



Simmons Perrine Moyer Bergman

Iowa Mechanics Lien and Revised Article 9 Update

March 6, 2014 | 11:45-1:00 PM

Presented by:

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Simmons Perrine Moyer Bergman

Mechanic's Lien

Iowa Mechanic's Lien Basics

- Anyone who furnishes material or labor on a *private* building or land for improvement, alteration or repair can file a mechanic's lien.
- If properly perfected, the lien can be foreclosed and the property sold to pay the lienholder.
- Mechanic's lien law is "entirely statutory," but there are many deadlines, tricks and pitfalls built in.
- The tricks affect contractors', subcontractors', owners' and lenders' rights in many ways.

Mechanic's Notice & Lien Registry

In Iowa, the game changed on January 1, 2013

- Before January 1, 2013, all mechanic's liens were filed with the Clerk of Court in the county where the real estate is located.
- As of January 1, 2013, mechanic's liens are filed online with the statewide registry maintained by the Secretary of State.
- The new central registry will display the existence of liens and be searchable by address and tax parcel identification number.

Online Registry of Iowa Mechanic's Lien

IOWA SECRETARY OF STATE
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Mechanic's Notice and Lien Registry

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Note: The Secretary of State's Office is a filing repository and does not determine the authority of a filer to make a submission. It is the responsibility of authorized filers to frequently check the status of filings on the Web site to ensure protection against submissions by an unauthorized party. If you determine that a submission was not authorized, it is your responsibility to seek legal action to protect your status.

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- Business Entity Forms & Fees
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- UCC Search

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Secretary of State
First Floor, Lucas Building
321 E. 12th St.

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Online Search Result of Iowa Mechanic's Lien

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Searched: **Contract** Results 142

<u>MNL#</u>	<u>Document</u>	<u>Posting Date</u>	<u>Contractor/Builder</u>	<u>City</u>	<u>Posted By</u>
003512-0	Mechanic's Lien	2/3/2014	Con-Struct	Ames	Con-Struct (Jennifer Herrick)
003512-2	Satisfaction of Lien	2/24/2014	Con-Struct	Ames	Con-Struct (Jennifer Herrick)
003512-0	Mechanic's Lien	2/3/2014	Con-Struct, Inc	Ames	Con-Struct (Jennifer Herrick)
002345-0	Mechanic's Lien	9/20/2013	CON-STRUCT, INC.	MARSHALLTOWN	Con-Struct, Inc. (Kim Johnson)
000335-0	Mechanic's Lien	2/28/2013	A & A Contracting Company	St Louis	Tri City Electric (Colleen Schwarz)
000335-2	Satisfaction of Lien	3/12/2013	A & A Contracting Company	St Louis	Tri City Electric (Colleen Schwarz)
000317-0	Mechanic's Lien	2/25/2013	A & A Contracting Company	St. Louis	Tri City Electric (Colleen Schwarz)
000317-2	Withdrawal	3/1/2013	A & A Contracting Company	St. Louis	Tri City Electric (Colleen Schwarz)
000336-0	Mechanic's Lien	2/28/2013	A & A Contracting Company	St Louis	Tri City Electric (Colleen Schwarz)
000336-2	Satisfaction of Lien	4/26/2013	A & A Contracting Company	St Louis	Tri City Electric (Colleen Schwarz)
000343-0	Mechanic's Lien	3/1/2013	A & A Contracting Company	St Louis	Tri City Electric (Colleen Schwarz)
000343-2	Satisfaction of Lien	4/29/2013	A & A Contracting Company	St Louis	Tri City Electric (Colleen Schwarz)
000299-0	Commencement of Work	2/21/2013	H & S Contracting	Trent	Ideal Ready Mix (Sulene Nelson)
000299-1	Preliminary Notice	2/21/2013	H & S Contracting	Trent	Ideal Ready Mix (Sulene Nelson)
000299-5	Mechanic's Lien	6/18/2013	H & S Contracting	Trent	Ideal Ready Mix (Sulene Nelson)
000299-7	Satisfaction of Lien	7/8/2013	H & S Contracting	Trent	Ideal Ready Mix (Sulene Nelson)
003546-0	Mechanic's Lien	2/7/2014	Rio Contracting, LLC	Springfield	Bikakis Law Firm (John Mayne)
002130-0	Mechanic's Lien	8/30/2013	A&A Contracting, Inc.	St. Louis	Churchill & Churchill, P.C. (Mark Churchill)
003222-0	Mechanic's Lien	12/30/2013	Cardinal Contractor	Waterloo	Ernest Spencer Metals Inc. (Neil Spencer)
003222-2	Satisfaction of Lien	2/3/2014	Cardinal Contractor	Waterloo	Ernest Spencer Metals Inc. (Neil Spencer)
000375-0	Mechanic's Lien	3/5/2013	Spectrum Contractors LLC	West Des Moines	Hrubetz Law Firm (Matthew Hrubetz)
000375-2	Satisfaction of Lien	8/27/2013	Spectrum Contractors LLC	West Des Moines	Hrubetz Law Firm (Matthew Hrubetz)



