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## Thirty Five Questions (And Answers) About the New Amendments to Article 9 of the Uniform Commercial Code

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Article 9 of the Uniform Commercial Code (“UCC”) governs security interests in personal property. So when a borrower (a “debtor” under Article 9) grants a security interest to a lender (a “secured party” under Article 9) to secure a loan, Article 9 provides the governing law. In 2010 the National Conference of Commissioners of Uniform State Laws and the American Law Institute, with participation by the American Bar Association, adopted amendments (“2010 Amendments”) to Article 9. The Mississippi Legislature, in its regular 2013 session, adopted the 2010 Amendments in Senate Bill No. 2609 (“S.B. 2609”). S.B. 2609 was signed by Governor Bryant and becomes effective on July 1, 2013.<sup>1</sup>

The 2010 Amendments make many changes to Article 9. Some of these changes are technical clarifications and corrections, and others address court decisions, new technology and gaps in the last major revision of Article 9. A comprehensive description of all of these changes is beyond the scope of this article. This article will focus on the changes that the author thinks are the most significant. In this article, Article 9 prior to July 1, 2013 is referred to as current Article 9.

### GENERAL

Question 1. Why is Article 9 being amended?

The last major revision to Article 9 occurred when Revised Article 9 was adopted, which was January 1, 2002 in Mississippi and July 1, 2001 in most of the rest of the country. Since that time gaps in Revised Article 9 have become evident, some decisions of some courts have been issued that are generally deemed to be misinterpretations, and of course technology has changed.

Question 2. Do the 2010 Amendments completely restate Article 9, like Revised Article 9 did?

No, the drafters of the 2010 Amendments tried to make as many changes as possible through amendments to the Official Comments to Article 9 and amendments to existing sections, rather than adding new sections that would change the numbering. While reading the Official Comments has always been important in interpreting the meaning of Article 9, the fact that many of the changes made by the 2010 Amendments are in the Official Comments makes reading the Official Comments even more important than before. In Mississippi, the Official Comments are not adopted as part of the amendments.

Question 3. Why is Mississippi just now adopting amendments that were promulgated in 2010?

Historically it has taken approximately three years for final amendments to the UCC to be adopted by all of the states. The national target date for adoption of the 2010 Amendments is July 1, 2013, the date that S.B. 2609 becomes effective, so Mississippi is on track with the other states.

Question 4. How many states have adopted the 2010 Amendments?

As of May 31, 2013, forty states have adopted the 2010 Amendments, according the website of the National Conference of Commissioners of Uniform State Laws.<sup>2</sup>

Question 5. How can I get at copy of the 2010 Amendments?

One can download a copy of S.B. 2609 from the website of the Mississippi Legislature.<sup>3</sup> The official uniform version of the 2010 Amendments as promulgated, including the Official Comments, can be downloaded from the website of the National

Conference of Commissioners of Uniform State Laws.<sup>4</sup>

## INDIVIDUAL NAMES

Question 6. What is the most important change in the 2010 Amendments?

The clarification of rules regarding names of individual debtors on financing statements generally is considered the most important change.

Question 7. What does the current version of Article 9 require for individual names?

The current version of Article 9 does not give any guidance about individual names. Current Section 75-9-502(a)(1) provides that a financing statement is sufficient only if it “provides the name of the debtor.”<sup>5</sup> An Official Comment to the current version of Section 9-503 states that “the actual individual or organizational name of the debtor on a financing statement is both necessary and sufficient.”<sup>6</sup> The problem is that there are many sources for a person’s name. For example, a person’s name can be shown differently on official records such as the person’s birth certificate, Social Security card, passport and driver’s license. The person may be known by a different name in the community than is shown on official records. Which name is correct? Courts have come to different conclusions. For example, one court held that the name “Terry J. Kindernecht” for a debtor on a financing statement was not sufficient because the debtor’s legal name was “Terrance Joseph Kindernecht.”<sup>7</sup> On the other hand, a court applying Mississippi law held that the name “Louie Dickerson” was sufficient even though the debtor’s legal name, according to the court, was “Brooks L. Dickerson.”<sup>8</sup> Another court held that a debtor’s legal name could only be the name on his birth certificate.<sup>9</sup>

Question 8. How did the 2010 Amendments try to bring clarity to individual names?

