



Simmons Perrine Moyer Bergman

# Revised Article 9 Update

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*Presented by:*

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## Case Example - In re Miller

- Recent Illinois Bankruptcy case reiterates the need for revised Article 9.
- In re Miller, the court held that a UCC-1 filing filed against “Bennie A. Miller” rather than “Ben Miller,” was ineffective. Miller used the name “Bennie A. Miller” in all of his business transactions and it was the name on his driver’s license, Social Security card, tax returns, and deed to his residence. Despite this, the court still found the bank’s UCC filing ineffective since Miller’s legal name, per his birth certificate, is “Ben Miller”.
  - 78 U.C.C. Rep. Serv. 2d 496, 2012 WL 3589426 (C.D. Ill. Aug. 17, 2012).

# Article 9 Amendments



Debtor's legal name: § 9-503

- Requires change in procedures



Information statement: § 9-518

- Allows secured party to file statement "if the person believes that the record is inaccurate or was wrongfully filed"



Perfection after debtor moves: § 9-316

- Four Month Auto Perfection now applies to original collateral and after acquired collateral purchased during auto perfected period



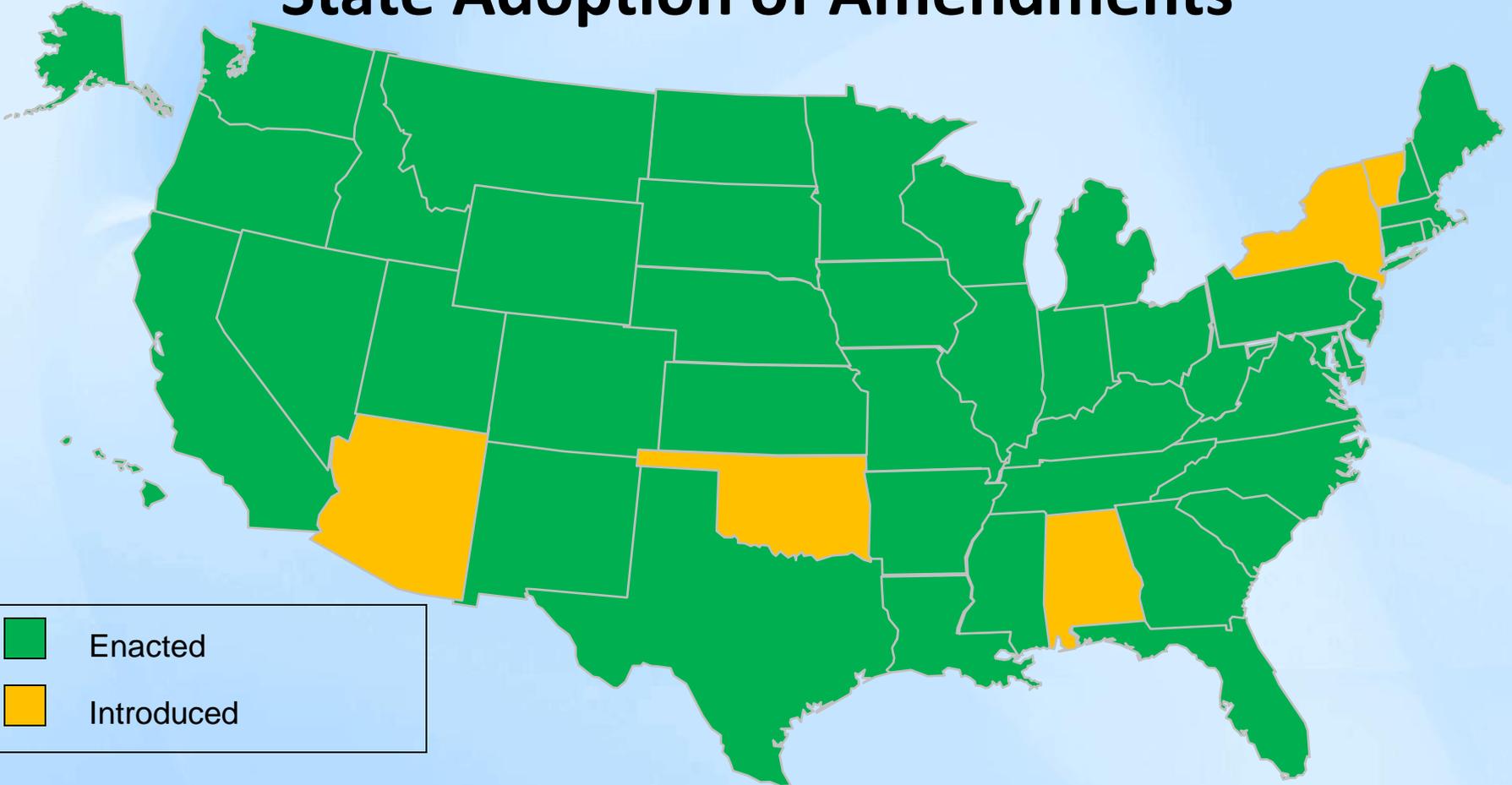
New forms: § 9-521

- SSN/FEIN field no longer included
- Accommodates longer names

# State Adoption of Amendments

- **Enacted: 45 states, the District of Columbia and Puerto Rico**
  - Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming
- **Introduced: 5 states**
  - Alabama, Arizona, Oklahoma, New York, Vermont