Simmons Perrine Moyer Bergman

Preliminary Notice

MECHANIC'S NOTICE AND LIEN REGISTRY

Matt Schultz
Iowa Secretary of State
321 East 12th Street
Des Moines, IA 50319
sos.iowa.gov



POSTED
MNLN #000299-1
2/21/2013 10:14:59 AM

Preliminary Notice

ORIGINAL MNLN NUMBER / DATE OF FIRST MATERIALS OR LABOR

000299-0 2/13/2013
Original MNLN number Date materials were first furnished or labor was first performed

SUBCONTRACTOR

Ideal Ready Mix Company Inc
Name
PO Box 416
Mailing address
West Burlington Iowa 52655-0416 United States
City State Postal code Country
319-754-4747
Telephone

PERSON CONTRACTING WITH CLAIMANT

H & S Contracting
Name
74101 Tracy Dr
Mailing address
Trenton Missouri 64683
City State Postal code Country

GENERAL CONTRACTOR / OWNER BUILDER

H & S Contracting **General Contractor**
Name Type
74101 Tracy Dr
Mailing address
Trent Missouri 64683
City State Postal code Country
660-789-2658
Telephone

PROPERTY OWNER(S)

Jim Lunkley
Name
19729 320th Ave
Mailing address
Moulton Iowa 52572
City State Postal code Country

PROPERTY INFORMATION

Appanoose
County Other counties
19729 320th Ave
Street address or location of the property if the street address cannot be reasonably identified
Moulton IA 52572
City State Postal code
320273000640000
Tax parcel identification number

NE SE EXC 1.21 AC RD

Legal description

ATTACHMENT

None

POSTED BY

Ideal Ready Mix (Sulene Nelson)

Posted by

Commencement of Work

MECHANIC'S NOTICE AND LIEN REGISTRY

Matt Schultz
Iowa Secretary of State
321 East 12th Street
Des Moines, IA 50319
sos.iowa.gov



POSTED

MNLN #000299-0
2/21/2013 10:12:28 AM

Commencement of Work

COMMENCEMENT OF WORK

2/13/2013
Commencement of work date

GENERAL CONTRACTOR / OWNER BUILDER

H & S Contracting General Contractor
Name Type

74101 Tracy Dr
Mailing address

Trent Missouri 64683
City State Postal code Country

660-789-2658
Telephone

PROPERTY OWNER(S)

Jim Lunkley
Name

19729 320th Ave
Mailing address

Moulton Iowa 52572
City State Postal code Country

PROPERTY INFORMATION

Appanoose
County Other counties

19729 320th Ave
Street address or location of the property if the street address cannot be reasonably identified