The drafters of the 2010 Amendments gave the states two options for names of individuals. Alternative A, known as the “only if” approach, requires that the name of an individual debtor on a financing

statement be the same as the debtor’s driver’s license. Under Alternative B, known as the “safe harbor” approach, the use of the name on the driver’s license is always valid, but variations on that name also are valid.

Question 9. Which alternative did Mississippi adopt?

The Mississippi legislature, like most states, adopted Alternative A. S.B. 2609 amends Section 75-9-503 to provide a new Section 75-9-503(a)(4) that provides a financing statement sufficiently provides the name of the debtor, “...if the debtor is an individual to whom this state has issued a driver’s license or nondriver’s identification card that has not expired, only if the financing statement provides the name of the individual which is indicated on the driver’s license or nondriver’s identification card.”

Question 10. Does Mississippi issue nondriver’s identification cards?

Yes, the Mississippi Department of Public Safety issues nondriver’s identification cards.<sup>10</sup>

Question 11. What if the name on the driver’s license contains an error?

The secured party has to use the name on the driver’s license even if it is incorrect. New Official Comment 2.d to Section 9-503 states in relevant part: “A financing statement does not “provide the name of the individual which is indicated” on the debtor’s driver’s license unless the name it provides is the same as the name indicated on the license. This is the case even if the name indicated on the driver’s license contains an error.”

Question 12. What if a debtor does not have a driver’s license or an identification card?

If the debtor does not have either a driver’s license or identification card, then Section 75-9-503(a)(4) governs and the name on the financing statement is sufficient “only if the financing statement provides the individual name of the debtor or a surname and first personal name of the debtor;”.

New Official Comment 2.d to Section 9-503 in the 2010 Amendments states in relevant part:

Article 9 does not determine the “individual name” of a debtor. Nor does it determine which element or elements in a debtor’s name constitute the surname. In some cases, determining the “individual name” of a debtor may be difficult, as may also be determining the debtor’s surname. This is because in the case of individuals, unlike registered organizations, there is no public organic document to which reference can be made and from which the name and its components can be definitively determined. Comment 2.d does provide some general guidance about individual names, such as stating that the name on the debtor’s birth certificate is not necessarily the debtor’s current name. The alternative of using the debtor’s “surname and first personal name” in Section 9-503(a)(5) also gives secured creditors some certainty that the middle name or middle initial is not necessary. Beyond these guidelines, the 2010 Amendments leave open the question of determining the individual’s name when the individual does not have an unexpired driver’s license or nondriver’s identification card. If a secured party has doubt about which name to use, the secured party can file more than one financing statement with a different name on each financing statement. It is possible that future legislation or court decisions could provide additional guidance to secured parties about the name to use if the debtor does not have an unexpired Mississippi driver’s license or identification card.

Question 13. What if a debtor has only an expired license and no identification card at the time that he signs the financing statement?

If the debtor only has an expired license and no identity card at the time that he signs the financing statement, then he does not have a “driver’s license or nondriver’s identification card that has not expired” as required by Section 75-9-503(a)(4), and Section 75-9-503(a)(5) controls.

Question 14. What if the debtor has an unexpired driver’s license at the time that the secured party makes the loan, the secured party perfects its

security interest by filing a financing statement using the debtor’s name on the driver’s license, the debtor changes her name but does not change the name on her driver’s license?

Under Section 75-9-503(a)(4), as long as the name on the financing statement remains the same as the name on the debtor’s unexpired driver’s license, the secured party remains perfected, even if the debtor changes her name. However, the secured party could become unperfected if the driver’s license expires or the state issues a new driver’s license in the new name. See Questions 15 and 17.

Question 15. What if the debtor has an unexpired driver’s license at the time that the secured party makes the loan, the secured party uses the name on the driver’s license on the financing statement and perfects its security interest by filing, the debtor’s name changes, and then the debtor’s driver’s license expires?