# State Adoption of Amendments<sup>1</sup>

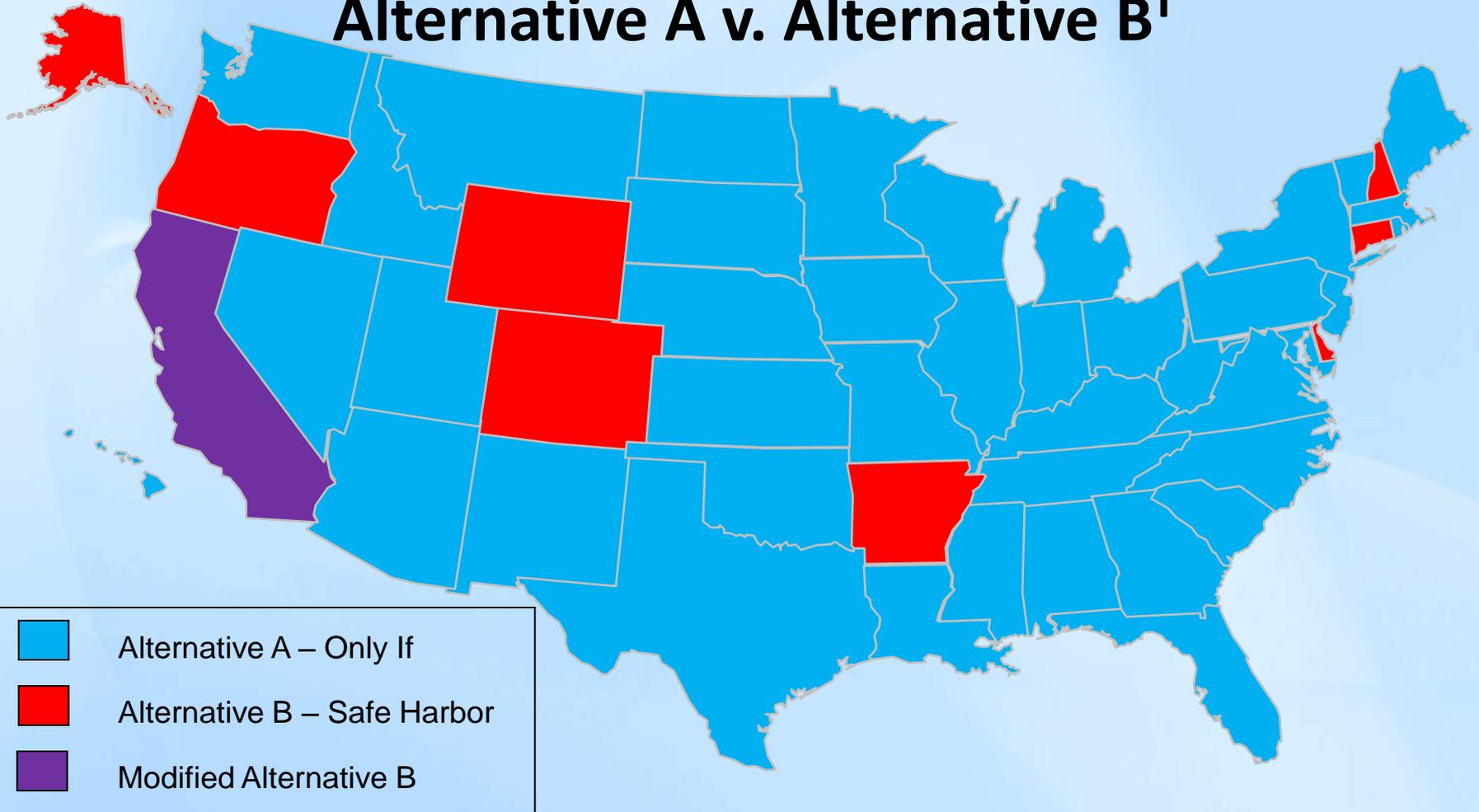


<sup>1</sup>As of January 17, 2014.

# New Rule for Name of Individual/Sole Proprietor for UCC Filings

- Revised Article 9 has two alternative methods for determining the proper name for UCC filings and each state adopts one of the two methods of: **Alternative A** or **Alternative B**.
- **Alternative A** (the “Only If” rule) – requires that the debtor’s name listed on the UCC Financing Statement match exactly the name listed on the debtor’s unexpired driver’s license, or if no license then the name appearing on the individual’s state identification card (if the state provides for such ID cards). If the debtor does not have an unexpired driver’s license (or state issued ID card) then the UCC filing shall be filed using 1) debtor’s surname (i.e. family name) and first personal name or 2) the individual’s name (which is not defined).
- **Alternative B** (the “Safe Harbor” rule) –requires that the debtor’s name listed on the UCC filing be one of the following: 1) the debtor’s name exactly as it appears on an unexpired driver’s license or if no license then the name appearing on the individual’s state identification card (if the state provides for such ID cards); 2) debtor’s surname (i.e. family name) and first personal name or 3) the individual’s name (which is not defined).
- Most states have decided to enact **Alternative A**.

# Alternative A v. Alternative B<sup>1</sup>



<sup>1</sup>As of January 17, 2014. Included in the above chart is the Alternative currently proposed to be enacted in the states that have yet to formally adopt revised article 9.