Moulton IA 52572
City State Postal code

320273000640000
Tax parcel identification number

NE SE EXC 1.21 AC RD
Legal description

ATTACHMENT

None

POSTED BY

Ideal Ready Mix (Sulene Nelson)
Posted by



MECHANIC'S NOTICE AND LIEN REGISTRY

Matt Schultz
Iowa Secretary of State
321 East 12th Street
Des Moines, IA 50319
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POSTED
MNLN #000299-5
6/18/2013 8:35:46 AM

Mechanic's Lien

ORIGINAL MNLN NUMBER

000299-1
Original MNLN number

CLAIMANT POSTING THE MECHANIC'S LIEN

Ideal Ready Mix Company Inc
Name
PO Box 416
Mailing address
West Burlington Iowa 52655-0416 United States
City State Postal code Country

CURRENT PROPERTY OWNER(S)

James W Lunkley and Judith E Lunkley
Name
19729 320th Ave
Mailing address
Moulton Iowa 52572
City State Postal code Country

INFORMATION FOR PROPERTY TO BE CHARGED WITH MECHANIC'S LIEN

Appanoose
City
19729 320th Ave
Street address or location of the property if the street address cannot be reasonably identified
Moulton IA 52572
City State Postal code
320273000640000
Tax parcel identification number
NE SE EXC 1.21 AC RD
Legal description

MECHANIC'S LIEN INFORMATION

2/13/2013
Date materials were first furnished or labor was first performed
4/3/2013
Date materials were last furnished or labor was last performed
\$ 5,414.86
Amount owed to Claimant

ADDITIONAL INFORMATION

H & S Contracting
General Contractor name
74101 Tracy Dr
Mailing address
Trent Missouri 64683
City State Postal code Country
660-789-2658
Telephone

ATTACHMENTS

Mechanic's Lien is appended to the Posted PDF Document.
Statement of Account is appended to the Posted PDF Document.

CERTIFICATION

I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct. Further, I agree to use an electronic signature in lieu of a handwritten signature, and the Secretary of State agrees to accept the electronic signature.

Robert G Brill 6/18/2013
Electronic Signature Date

POSTED BY

Ideal Ready Mix (Sulene Nelson)
Posted by

All Contractors

- The only change—theoretically—is how contractors and subcontractors file their liens.
- Filings will no longer be made with the Clerk of Court.
- A central registry allows for more convenient and timely searches for mechanic's liens.
- The mechanic's lien filings will function like UCC filings.

Residential Contractors

- “Residential construction” is defined under the Iowa code as “construction on single-family or two-family dwellings occupied or used, or intended to be occupied or used, primarily for residential purposes, and includes real property pursuant to chapter 499B.”
- Residential contractors have notice requirements that do not apply to commercial construction. Therefore, commercial contractors may continue to file liens without meeting the following notice requirements.
- General contractors must post a “Preliminary Notice” within ten days of commencing work.
- Failure to post the notice cuts off lien rights.
- The owner is notified by the general contractor and the secretary of state.
- This notice requirement eliminates the problem with unrecorded liens relating back to the commencement date of the work.

Owner Notice Requirements

- The notice must be sent to the owner's address and, if the owner's address is different than the property address, to the property itself (addressed to the owner).
- The notice must contain the owner's name and address; the name, address and telephone number of the general contractor or owner-builder; the address and legal description of the property; the tax parcel identification number; and the date work started or is anticipated to start.
- General contractor is also required to post a notice of commencement of work to the mechanics' notice and lien registry internet site no later than ten days after commencement of work on the property.
- Subcontractor may post the notice if the general contractor fails to do so.

Failure to Provide Notice

Provide notice to preserve mechanic's lien rights

- If a general contractor fails to provide the notice, it will be barred from asserting a mechanic's lien.
- If a general contractor or owner-builder does not timely post and send the notice, a subcontractor may do so.

