	R	Trust's location per RA-9 § 307(b)(2), (b)(3), or (c)
I	Trustee's jurisdiction of organization	S	Information to distinguish debtor (whether trust or trustee) from other trusts with same settlor per RA-9 § 503(a)(3)(A)
J	Trust's organizational ID #	T	Check first item (Trust)

* Where the name in box 1a or 1b is not commonly associated with the address in box 1c, consider specifying the address in box 1c "in care of" or "c/o" a name commonly associated with such address, e.g., the trustee's name.