If the debtor’s driver’s license expires, Section 75-9-503(a)(5) governs the sufficiency of the name on the financing statement. As long as the name on the financing statement also meets the requirements of Section 75-9-503(a)(5), the secured party will remain perfected. The secured party could become unperfected, however, if the secured party’s name under Section 75-9-503(a)(5) is different than the name on the expired driver’s license. In that case, the debtor’s name on the financing statement may become “seriously misleading” under Section 75-9-507(c). If the name on the financing statement becomes seriously misleading, under Section 75-9-507(c) the financing statement becomes ineffective as to any collateral acquired by the debtor four months after the driver’s license expires unless the financing statement is amended before the end of the four-month period.<sup>11</sup> For example, suppose the debtor’s name on his driver’s license is Ronald William Artest, Jr.; a secured party makes a loan to the debtor and perfects its security interest by filing a financing statement identifying Ronald William Artest, Jr. as the debtor; Ronald William Artest, Jr., changes his name to Metta World Peace; and then debtor’s driver’s license expires and he does not get a new driver’s license. In either case, the name on

the financing statement would become seriously misleading, and the secured party would become unperfected unless it filed an amendment to the financing statement changing the debtor's name to Metta World Peace before the end of the four-month period. This type of complete name change is probably going to prove to be uncommon in practice. A much more common circumstance, and a closer case, is when the debtor changes part of her name to reflect a change in marital status. The same rules regarding a complete change in the debtor's name will apply to changes in the debtor's name due to a change marital status. For example, suppose a secured party makes a loan to Betty Catherine Jones and files a financing statement identifying Betty Catherine Jones as the debtor; Betty Catherine Jones marries Bill Smith and changes her name to Betty Jones Smith without changing the name on her driver's license, and then her driver's license expires. The secured party who filed a financing statement relying on the name Betty Catherine Jones on her driver's license could become unperfected if the name change is deemed to make the name on the financing statement seriously misleading.

Question 16. When does a change in the debtor's name make the name in the financing statement "seriously misleading"?

Section 75-9-506(c), which is not being amended as part of the 2010 Amendments, provides that "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 Section 75-9-503(a), the name provided does not make the financing statement seriously misleading." In other words, if a search of the Secretary of State's records under the new name would disclose a financing statement filed under the original name, the name change would not be seriously misleading. To put this another way, if a second secured party runs a search of the changed name and the search does not show the financing statement with the original name, the second secured party is protected if it files a financing statement using the changed name.

Question 17. What if the debtor has an unexpired license at the time that the secured party makes the loan, the secured party uses the name on the driver's license, the secured party perfects its security interest by filing a financing statement, the debtor changes her name, and the state issues a driver's license in her new name?

The same rules would apply as when the debtor's driver's license expires. If the name on the new driver's license makes the name on the financing statement seriously misleading under Section 75-9-507(c), the secured party will become unperfected as to any collateral acquired by the debtor four months after the new license is issued, unless the secured party amends its financing statement before the end of the four-month period to identify the debtor by the new name.

Question 18. Is there a public database in Mississippi that would allow secured parties to check to see if their debtors' driver' licenses have expired, or if their debtors have changed their names?

Not to the author's knowledge.

Question 19. What if a debtor who moves to Mississippi from another state does not have a driver's license issued by Mississippi, but still has an unexpired driver's license or nondriver's identification card from the other state? Does it matter whether the driver's license is expired or not expired?

Section 75-9-503(a)(4) requires the use of the name on the driver's license only if the driver's license is issued by "this state." In most cases, the law of the state in which the debtor is located governs perfection of a security interest in the debtor's collateral.<sup>12</sup> An individual is located at the individual's principal place of residence.<sup>13</sup> So if the debtor is located in Mississippi, and a financing statement perfecting the secured party's security interest must be filed in Mississippi under Mississippi's version of Article 9, then the secured party can only rely on a driver's license or nondriver's identification card issued by the State of Mississippi. A driver's license or nondriver's identification card from another state cannot be relied upon.