Residential Subcontractors

- To assert a mechanic's lien, a subcontractor must post a preliminary notice.
- A subcontractor can claim a mechanic's lien only for labor or material provided after the preliminary notice is posted.
- The subcontractor must also deliver a copy of the notice to the owner by personally serving it via the county sheriff or private process server, mailing the notice by certified mail (so long as the subcontractor obtains a signed return receipt) or by personally delivering the notice to the owner (so long as the owner signs a receipt acknowledging delivery).
- If a subcontractor does not post the Preliminary Notice to the Registry or deliver the Preliminary Notice to the owner, it will be barred from asserting a mechanic's lien.

Upside/Downside

- One stop shopping.
- Good news for lenders worried about unrecorded liens.
- Hard change for residential contractors and subcontractors who are disposed to wait until the project goes bad before filing.

Revised Article 9

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



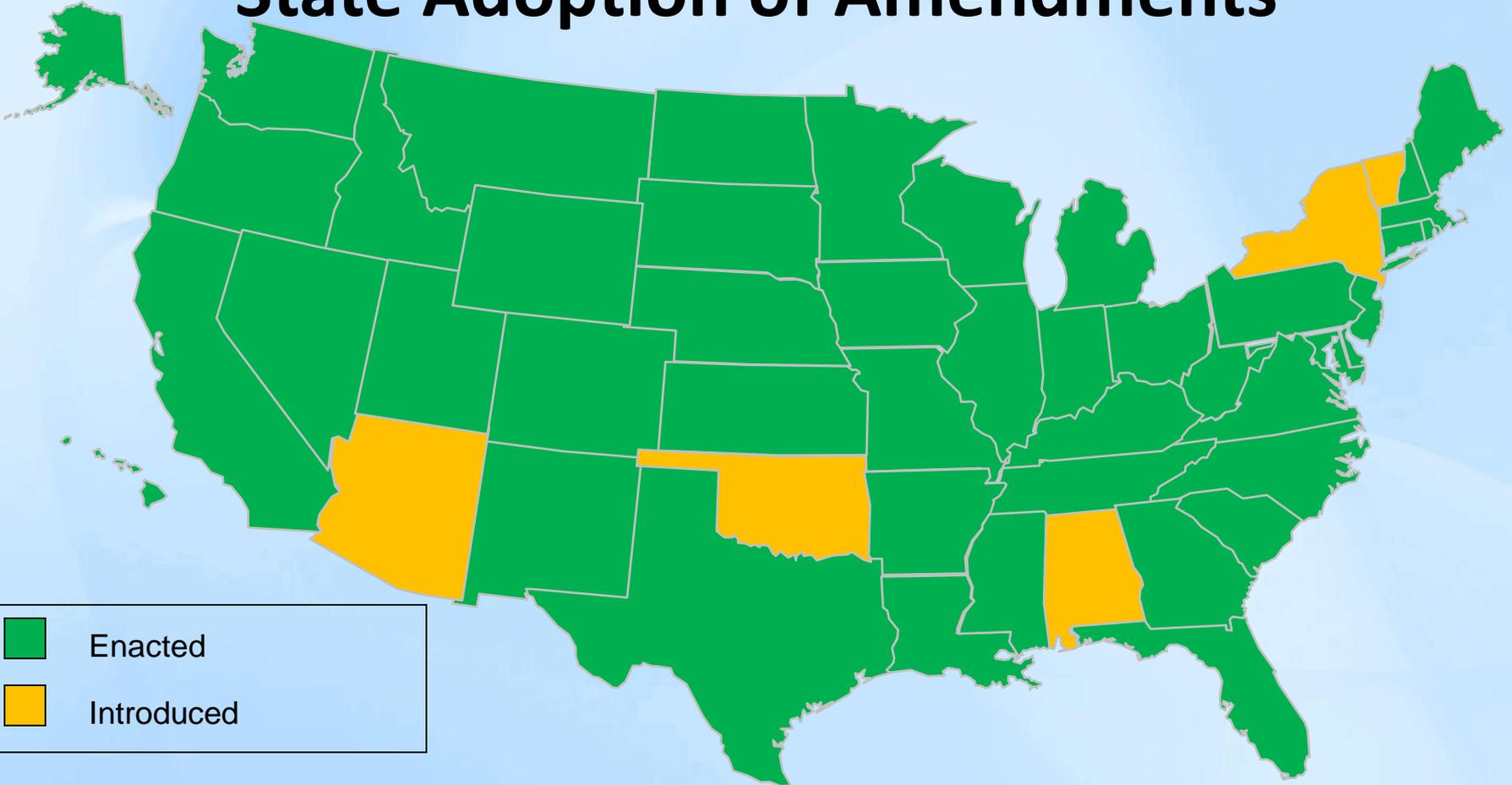
New forms: § 9-521

- 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 Amendments¹

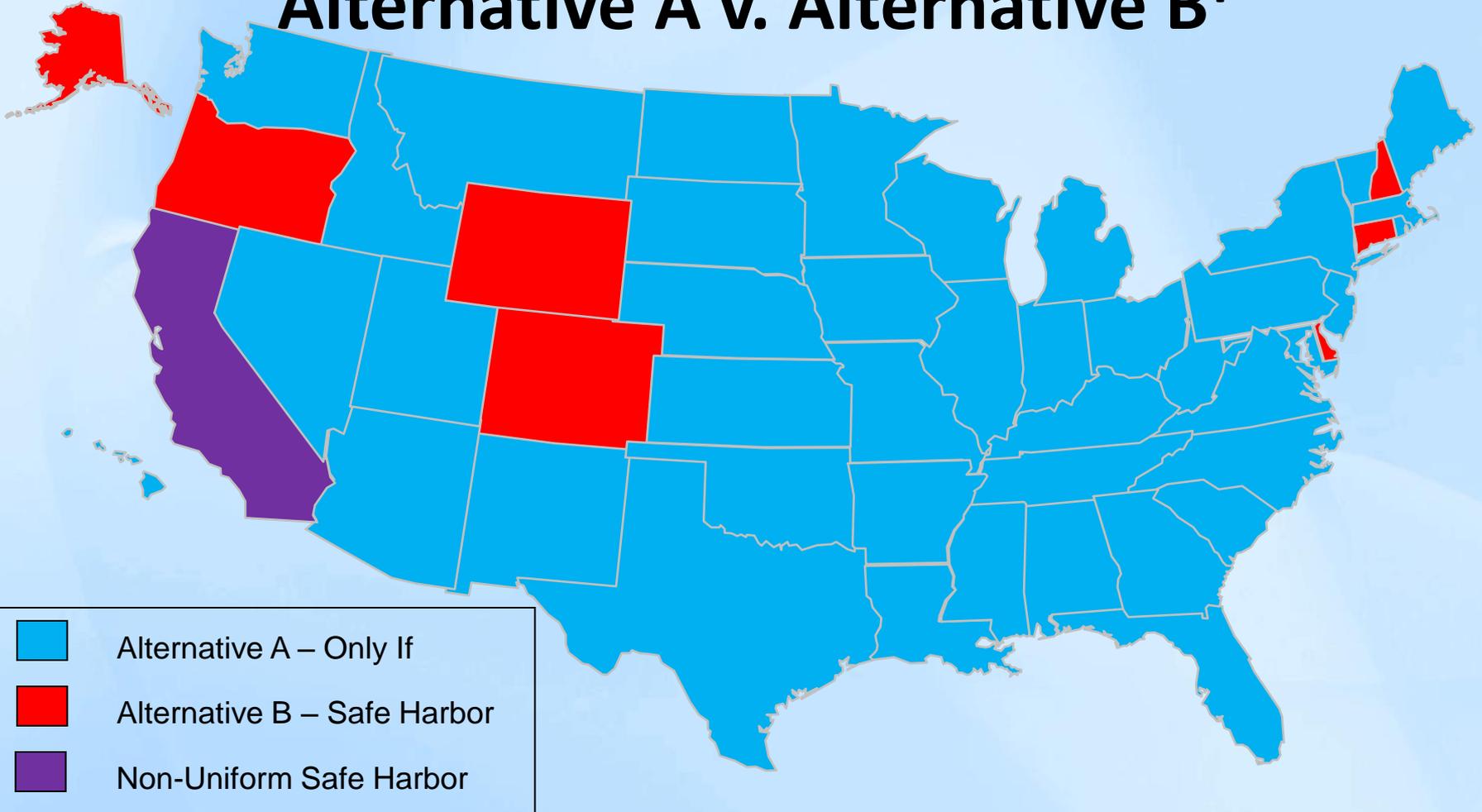


¹As of January 17, 2014.

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

- Revised Article 9 proposes two alternative methods for determining the proper name for UCC filings: **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).
- Iowa and most other states have chosen **Alternative A**.

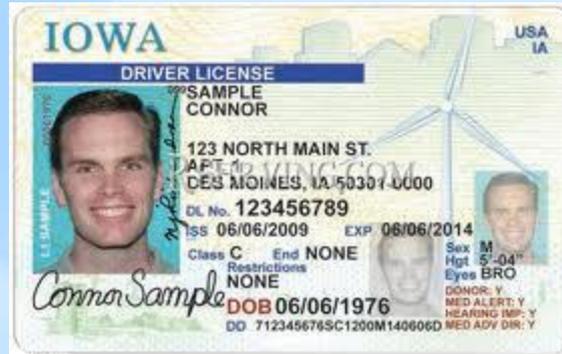
Alternative A v. Alternative B¹



¹As 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. 21

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 Beth part of the first name or is Beth the middle name?

