

MINOR ERROR IN FINANCING STATEMENT MAY LEAVE CREDITOR UNSECURED

Minor errors—even a simple typo—can render a financing statement “seriously misleading” and ineffective under revised Article 9 of the Uniform Commercial Code (“RA9”). For example, the errors in the following debtor names, rendered each of the financing statements ineffective to perfect the creditor’s security interest:

1. Debtor’s name on financing statement: Tyringham Holdings
(Debtor’s actual legal name: Tyringham Holdings, Inc.)¹
2. Debtor’s name on financing statement: Roger House
(Debtor’s actual legal name: Rodger House)²
3. Debtor’s name on financing statement: K W M Electronics Corporation
(Debtor’s actual legal name: K. W. M. Electronics Corporation)³

Under RA9, the formal requirements for an effective financing statement include: (i) the name of the debtor; (ii) the name of the secured party or representative of the secured party; and (iii) an indication of the collateral covered by the financing statement. Each requirement is important, but the requirement that a financing statement provide the debtor’s correct name is particularly so, because those searching for financing statements search for them using the debtor’s name. For a debtor filed as a registered organization, the name to be used in the financing statement is the name listed on the debtor’s organizational document filed in the public record of the debtor’s state of organization. Individual debtors can be more troublesome, but the prudent creditor should review the individual debtor’s birth certificate, marriage license (if any), driver’s license and, if available, their passport to determine the correct name (or names) to use on the financing statement.

In the cases referenced above, the court’s analysis focused on Section 9-506 of RA9, which sets the standard by which an incorrect debtor name on a financing statement is to be considered “seriously misleading.” Under RA9, a financing statement is “seriously misleading” if it does not contain the correct name of the debtor, with one exception. The exception states 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, would disclose the existence of the financing statement with the incorrect name, then the name provided does not make the financing statement “seriously misleading”. Unfortunately for the creditors, in each instance listed above, a search of the state’s UCC records using the correct debtor name did not reveal the existence of the financing statement that contained the incorrect name, and the financing statements were found to be ineffective, leaving the creditor unperfected and unsecured.

¹ *In re Tyringham Holdings, Inc.*, 354 B.R. 363 (Bankr. E.D. Va. 2006).

² *Pankratz Implement Co. v. Citizens Nat’l Bank*, 281 Kan. 209 (2006).

³ *Host America Corp. v. Coastline Financial, Inc.*, 2006 WL 159614 (D. Utah 2006).

Creditors can take simple steps to avoid such a harsh result. These include the following:

1. For an entity debtor, obtain a *certified* copy of the debtor's organizational documents (e.g., articles of incorporation for a corporation, articles of organization for a limited liability company, and statement of qualification for a limited liability partnership).
2. Compare the debtor's name listed on the organic document to the name listed in the state's records to make sure they are consistent.
3. For an individual debtor, obtain a *certified* copy of their birth certificate and marriage license, if any, and a copy of their driver's license, and if available, a copy of their passport. List all variations of the individual debtor's name on the financing statement.
4. Have someone proof the financing statement for errors prior to closing.
5. File the financing statement in the correct state not later than the day of closing.⁴
6. Obtain a *certified* UCC search from the state post-filing to make sure the financing statement appears in the state's records.

Conducting simple due diligence and taking care when drafting the financing statement can go a long way to ensure the debtor's true name is correctly listed on the financing statement and that it will be effective when properly filed under RA9.

⁴ Many lenders obtain consent from a prospective borrower to "pre-file" a UCC Financing Statement so that a search can be performed prior to closing in order to confirm the Lender's priority.