Section 75-9-503(a)(5) applies rather than Section 75-9-503(a)(4), and as a result the secured party must identify the individual's name or the surname and first personal name of the debtor. A passport should be treated the same as a driver's license from another state.

## REAL ESTATE INTERESTS

Question 20. Does the requirement for using the debtor's name on the driver's license apply to fixture filings and financing statements covering timber to be cut and as-extracted collateral?

Fixtures, timber to be cut and as-extracted collateral are in twilight zone between real and personal property. A secured party has to perfect its security interest in these types of collateral under the UCC. A special problem with these types of collateral is that the debtor's interest in the real estate may be owned in a different name than the name shown on the debtor's driver's license (or public organic record, if the debtor is a registered organization), according to the real estate records. The 2010 Amendments address this issue in a limited way by amending Section 75-9-502(c)((3) to provide that when a mortgage also is serving as a fixture filing, the mortgage does not have to use the name on the debtor's driver's license, but can provide "the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom Section 75-9-503(a)(4) applies." In other words, the same hazy requirements regarding the debtor's name apply as if the debtor did not have a driver's license or nondriver's identification card. This amendment does not address financing statements covering as-extracted collateral or timber to be cut. This may be a circumstance when it is prudent for the secured party to file two financing statements, with one financing statement identifying the individual debtor by the name on his driver's license, and the other financing statement identifying the debtor by the name under which he owns title to the real estate.

## SEARCHING THE DEBTOR'S NAME

Question 21. Since S.B. 2609 requires the use of the name on an individual debtor's driver's license on financing statements, is that the only name that a secured party needs to search when searching for existing security interests encumbering the debtor's interest?

No, there are at least two reasons for continuing to search variations of the debtor's name. First, existing financing statements that were perfected before July 1, 2013 using names other than the name on the debtor's driver's license can be effective through 2018. Second, and more importantly, Article 9's rules requiring the use of the name on the debtor's driver's license do not apply to tax liens filed by the Internal Revenue Service.<sup>14</sup> Federal tax liens are usually filed in the name on the debtor/taxpayer's tax return, which in turn usually is the name on the debtor's Social Security card or the name to which the Internal Revenue Service issued an employer identification number in the case of a corporation. So if the secured party only searches for the name on the debtor's driver's license, and a federal tax lien or judgment is filed in a different name, the search might not pick up the federal tax lien. The same rules apply for registered organizations.

Question 22. Couldn't the potential differences between the name on an individual debtor's driver's license and the potentially infinite variety of alternative names on a Social Security card be reduced if the Mississippi Department of Public Safety adopted a policy of using the name on Social Security cards as the name on driver's licenses?

Yes.

## CHANGE IN LOCATION OF DEBTOR AND COLLATERAL

Question 23. What if a debtor whose residence is in Mississippi grants a security interest, the secured party files a financing statement in Mississippi to perfect its security interest, and then the debtor moves to another state?

If a debtor changes his residence from Mississippi to another state, then the law governing perfection of the secured party's security interest will change to the law of the second state, which will require that a financing statement be filed in the second state. Under the current version of Section 75-9-316(a), the secured party's security interest in existing collateral will remain perfected for four months. If the secured creditor does not file a new financing statement in the second state within this four-month period, its security interest becomes unperfected and is deemed never to have been perfected against a purchaser of the collateral.<sup>15</sup> The 2010 Amendments add a new section, Section 75-9-316(h), which provides that if the secured party files the new financing statement in the second state before the end of the four-month period, the secured party will not only maintain its perfected security interest in collateral that the debtor owned at the time that it changed its location, but the secured party also will have a perfected security interest in any new collateral that the debtor acquired during the four-month period.

**Question 24.** What happens if a debtor whose residence is another state grants a security interest, the secured party files a financing statement in that state, and then the debtor moves to Mississippi?

The same rule applies as in the previous question when the secured party perfects by filing in Mississippi and then the debtor changes location to another state. The secured party who filed in the other state has to file a new financing statement in Mississippi within four months, or become unperfected.