UCC FINANCING 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)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name). If any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME			
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S) (INITIAL(S)) SUFFIX
	Hartman	Mary	Beth
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY
551 12th Street NW	Cedar Rapids	IA	52405 USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name). If any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME			
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S) (INITIAL(S)) SUFFIX
	Hartman	Mary Beth	
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY
551 12th Street NW	Cedar Rapids	IA	52405 USA

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME			
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S) (INITIAL(S)) SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY

4. COLLATERAL: This financing statement covers the following collateral:

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, item 17 and instructions) being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

Public-Finance Transaction Manufactured-Home Transaction A Debtor is a Transmitting Utility Agricultural Lien Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): Lessee/Lessor Consignor/Consignee Seller/Buyer Bailee/Bailor Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

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.

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 courts have held that the 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 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.

Implications of Regulation B

- With the adoption of Revised Article 9, more lenders will likely want to keep a copy of a debtor's driver's license in its files in order to establish that its filing was proper.
- Regulation B applies to all creditors and requires financial institutions and other firms engaged in the extension of credit to “make credit equally available to all creditworthy customers” regardless of sex, marital status, race, color, religion, age, or national origin.
- Regulation B does not expressly prohibit a financial institution from maintaining a copy of a debtor's driver's license in its records.

Implications of Regulation B

- Prior to the adoption of the CIP rules, there was a widely supported premise by regulators that keeping a copy of the debtor's driver's license could lead to discriminatory lending practices as the lender could use such information for discriminatory purposes.
- The adoption of the CIP rules made clear that the keeping of a debtor's driver's license for purposes of verifying a customer's identity is not a violation of Regulation B, but that creditors should ensure proper policies, procedures and safe guards are in place to ensure such information is used properly.

Implications of Regulation B

- Ways of minimizing the risk of violating Regulation B:
 - Keep copy of driver's license in a separate file and not in the loan file itself;
 - If copy of driver's license is in the loan file, ensure it is kept separate from the other customer information such as the financial statements, credit reports, etc.
- I recommend to my bank clients to maintain a copy of the debtor's driver's license unless the bank has other practices indicative of high risk for fair lending disparities.
- I recommend to keep the driver's license in a separate file from the loan file and include instructions in its loan policies restricting access to such copies.

