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## FINANCIAL INSTITUTION E-BRIEF

### Amendments to Article 9 Address Accuracy of Debtor's Name

As discussed in the prior E-Brief, Nebraska recently adopted substantial amendments to Article 9 of the Nebraska Uniform Commercial Code (UCC), with such amendments being operative on July 1, 2013. This E-Brief continues the discussion, focusing on the additional clarity the amended UCC seeks to provide lenders in determining the proper name to be used for the individual debtor or the registered organization debtor in preparing a financing statement.

#### ***Individual Debtor***

Under the current UCC, a financing statement evidencing a security interest in collateral owned by an individual is sufficient if it identifies the "name of the debtor." While this may seem straight forward, improperly identifying the debtor's name has led to significant problems for secured lenders, including the invalidation of security interests. Many individual debtors use slight variations of their names (e.g. "Joseph" versus "Joe") in official documents. To compound the problem, the current UCC fails to clearly state what official documents a lender may rely upon when ascertaining the debtor's proper name. For example, if the debtor uses a different name on his or her driver's license than what appears on his or her birth certificate, which of the debtor's names should the secured lender utilize on a financing statement?

The amended UCC provides more certainty for lenders in identifying the debtor's name. Specifically, if the debtor has an unexpired Nebraska driver's license, the financing statement *must* use the name that appears on the driver's license. If the debtor has more than one current Nebraska driver's license, the most recently issued license controls. In

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all other situations, the lender must use the “individual name of the debtor or the surname and first personal name of the debtor.”

While the amended UCC provides lenders with more guidance than the current UCC, there are still uncertainties of which lenders should be aware. For example, what happens if the debtor renews his or her driver’s license and uses a different name? It is unclear whether the properly prepared financing statement remains valid or if the lender must correct the financing statement to reflect the debtor’s name on the renewed license. The amended UCC also provides little clarification with respect to debtors who do not have a current Nebraska driver’s license, as it remains unclear what documents a lender should refer to when determining the debtor’s “individual name,” “surname,” or “first personal name.”

#### ***Registered Organization Debtor***

The amended UCC also provides clarification on the proper name of a “registered organization.” A registered organization is essentially an entity that is required to maintain a public record of its existence (e.g. corporations, LLCs and LLPs).

Under the current UCC, a financing statement evidencing a security interest in collateral owned by a registered organization is sufficient if it identifies the name of the organization “indicated on the public record.” But, it is unclear which documents in the “public record” a lender is required to reference when determining the registered organization debtor’s proper name. For example, a corporation’s Articles of Incorporation may provide a different name than what appears on the Secretary of State’s searchable online database.

Under the amended UCC, the lender must use the name of the debtor appearing on the “public *organic* record.” The public organic record refers to the initial filing made by the registered organization (e.g. the Articles of Incorporation, the Certificate of Organization, etc.).

**In summary, even though the amended UCC provides a degree of clarification for lenders in determining a debtor’s proper name, lenders should still take certain precautions when completing and recording financing statements even after the new rules take effect on July 1,**

**2013. In order to minimize the chance of a financing statement being deemed invalid, particularly for individual debtors, a lender should continue to record a financing statement for every name the lender is aware the debtor uses.**

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