**Question 25.** Do the same rules regarding change in location of an individual debtor apply to the change in the location of a corporation?

Yes, but it is much less common for a corporation to change its location for Article 9 purposes than for individuals. A corporation, limited liability company or limited partnership would be a "registered organization" under Article 9, and a registered organization is deemed to be located in the state in which it is organized.<sup>16</sup> So in order to change its

location to another state, a corporation would have to re-incorporate in the other state, or be merged into another corporation located in the other state.

## NAMES OF REGISTERED ORGANIZATIONS

**Question 26.** Do the 2010 Amendments make any changes regarding names of debtors who are corporations as well as debtors who are individuals?

Yes. The current definition of a registered organization in Section 75-9-102(a)(70) of Mississippi's Article 9 is "an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized." The problem with this definition is that neither Article 9, nor Article 1, which is the default source of definitions for the UCC, defines public records. Because of this, it is possible for more than one document that may be a public record to exist for a registered organization, and the possibility of different names on different public records. For example, a license issued by the Mississippi Department of Insurance to a corporation could be a "public record," and the name on the license could be different than the name on the articles of incorporation filed in the Mississippi Secretary of State's office. A certificate of good standing issued by the Secretary of State's office could be a public record. The 2010 Amendments address this issue by changing the definition of a "registered organizations" to one formed by the filing of a "public organic document".<sup>17</sup> The 2010 Amendments add a new definition of "public organic document" as Section 75-9-102(a)(68) that limits public organic documents to "a record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization" and any amendments. A new Official Comment 11 to Section 9-102 states that a certificate of good standing issued with respect to a corporation cannot be a "public organic document" because the issuance of the certificate of good standing does not form or organize the corporation.

## TRUSTS AND ESTATES

**Question 27.** Do the 2010 Amendments make it easier to perfect a security interests in property owned by trusts and estates?

Yes, the 2010 Amendments make a number of changes that clarify how to perfect a security interest in property owned by trusts. The current version of Article 9 generally treats all trusts the same. The 2010 Amendments distinguish between common-law trusts and statutory trusts. The 2010 Amendments further distinguish between trust that are business trusts, which can be registered organizations, and other trusts. The 2010 Amendments make substantial changes to Section 75-9-503(a)(3) regarding the sufficiency of names of trusts on financing statements. The 2010 Amendment also add new provisions regarding the name of debtor when the property is owned by an estate of a decedent.<sup>18</sup> The new Official Comments to Section 9-102 and Section 9-503 are invaluable in understanding the new rules regarding trusts and estates.

## TRANSITION RULES

**Question 28.** If an individual debtor grants a security interest to a secured party, and the secured party perfects the security interest by filing in Mississippi before July 1, 2013, and the name on the debtor's driver's license is the same as the name on the debtor's Mississippi driver's license or nondriver's identification, does the secured party have to take any action before or after July 1, 2013 to maintain perfection?

No. New Section 75-9-805(a) provides that a financing statement that is filed before July 1, 2013 is effective to perfect a security interest if that filing would satisfy the requirements of the Article 9 as amended by S.B. 2609.

**Question 29.** If an individual debtor grants a security interest to a secured party, the secured party perfects its security interest by filing in Mississippi before July 1, 2013, and the name on the financing statement is not the same as the name on the debtor's Mississippi driver's license, does the

secured party have to take any action before or after July 1, 2013.

No. New Section 75-9-805(b) provides that "This act does not render ineffective an effective financing statement that, before this act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Article 9 as it existed before amendment." The example in the New Official Comments to Section 9-801 of the 2011 Amendments expressly addresses the situation in which an individual debtor's name on a financing statement filed before July 1, 2013 is not the same as the name on his driver's license.

**Question 30.** Section 75-9-803(b) requires that any financing statement that does not meet the requirements of Article 9 as amended by S.B. 2609 must be amended within one year after July 1, 2013. Doesn't that section require a secured party to file an amendment if an individual debtor's name on an existing financing statement is not the same as the name on the debtor's driver's license?