# Individual's Legal Name – Alternative A

- **Old rule:** Use the “individual name of the debtor”
  - William, Will, Bill, or Billy?



- **New rule:** Use the individual's name as it appears on an unexpired driver's license issued by the state of residence.
  - Use the old rule when the individual has no license, an expired license, or an out-of-state license.

## **Determining the exact legal name may not be as easy a task as it initially appears to be**

- **Mary Beth Hartman – Is Mary Beth the first name or is Beth the middle name?**

# When in doubt, file under multiple names

- Official Comments 2(d) to 9-503: If there is any doubt about an individual debtor's name, a secured party may choose to file one or more financing statements that provide a number of possible names for the debtor, and a searcher may similarly choose to search under a number of possible names.



Simmons Perrine Moyer Bergman

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME
OR
1b. INDIVIDUAL'S LAST NAME: Hartman; FIRST NAME: Lynn; MIDDLE NAME: Wickham; SUFFIX:
1c. MAILING ADDRESS: 303 Ashland Ct SE, Cedar Rapids, IA 52403
1d. SEE INSTRUCTIONS; 1e. TYPE OF ORGANIZATION; 1f. JURISDICTION OF ORGANIZATION; 1g. ORGANIZATIONAL ID #, if any

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME
OR
2b. INDIVIDUAL'S LAST NAME: Wickham Hartman; FIRST NAME: Lynn; MIDDLE NAME: Wickham; SUFFIX:
2c. MAILING ADDRESS: 303 Ashland Ct SE, Cedar Rapids, IA 52403
2d. SEE INSTRUCTIONS; 2e. TYPE OF ORGANIZATION; 2f. JURISDICTION OF ORGANIZATION; 2g. ORGANIZATIONAL ID #, if any

