Friday, May 25, 2012

Since revised Article 9 of the Uniform Commercial Code (UCC) became effective in 2001, financing statements naming individuals (i.e., humans) as debtors have been problematic. The UCC requires that the financing statement provide the "name" of the debtor. However, while the UCC specifies where the name of a corporation or limited liability company is to be found (e.g., in the articles of incorporation), the UCC does not specify where the "name" of an individual debtor is to be found. This is significant because even seemingly minor differences between the debtor's "name" and the debtor's name as listed on the financing statement can render the financing statement ineffective.

One common approach has been to use the name of the individual as it appears on his or her driver's license (or other state-issued identification if the individual does not have a driver's license). This approach is insufficient under a case recently decided by the United States Bankruptcy Court for the Central District of Illinois. In the case of In re Miller, the secured party's financing statement named the debtor as "Bennie A. Miller." This was the name that appeared on the debtor's driver's license and social security card as well as his federal tax returns and other legal and financial documents. Further, the debtor was generally known as "Bennie A. Miller" in the community. The debtor's birth certificate, however, listed his name as "Ben Miller."

The court found that the debtor's "name" for purposes of the UCC was the name listed on his birth certificate, not what appeared on his driver's license and other documents. The court seems to reason that the name on the birth certificate initially was the debtor's name and the debtor never legally changed his name. Since a UCC search using the name "Bennie A. Miller" did not reveal the name "Ben Miller," the bank's financing statement was found by the court to be seriously misleading and was therefore ineffective.

The Miller decision has been criticized by leading authorities on Article 9. However, in light of the decision, secured parties may want to require that individual debtors, for whom financing statements have or will be filed, provide a certified copy of their birth certificate. The secured party would then search and file against both the name on the birth certificate and the name listed on the driver's license (if different). A secured party might also ask the individual debtor if he or she has ever changed his or her name, whether as a result of a marriage or otherwise.

An amendment has been introduced in the Illinois State Senate that would amend Article 9 to provide that the name of an individual, for purposes of the UCC, is the name listed on his or her unexpired driver's license. This bill, if passed, will address the issue that invalidated the bank's financing statement in the Miller case. However, in its current form the amendment does not address or identify what the debtor's name is for purposes of the UCC if the debtor's driver's license later expires or is revoked. In such cases, it appears that the secured party would be back at square one, with Article 9 not specifying where to find the debtor's name.

Even when the correct debtor's name can be found, secured parties should continue to bear in mind that, after the initial filing, amendments or new filings may be required for an individual debtor who changes his or her name (including as a result of a change in marital status) or moves from one state to another.

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