No, Section 75-9-803(b) is expressly subject to Section 75-9-805.

**Question 31.** Suppose a debtor grants a security interest to a secured party, the secured party perfects its security interest by filing in Mississippi before July 1, 2013, the debtor changes its name, and then the secured party wants to file a continuation statement. Does the secured party use the name in the original financing statement in the continuation statement, or the new name?

The secured party has to take two steps. First, it has to amend its original financing statement to reflect the changed name. Second, the secured party has to file a continuation statement.

**Question 32.** Can the secured party do this in a single UCC Amendment form, by checking both the box for continuation and the box for party information change?

No, the secured party has to file two separate UCC-3 Amendments, one to change the debtor's name and another to continue the security interest.



Question 33. Will the forms of financing statements and amendment statements change as a result of the 2010 Amendments?

Yes. Changes are made to the current standard forms to reflect other changes in the 2010 Amendments, such as the names of trusts and estate. Among other changes, the new form of financing statement has checkboxes to indicate when the collateral is held in a trust or being administered by a decedent's personal representative, and whether the transaction involves a transmitting utility, public finance transaction, or manufactured housing, rather than this information being on an addendum. The requirement for an organizational identification number has been eliminated. The new form has spaces for an individual's surname, first personal name and additional name/initial(s) rather than for an individual's last name, first name and middle name. Samples of the new forms are included in Section 9-521 of the uniform version of the 2010 Amendments that was promulgated by the American Law Institute and the National Conference of Commissioners of Uniform State Laws. Mississippi, and many other states, historically has not included copies of sample forms in their versions of the UCC. S.B. 2609 instead amends Section 75-9-521 to provide that a filing office may not refuse to accept an initial financing statement or written record set forth in the 2010 Amendments to Article 9.

#### **OTHER NEW UCC LEGISLATION**

Question 34. Did S.B. 2609 make any other material changes to the UCC in addition to adopting the 2010 Amendments to Article 9?

Yes, S.B. 2609 makes two other changes to Mississippi's UCC. First, in Section 2 of S.B. 2609, Section 75-2-719(4) was amended to allow buyers and sellers to agree to a limitation of remedies, other than in the sale to consumers. This amendment is consistent with Section 75-2-315.1, which permits a seller of goods other than consumer goods to disclaim implied warranties, and the amendment to Section 11-7-18 in 2010, which prohibits limitations of remedies or disclaimers of implied warran-

ties in sales to consumers. Second, Section 3 of S.B. 2609 amended Section 75-4A-108. Section 75-4A-108 currently states that Section 4A does not apply to any funds transfer which is governed the federal Electronic Fund Transfer Act ("EFTA"). The amendment makes an exception for "remittance transfers" as defined in EFTA. This amendment was recommended by the Permanent Editorial Board for the Uniform Commercial Code to address an amendment to EFTA in the Dodd-Frank Wall Street Reform and Consumer Protection Act, and is being made by most of the states.<sup>19</sup>

Question 35. Did the 2013 Mississippi Legislature pass any other bills that affect the UCC in addition to S.B. 2609?

The Legislature passed two other bills relating to unauthorized filings that were signed by the Governor. One bill, S.B. 2385, makes offering a false instrument that imposes a lien on the real or personal property of a law enforcement officer, public official or public employee a misdemeanor punishable by a fine or imprisonment. The second bill, H.B. 1008, creates a new section of Article 9, Section 75-9-501.1. This new section gives the Secretary of State the authority to refuse to file or to terminate a financing statement if the Secretary of State has a reasonable basis for concluding that the financing statement was intended to harass, was not authorized or was not being filed in connection with a valid financing transaction. The problem of bogus filings being made against public officials is common, and many states have adopted statutes to try to prevent bogus filings from being made.<sup>20</sup> Prior to this bill, the Secretary of State did not have the authority to refuse to file or to terminate financing statements that obviously were not authorized. While the current version of Section 75-9-518 permits a debtor to file a correction statement to the effect that the filing was unauthorized after the unauthorized filing had been made, the Secretary of State could not refuse to file the financing statement in the first place. The 2011 Amendments amend Section 75-9-518 to change the name of the "correction statement" to an "information statement," and

permit secured parties to file information statements as well as debtors. (2011)).