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME
OR
3b. INDIVIDUAL'S LAST NAME; FIRST NAME; MIDDLE NAME; SUFFIX
3c. MAILING ADDRESS; CITY; STATE; POSTAL CODE; COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable); 6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL PROPERTY RECORDS of the State of Iowa; 7. Check to REQUEST SEARCH REPORT (S) on Debtor(s); 8. OPTIONAL FILER REFERENCE DATA

# Seriously Misleading

- A Financing Statement not complying with these rules MAY still be effective, depending on whether it is seriously misleading, and the laws of your state:
  - A filing made that is not in compliance with the Article 9 rules is presumed to be seriously misleading .
  - However, a filing under an improper name may be deemed to not be seriously misleading if such a filing is found when someone performs a search of the filing office records using the correct debtor's name.
    - Please Note: In some states it has been held that failure to comply is seriously misleading, and is not presumed.
  - **Example:** In an Alternative A state, if a filing is made for a debtor using the name "John Doe" and the name appearing on that debtor's driver's license is "John Smith Doe" then the presumption that the filing is seriously misleading might be able to be overcome if a search on the name "John Smith Doe" returns the filing made for "John Doe".
- The ONLY way to ensure a Financing Statement is not seriously misleading is to file it using the proper debtor name as required under Article 9.

## Common Questions Regarding Filing for Individuals

- **Should a secured party file just using the First and Last Name on the Driver's License?**
  - No, the name on the filing should be *exactly as it appears on the driver's license*.
- **What if someone's driver's license is incorrect?**
  - Still file under the incorrect driver's license name. Recommend filing a second filing under the correct name.
- **What if someone has multiple unexpired driver's licenses, in the same state, with different names?**
  - Use the name listed in the most recent unexpired driver's license and consider filing under other names.
- **What if someone has multiple driver's licenses from different states with different names?**
  - Use the driver's license issued in the state of domicile and consider filing under other names.

# Organization's Legal Name

- **Old rule:** Use the name “indicated on the public record of the debtor’s jurisdiction”
  - & or and; LLC or L.L.C.; Inc. or Incorporated?



**ARTICLE 1**  
**NAME**  
The name of the professional limited liability company is **SIMMONS PERRINE MOYER BERGMAN PLC** (the “Company”).



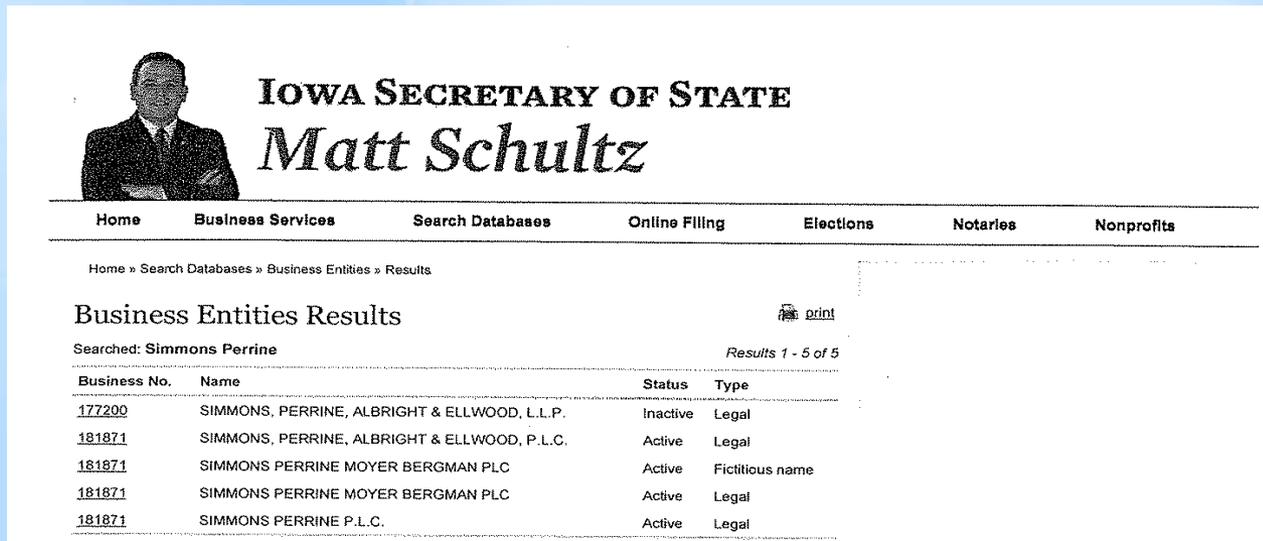
- **New rule:** Use an organization’s “public organic record”
  - Choose the formation document most recently filed with the state not the Secretary of State’s database entry

