



First American Title

**First American Title Insurance Company
CURRENT DEVELOPMENTS
SPECIAL EDITION**

Chapter 505 of the Laws of 2014, enacted on December 17, 2014, repeals Articles 1 (“General Provisions”) and 7 (“Warehouse Receipts, Bills of Lading and Other Documents of Title”), adds new Articles 1 and 7 (now termed “Documents of Title”), and amends Article 9 (“Secured Transactions”) of New York’s Uniform Commercial Code. Effective immediately, Chapter 505 applies to transactions entered into on or after December 17. According to the Memo supporting the legislation, Article 9 is amended “to clarify how to name the debtor when perfecting a security interest...”

A summary of the provisions impacting Article 9, prepared by David L. Wanetik, Chief Operating Officer of First American’s Uniform Commercial Code Division, who is based in New York, is set forth below.

The legislation (Assembly Bill No. 9333/Senate Bill No. 7816) includes provisions in the proposed draft generated by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) 2010. However, certain sections in the NCCUSL draft were not included, creating issues involving the forms and transition to the new requirements. Critical aspects of the amendments are as follows.

Individual Debtor Name

The new law adopts the Alternative A “Only If” approach in the NCCUSL draft for individual debtor name sufficiency in § 9-503(a)(4). The sole safe harbor for an individual’s name is the name that appears on an unexpired driver’s license or non-driver photo identification card issued by NY. Beginning today, any financing statements recorded or filed in New York State providing an individual debtor name must comply with the new Alternative A rules.

Forms

It appears that New York is the only state that retained the requirement that a financing statement provide the type and jurisdiction of organization for organization debtor names. New York also has retained a non-uniform

version of § 9-521 that requires filing offices to accept forms approved by the New York Department of State (“DOS”). The DOS has not yet approved the new forms (rev. 04/20/2011) because they lack fields for the organization information. Consequently, filers should continue to use the old forms when filing written records. However, the old forms do not contain check boxes with text of the indications required by new § 9-503(a)(2), collateral being administered by a personal representative, or new § 9-503(a)(3), collateral held in a trust. It is recommended that when filing a written UCC record for these types of transactions, the filer should include the new indication text in the collateral, addendum miscellaneous field or on an attached exhibit.

Electronic Filing

The DOS electronic UCC filing system remains sufficient for most transactions. However, following the issues raised above about the forms, the system has not yet been upgraded to reflect the new indications required by §§ 9-503(a)(2) and (3). It is recommended that filers should file records that provide the new indications as written records. In the alternative, the filer should provide the indication text in the collateral field of an electronically-filed record.

Transition

The legislation omitted the NCCUSL Part 8 transition rules, which has raised questions regarding the effect of the new law on pre-effective date financing statements that do not comply with the new debtor name rules. It appears that the new law only applies to transactions entered into on or after the effective date. Consequently, a pre-effective-date financing statement should remain effective under the former law, as has been the case in former revisions and amendments, so the secured party can wait to bring the record into compliance with the new debtor name rules until it must be continued or otherwise amended. Nevertheless, some industry sources claim that secured parties must amend non-compliant records within 4 months (by 4/17/2015) to remain perfected in after-acquired collateral because the new law caused a change in the debtor name for purposes of § 9-507(c). It is recommended that secured parties consult with legal counsel to determine the best course of action with respect to pre-effective-date records.

Cooperative Filings

During the legislative process, provisions had been inserted providing that the name of the individuals owning cooperative interests would be correctly filed if the financing statement was the same name as on the stock certificate. However, when the legislation passed both houses of the legislature, that provision was nowhere to be seen. Accordingly, filings against cooperative ownership must follow the standard rules which require filing under the

individual's name as it appears on an unexpired New York State driver's license or state issued identification card. This policy could be impacted by a "corrective bill" which may be proposed after the first of the year which would reintroduce the concept of the correct name being that on the stock certificate. In anticipation of such an amendment, secured parties may want to file using the name on the driver's license or state issued identification card and the name on the stock certificate, if there is any difference.

Chapter 505 is posted at

http://assembly.state.ny.us/leg/?default_fld=&bn=A09933&term=2013&Text=Y

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