<sup>1</sup> Miss. Code Ann. § 75-9-801 (effective July 1, 2013).

<sup>2</sup> <http://uniformlaws.org/NewsDetail.aspx?title=40 States Have Enacted the 2010 Amendments to UCC9>

<sup>3</sup> <http://billstatus.ls.state.ms.us/2013/pdf/history/SB/SB2609.xml>.

<sup>4</sup> <http://www.uniformlaws.org/Shared/Docs/UCC9/UCC9KitBundle.pdf>

<sup>5</sup> Miss. Code Ann. § 75-9-502(a)(1).

<sup>6</sup> Official Comment 2 to Section 9-503.

<sup>7</sup> *Clark v. Deere & Co. (In re Kindernecht)*, 308 B.R. 71 (BAP 10<sup>th</sup> Cir. 2004)(applying Kansas law).

<sup>8</sup> *Peoples Bank v. Bryan Brothers Cattle Co.*, 504 F.3d 549 (5<sup>th</sup> Cir. 2007).

<sup>9</sup> *In re Miller*, 2012 WL 32664 (Bankr. C.D. Ill., January 6, 2012). This decision by a bankruptcy court later was reversed by the district court. *In re Miller*: 2012 WL 3589426 (C.D.Ill., August 17, 2012).

<sup>10</sup> The website of the Mississippi Department of Public Safety provides in relevant part, “Any blind or physically disabled person, or any other persons six (6) years of age or older may apply to the Department of Public Safety for an identification card. Identification cards are issued for a four (4) year period, except those issued to legally blind persons, which are for a ten (10) year period.” <http://www.dps.state.ms.us/driver-services/new-drivers-license/identification-cards/>.

<sup>11</sup> The secured party remains perfected as to collateral acquired by the debtor prior to the time that the debtor’s driver’s license expired. If the loan was a purchase money obligation and the secured party does not have any obligation to make additional advances, the secured party may not be harmed if its financing statement becomes unperfected as to future collateral only.

<sup>12</sup> Miss. Code Ann. § 75-9-301(1).

<sup>13</sup> *Id.* § 75-9-307(b)(1).

<sup>14</sup> See *United States v. Crestmark Bank (In re Spearing Tool and Manufacturing Co.)*, 412 F.3d 653 (6<sup>th</sup> Cir. 2005).

<sup>15</sup> *Id.* § 75-9-316(b). Note that when a debtor changes its name, and the secured party does not perfect within the four-month period, as discussed above, the secured party’s security interest is only ineffective as to future collateral. When the debtor moves to another

state, and the secured party does not file a new financing statement within four months, the secured party becomes unperfected as to all collateral, not just future collateral. See note 11. So the consequences of the secured party failing to file a new financing statement after the debtor changes location are much worse than if the secured party fails to file a financing statement after the debtor changes its name.

<sup>16</sup> Miss. Code Ann. § 75-9-307(e). The 2010 Amendments do not change this result.

<sup>17</sup> This revised definition of “registered organization” will be renumbered as Section 75-9-102(a)(71) under the 2010 Amendments.

<sup>18</sup> See §§ 75-9-503(a)(2), 75-9-503(f), 75-9-503(h).

<sup>19</sup> See

[http://www.uniformlaws.org/Act.aspx?title=UCC%20Article%204A%20Amendments%20\(2012\)](http://www.uniformlaws.org/Act.aspx?title=UCC%20Article%204A%20Amendments%20(2012)).

<sup>20</sup> See *State Strategies to Subvert Fraudulent Uniform Commercial Code (UCC) Filings*, National Association of Secretaries of State (August 8, 2012), available from the website of the National Association of Secretaries of State at [http://nass.org/index.php?option=com\\_content&view=article&id=226&Itemid=469](http://nass.org/index.php?option=com_content&view=article&id=226&Itemid=469).