# Determining Name of Registered Organizations

- Registered Organizations include Corporations, Limited Partnerships, and Limited Liability Companies.
- Name to be used is the exact name stated on the “public organic record” most recently filed in the state where the organization is organized.
  - Examples of public organic records: Articles of Incorporation, Certificates of Limited Partnership, Articles of Organization, Amendments or Restatements to such.
- Important to note, the name(s) listed in a certificate of good standing or on the Secretary of State’s website is not sufficient. The organization’s name must match the actual public organic record.
  - **Illustration:** Certificate of good standing and Secretary of State’s website identifies debtor as: “Property Disposals, Inc.” and the Articles of Incorporation states: “Property Disposal, Inc.” (without any other filings)
  - **Filing should use the name of “Property Disposal, Inc.”**
- When filing continuation statements, the name used on such statements must match the “public organic record.”

# Organization's Legal Name

- Do not use organization's name listed on the Secretary of State's website database entry:



**IOWA SECRETARY OF STATE**  
*Matt Schultz*

Home   Business Services   Search Databases   Online Filing   Elections   Notaries   Nonprofits

Home » Search Databases » Business Entities » Results

Business Entities Results [print](#)

Searched: **Simmons Perrine** Results 1 - 5 of 5

Business No.	Name	Status	Type
<a href="#">177200</a>	SIMMONS, PERRINE, ALBRIGHT & ELLWOOD, L.L.P.	Inactive	Legal
<a href="#">181871</a>	SIMMONS, PERRINE, ALBRIGHT & ELLWOOD, P.L.C.	Active	Legal
<a href="#">181871</a>	SIMMONS PERRINE MOYER BERGMAN PLC	Active	Fictitious name
<a href="#">181871</a>	SIMMONS PERRINE MOYER BERGMAN PLC	Active	Legal
<a href="#">181871</a>	SIMMONS PERRINE P.L.C.	Active	Legal

# Organization's Legal Name

- Do not use organization's name listed on the Secretary of State's Certificate of Existence:

**IOWA SECRETARY OF STATE  
MATT SCHULTZ**



**CERTIFICATE OF EXISTENCE**

Date: 7/23/2013

Name: SIMMONS PERRINE MOYER BERGMAN PLC (489DPL - 181871)

Date of Incorporation: 1/1/1995

Duration: 1/1/2045

# Other Legal Name Situations

- **General Partnership**
  - List the general partners using the individual and organization rules, as applicable.
- **Limited Liability Partnerships**
  - Treat general partners of a limited liability partnership as you would general partners in a general partnership.
  - It is advisable when filing against the limited liability partnership itself to rely on the name of the partnership in the “Statement of Qualification” filed on the Secretary of State’s website (or the most recent amendment to such). If informed that the partnership name is different than the name on the Statement of Qualification, then advisable to file under that name as well.

# Determining Name of Personal Trust

- Name to be used for the trust is the name identified within the trust agreement itself.
  - Example: “John Doe Irrevocable Trust” should be used if the Trust Agreement contained the following provision:

- If trust agreement fails to contain a term expressly identifying the name of the trust, then the name that appears on the title page of the trust AND the name of the grantor/settlor should be used.
  - Example: “John Doe” AND “John Doe Irrevocable Trust” should both be used if the Trust Agreement’s title page contained the following name:

# Determining Name of Personal Trust & Estate with Personal Representative

- Personal Trusts:
  - For UCC Financing Statements, the box “held in a Trust” in section 5 must be checked.
  - Also, must provide additional information in the Financing Statement distinguishing the trust from other trusts having the same settlor/grantor, if any:
    - Example: John Doe Trust Executed July 2, 2013
  
- Estates Administered by Personal Representative:
  - UCC Financing Statement should be filed on the name of the decedent.
  - For UCC Financing Statements, the box “being administered by a Decedent’s Personal Representative” in section 5 must be checked.

