

From: Oregon Law Commission
Date: January 14, 2014
Re: U.C.C. Article 9, Debtor Name (ORS 79.0503(1)(d))

10 Reasons for Keeping Present Oregon Law (Maintaining the Alternative B Provision for the Individual Debtor Name Requirement for UCC Article 9-503) and Rejecting Amendments Proposed by the Banker's Association to Adopt the Alternative A Provision for the Individual Debtor Name Requirement

The 2010 amendments and updates to Article 9 of the Uniform Commercial Code, as approved by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission) and the American Law Institute, offered states two alternatives for updating the requirements of an individual debtor's name, for the purpose of filing and searching for a UCC financing statement. Either alternative is considered uniform.

Alternative A requires that the debtor's name placed on the financing statement be exactly the name as it appears on the debtor's most recently issued unexpired driver's license, if the debtor has a driver's license.

Alternative B is broader in what it permits, and provides that the debtor's name placed on the financing statement must be the debtor's individual name, the debtor's surname and first personal name, OR the debtor's name as it appears on the most recently issued driver's license.

In 2012, as part of the update of the whole chapter, a Work Group of the Oregon Law Commission recommended adoption of the Alternative B provision for Oregon, as reflected in section 12 of HB 4035 (2012) and now codified at ORS 79.0503. HB 4035 (2012) passed the House and Senate unanimously and was signed by the Governor on March 5, 2012. The legislature rejected an amendment during the 2012 session and also failed to pass HB 2600 during the 2013 session; these were efforts by the Banker's Association to amend the law to the Alternative A provision. The Banker's Association is trying again during the 2014 session (through LC 155) to amend the law to Alternative A. The Oregon Law Commission continues to oppose changing the law this session and continues to support the Alternative B provision.

The reasons for choosing Alternative B (the safe harbor provision) include the following:

1. The Alternative B provision protects both unsophisticated and sophisticated filers from filing invalid financing statements and perhaps committing malpractice. The name requirement is a substantive requirement in the law, and Alternative B provides more flexibility. If Alternative A is chosen, the work group was concerned that filers would be more prone to make mistakes by either not using the driver's license name always or not copying it exactly. The consequence for invalid filings could be financially very detrimental to Oregon businesses.
 - For example if the debtor's driver's license says "Jones, Cynthia Allison," under Alternative A, if the filer omits the "Allison" the filer will not have complied with the debtor's name requirements for the filing statement, with the result being that the filer will not have a valid security interest. If the same debtor commonly goes by "Cindy Jones" and the filer puts "Cindy Jones" on the statement, the filer will also not have complied with the requirements of Alternative A. In both instances, the statement would be sufficient under Alternative B.
2. Alternative B keeps longstanding Oregon law and then also adds two other ways to name the debtor (i.e., by driver's license or by surname and first personal name). No training or change in practice is required to maintain status quo for valid financing statements in Oregon. The additions to the law, however provide safe harbor for creditors and more certainty.
3. Whether A or B is chosen, searchers will continue to need to search for more than just a driver's license name in order to check for prior secured transactions because 1) financing statements are good for five years and thus valid statements will have been filed under other name variances (prior to this new law); 2) federal tax liens do not use the driver's license name (they use social security names generally); 3) people change their driver's license name over time; and 4) some people do not have a driver's license. Thus, the work group was not

persuaded by the argument often advanced for Alternative A, that it provides “certainty” or makes it easier for searchers.

4. The requirement in Alternative A that if an individual has a state issued driver’s license or identification card, that name must be used, could place debtors who do not have a license or card in a position of having to prove a negative to get financing. There was concern expressed to the work group that individuals who do not have such identification will not be able to get financing, or at least have a harder time doing so. Additionally, lenders may begin requiring such identification, thereby making one’s driver’s license name his or her “official name,” and elevating the role of a driver’s license beyond that which is intended in the driver’s licensing laws.
5. Crop lien claims generally use the same financing forms as Article 9, and are foreclosed using the procedures in ORS Chapter 79 as well. Providing the flexible name requirement of B will protect unsophisticated property owners and farmers who lease their land from costly mistakes that would subject their lien to loss of priority or make it potentially invalid.
6. Oregon has a sophisticated and free UCC database through the Oregon Secretary of State’s office. According to Tom Wrosch, the Director of UCC filings at the Oregon Secretary of State’s office, Oregon searchers use the “Extended UCC search option online, to find out all the possible names, and then - if necessary - do a UCC search logic search. Nationally, states don’t always offer that option, but Oregon has always offered it and will always continue to.” In short, Oregon does not have a searcher problem. The Work Group felt that neither Alternative A nor B should be preferred for the purpose of searching debtors’ names, as searchers should search the same way with either version.
7. Oregon does have a DMV search problem because Oregon does not allow online access to DMV driver’s license records. Thus, filers cannot easily verify a driver’s license in Oregon-- which Alternative A would presumably require (at least for careful filers). While Oregon does allow limited telephonic verification of driver’s licenses to legitimate businesses, it is not realistic for unsophisticated and infrequent filers to have filed the paperwork with DMV and set up a payment account prior to needing to verify a license. Unless and until the DMV statutes are amended to make driver’s license information easily accessible, the Work Group concluded that Alternative A could be a trap for filers that might result in an increase in improper filings and related uncertainty. It is important to note that, of the states that have adopted Alternative A, most have public DMV databases for filers to verify a driver’s license.
8. Alternative B allows for use of a driver’s license name as a sufficient name of the debtor. In fact, the use of a debtor’s name on an unexpired valid driver’s license provides filers a “safe harbor,” so they can know the driver’s license name will meet the name requirement of ORS 79.0502. The difference is that Alternative B *permits* the driver’s license name and Alternative A *requires* it and only it (if the debtor has a driver’s license). Banks can train their staff to use driver’s license if they want as it is an acceptable name.
9. The work group felt that Alternative B is more logical to users in the circumstances of a name change or married name. If a lender knows that an individual has recently married or changed names, it will seem logical to use the debtor’s new name. However, use of the debtor’s new name would be invalid if Alternative A is chosen, as only the *driver’s license name* would be sufficient, even if the debtor’s *common name* has changed (and the license has not).
10. One argument advanced for Alternative A is that of “uniformity:” that is, that Oregon should adopt the alternative chosen by most other states. Both alternatives, however, are accepted uniform provisions provided by the Uniform Law Commission and ALI.