

## DELAWARE ADOPTS THE 2010 ARTICLE 9 AMENDMENTS

By Patrick M. Horan

*Requirements for financing statements to be filed in Delaware will change on July 1, 2013 with the adoption of the 2010 Amendments to Article 9 of the UCC.*

On May 3, 2013, with the signing of HB8 by Governor Jack Markell, Delaware enacted the 2010 Amendments to Article 9 of the Uniform Commercial Code. The changes will take effect on July 1, 2013.

Article 9 provides the rules by which a creditor may take an interest in a debtor's personal property in connection with a secured transaction. This "security interest" allows a creditor to repossess and sell the property of a debtor should the debtor default on the transaction.

Amendments to Article 9 were jointly proposed in 2010 by the National Conference of Commissioners on Uniform State Laws and the American Law Institute and have now been adopted by the State of Delaware. Although there are a number of technical changes that will take effect as a result of the Delaware amendments, there are three changes worth focusing on. First, with HB8, Delaware has selected the proposed Alternative B — "safe harbor" rule — as it relates to an individual debtor's name on a financing statement. Under this "safe harbor" rule, the current requirement of including an "individual's name" on a financing statement is still intact. In addition, it is now proper to utilize a name on a driver's license or a Delaware-issued identification card, or an individual's surname and first personal name to complete a financing statement. This amendment also clarifies that the proper name of a business entity or other registered organization is the name filed with Delaware and provided on the entity's charter or other constitutive documents.

Second, the amendments change the rules relating to a perfected security interest in property acquired after a debtor relocates to a new jurisdiction. Although the current rules protect a perfected security interest for four months after any relocation before a creditor is required to perfect that interest in a new jurisdiction, the protection of this grace

period has never applied to property acquired after the move. Now, with the effect of this amendment, that grace period will extend to after-acquired property and likewise protect a creditor's interest in the newly acquired property for up to four months while the creditor is perfecting its interest in the new jurisdiction.

Third, secured parties may now clarify their position if a creditor believes that an amendment to a financing statement was not authorized. Although previously available to debtors only, creditors may now file what was previously known as a "correction statement" and, following this amendment, is now known as an "information statement." Although these information statements do not have any binding legal effect, they do create a public record that a claim was wrongfully filed. These new rules do not require a party to file an information statement, even if the party is aware of the erroneous filing. ♦

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