

## **OH WHERE, OH WHERE, HAS MY BORROWER GONE?**

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Filers have been educated, endlessly, about the importance of the careful preparation of the financing statement. We know that identifying the debtor's exact legal name is the cornerstone of perfection and we know that filing in the correct jurisdiction is equally important. Attorneys and specialists pour over the initial financing statement documentation - dotting 'I's' and crossing 'T's.' Articles of Incorporation are reviewed, Good Standing Certificates are ordered and jurisdictional non-uniformities are observed. The importance of the date of filing is emphasized and searches-to-reflect are analyzed to confirm priority. Closings are made, funds are disbursed, and files are collected and stored away. Lender can pat her (or his) self on the back for a thorough job well done.

That might be true, were it not for the simple fact that there is 'life after closing.' Borrowers are active. They change their names, they merge, they convert, and sometimes, they even move across state lines. The sections of RA9 that focus on continuing perfection try to spread the burden evenly between searcher and filer, ultimately leaving both with a certain amount of unmitigated risk. In the following paragraphs we'll take a look at the various instances where one party or the other bears the brunt of the risk and, therefore, the responsibility of increased due-diligence.

Without a plan in place to monitor borrowers' names and whereabouts going forward, lenders are leaving themselves vulnerable to a loss of perfection under §9-316, §9-507 and §9-508. The only way to maintain perfection in the event of many Debtor changes is to quickly discover that an event has occurred, analyze the event's effect on the continuing perfection of the financing statement and address the public record accordingly.

In the event that an individual debtor moves to another jurisdiction, a Registered Entity debtor re-organizes in another jurisdiction, or a new debtor in a new jurisdiction becomes encumbered through a transfer of collateral, the burden falls on the Secured Party to ensure that they reperfect under the law of the new jurisdiction. The existing security interest remains perfected only until the earliest of a lapse of the financing statement, or four months to one year depending on whether or not a new debtor has become encumbered. It may seem that four months or one year gives a Secured Party adequate time to have researched active Debtors to determine if there has been activity. If one was running quarterly public record corporate searches against their Registered Entity portfolio, they may be able to catch an event just-in-time. However, what if the expiration date for Lender's filing is approaching even more quickly?

Example: Secured Party perfects by filing under the laws of Tennessee. The filing date of the financing statement is September 16, 2003. On September 13, 2008 – the debtor of record “reincorporates” by merging their corporation into a newly formed Florida entity.

**Question: How much time does Lender have to avoid a lapse in perfection by filing a new UCC-1 financing statement in Florida?**

Answer: 3 days.

Perhaps more common than a change in jurisdiction, would be a merger within the same jurisdiction, or an amendment to the debtor's Articles of Incorporation resulting in a name change. If the new name of the debtor causes the financing statement to become seriously misleading, the secured party has a four month window during which they must amend their existing financing statement to reflect Debtor's new name in the public record. Here, we have a four month period of time wherein a searcher bears the risk of not being notified of an active lien. After the four months, however, the Secured Party succumbs to a loss of perfection if they did not amend appropriately.

RA9 makes no concession for the Secured Party's lack of notice that these events have taken place. While knowing your borrower is of great importance to a conscientious lender – few have implemented the operational process to effectively research the on-going activities that can ultimately render their financing statement ineffective. Through the research and product development of many national UCC service providers, however, there is now a tool in place, built to assist in the data gathering and discovery of Registered Entity name and jurisdictional changes.

First American's Debtor Monitoring program allows for a lender's \*portfolio of Registered Entity names to be continually monitored (as often as daily) against their state of organization's corporate data. First American is alerted as soon as there is activity on the corporate public record indicating a merger, dissolution, or name change. Further, we are able to monitor the good standing status of the Registered Entity with the Secretary of State. Many service providers charge substantially for a corporate record search – resulting a cost-ineffective approach to ongoing monitoring. Others simply alert Customer that there has been an 'event' without detailing the specifics and offering recommendations as how to proceed with the re-perfection process. First American is different.

For a cost-effective flat rate-per filing, First American monitors your portfolio \*\*daily and provides detailed information and guidance for the necessary, subsequent steps toward re-perfection. Beyond our unparalleled customer service and expertise, First American now offers insurance for this program adding to the already distinguished arsenal of risk mitigating tools available to our customers. Perfection with *Protection*. Contact us today for details.

*\*Debtor Monitoring not available in New Jersey, Pennsylvania and West Virginia.*

*\*\*Daily monitoring available with the exception of Delaware. First American offers monthly monitoring in Delaware.*