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”).



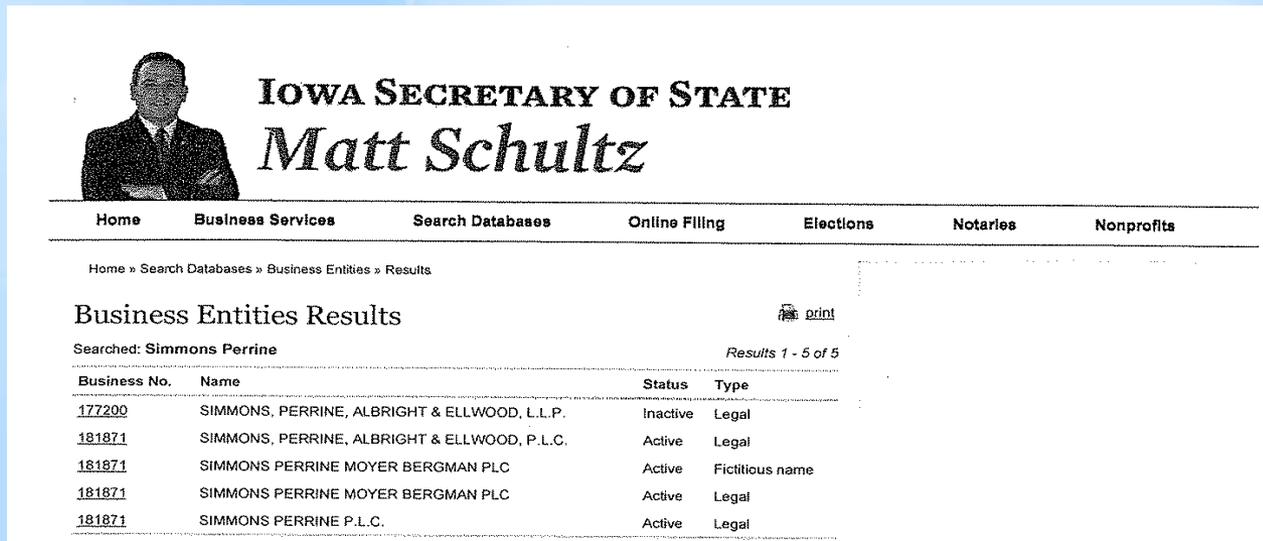
- **New rule:** Use an organization’s “public organic record”
 - Choose the formation document most recently filed with the state not the Secretary of State’s database entry

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

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Business Entities Results [print](#)

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

Business No.	Name	Status	Type
177200	SIMMONS, PERRINE, ALBRIGHT & ELLWOOD, L.L.P.	Inactive	Legal
181871	SIMMONS, PERRINE, ALBRIGHT & ELLWOOD, P.L.C.	Active	Legal
181871	SIMMONS PERRINE MOYER BERGMAN PLC	Active	Fictitious name
181871	SIMMONS PERRINE MOYER BERGMAN PLC	Active	Legal
181871	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.
 - Review any partnership documents available (such as the Partnership Agreement) in order to determine the proper name of the partnership.

➤ 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
---	--

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.

Case Example - In re Miller

- In re Miller, a recent Illinois Bankruptcy case, applied the prior standard that stated: “(a) Sufficiency of debtor's name. A financing statement sufficiently provides the name of the debtor: ... (4) in other cases: (A) if the debtor has a name, only if it provides the individual or organizational name of the debtor[.]”
- 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 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).
- Different result would apply if Revised Article 9 controlled.
 - If Alternative A applied -> the filing would have been effective since the filing matched the name on the debtor’s driver’s license.
 - If Alternative B applied -> the filing would again be effective since the name used matched the debtor’s name as it appeared on his driver’s license which is one of the three names that may be used for an effective UCC filing.



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Questions?

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