# Implementation of Procedures to Track Legal Name

- Important to have procedures in place to track debtor's legal name changes.
- Potential procedures:
  - Request debtor to provide notification of any changes in their legal name.
  - Contact debtor when license is set to expire to review renewed license.
  - Request to review debtor's driver's license on a periodic basis to ensure proper filing.

# Change of Events Requiring Amendment of Financing Statements

- Driver's License Event:
  - Renewal – If driver's license is renewed or reissued and the name on the license changes, then lender must amend UCC filing within 4 months of renewal.
  - Expiration - If driver's license expires and is not renewed and the individual's correct name is different in any way from the name on the expired driver's license, then lender must amend UCC filing within 4 months of expiration.
- Individual Moves to Another State. Lender must discover the move and file a new UCC financing statement within 4 months of the move in the new state. Failure to file could result in loss of perfection in all filing-type collateral.
- Individual Changes Sole Proprietorship to a Legal Entity. Lender must discover change within:
  - 4 months of the change if in same filing jurisdiction and amend to prevent loss of perfection in new filing-type collateral acquired after 4 months; OR
  - 1 year of the change and refile in new jurisdiction to prevent loss of perfection in all filing-type collateral.



**CAUTION:**  
This is not an  
amendment.

**INFORMATION STATEMENT**  
FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)

**Print**

**Reset**

**THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY**

1. Identification of the **RECORD** to which this **INFORMATION STATEMENT** relates

1a. INITIAL FINANCING STATEMENT FILE NUMBER	1b. RECORD INFORMATION TO WHICH THIS INFORMATION STATEMENT RELATES
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2. Check one of these three boxes to indicate the claim made by this **INFORMATION STATEMENT**

2a.  **RECORD IS INACCURATE.** Enter in item 3 the basis for the belief by the Debtor of Record identified in item 5 that the RECORD identified in item 1 is inaccurate and indicate the manner in which the person believes the RECORD should be amended to cure the inaccuracy

2b.  **RECORD WAS WRONGFULLY FILED.** Enter in item 3 the basis for the belief by the Debtor of Record identified in item 5 that the RECORD identified in item 1 was wrongfully filed

2c.  **RECORD FILED BY PERSON NOT ENTITLED TO DO SO.** Enter in item 3 the basis for the belief by the Secured Party of Record that the person that filed the RECORD identified in item 1 was not entitled to do so under UCC Section 9-509

3. Basis for claim of box checked in item 2

4. If this **INFORMATION STATEMENT** relates to a RECORD filed [or recorded] in a filing office described in Section 9-501(a)(1) and this **INFORMATION STATEMENT** is filed in such a filing office, provide the date [and time] on which the **INITIAL FINANCING STATEMENT** identified in item 1a above was filed [or recorded]

4a. DATE	4b. TIME
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5. NAME of PERSON filing this **INFORMATION STATEMENT**

5a. ORGANIZATION'S NAME				
OR	5b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

## Search Procedures After July 1, 2013

- At least until July 1, 2018, and for all new UCC filing-type secured loans to individuals, search under:
  - Driver's license name,  
AND
  - Name by which the individual otherwise is generally known,  
AND
  - Surname, First name
- If prior filings of other secured creditors appear, address priority issues before proceeding to close and fund.
- A UCC filing predating July 1, 2013, could have priority over a later filing even though the prior UCC filing was not filed on the current driver's license name.
- Ask individual debtors whether their name changed on the driver's license during the past 5 years. If so, also search that other name.

## **Filings After July 1, 2013**

- All new filings must comply with the amended Article 9.
- Whenever there has been a change in circumstances requiring action by the secured party, then the existing filing must comply with amended Article 9.
- If an existing filing reaches its lapse date, then the filing must comply with amended Article 9 to remain effective.

# Transition Rules

- Financing Statements that were properly filed prior to July 1, 2013 remain effective until such filing lapses or a change in circumstances arise requiring the secured party to amend it.
  - Examples of changes in circumstances – Individual debtor's name changes, sole proprietorship is converted into a different legal entity, or a continuation statement is filed.
  - All such examples will require the filing to comply with Revised Article 9.



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## Questions?

Simmons Perrine Moyer Bergman PLC

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