

community BANKER

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Welcome to the latest issue of the COMMUNITY BANKER.

The Community Banker is prepared by attorneys at Olson & Burns P.C. to provide information pertaining to legal developments affecting the field of banking. In order to accomplish this objective, we welcome any comments our readers have regarding the content and format of this publication. Please address your comments to:

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The attorneys at Olson & Burns represent a wide range of clients in the financial and commercial areas. Our attorneys represent more than 30 banks throughout North Dakota.

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PRACTICAL POINTERS FOR UCC FILING

The Entity Borrower:

Using the correct debtor name on a UCC filing (or search, for that matter) is essential. Section 41-09-74 of the North Dakota Century Code requires the debtor name to appear exactly as it is listed on the “public organic record” most recently filed with or issued or enacted by the Secretary of State of the State of the entity’s creation or organization.

As always, a secured party should obtain and review an entity’s Certificate of Good Standing to ensure that a company is properly registered with the state, is current with state fees and required document filings, and is legally permitted to engage in business activities in the state. However, don’t rely on the Certificate of Good Standing when searching for the correct name to enter on a UCC filing.

Spend the time and make the effort to get it right.

Throughout the country there continue to be cases where slight deviations or errors meant a



secured party failed to sufficiently provide the name of the debtor and the financing statement was “seriously misleading.” See N.D.C.C. § 41-09-77. Some of the minor deviations or mistakes that affected a secured party’s perfection include making a company name a possessive (e.g., Toby Sport Shop as Toby’s Sport Shop), using an ampersand “&” instead of using the word “and”, using numerals when the numbers in the corporation name are spelled out (Seventh on Broadway became 7th on Broadway), or using incorrect

punctuation.

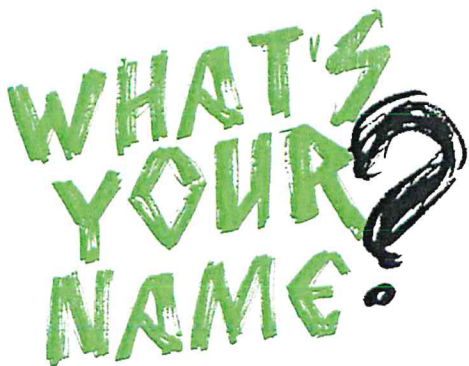
Remember that filing against a trade name or fictitious name of the debtor is ineffective. Additionally, the debtor’s legal name in the UCC financing statement should *never* include the trade name (e.g., Dakota Tree, Inc. d/b/a Jack’s Lumber) because including that d/b/a could render the UCC filing ineffective depending on whether the filing office’s search logic would catch that name when searching the exact legal name Dakota Tree, Inc. If the thought of not filing against a well-known trade

name gives you heartburn (even though it's ineffective), you can **1)** provide only the exact legal name of the entity in the first Debtor Name field in the financing statement and **2)** provide the trade name only in the Additional Debtor field.

Sometimes, a mistake in the debtor's name will not be fatal to your filing and you won't be left unperfected. If a third party conducts a UCC search using the debtor's correct legal name and the filing office's standard search logic *discloses* a financing statement that fails sufficiently to provide the name of the debtor, the erroneous name provided does *not* make the financing statement seriously misleading. *See* N.D.C.C. § 41-09-77. In effect, a secured party might have an error in the debtor's name and remain perfected in some states because the search logic caught the name; in other states, the search logic did not disclose the debtor because of the error in the correct legal name and the secured party is no longer perfected.

The Individual Borrower:

One would think that filing against an individual natural person would be much simpler, but that's not always the case. In order to be perfected, the lender must determine the individual's correct legal name. If the debtor is a person to whom the State of North Dakota has issued a driver's license or identity card that has not expired, the financing statement must provide the name on the driver's license or identity card. If the State of North Dakota has issued an individual more than one driver's license or identity card, use the debtor's name provided on the one that was issued *most recently*. N.D.C.C. §41-09-74.



Things get a little more complicated if the debtor is a person who does not have a North Dakota driver's license or identity card. In that case, the financing statement must use the "individual name of the debtor or the surname and first personal name of the debtor." N.D.C.C § 41-09-74. Where do you get this information? Social Security Card? Tax Return? Birth Certificate? The UCC doesn't tell us. Whichever document is used, be sure that the file has a copy of the document and perhaps a note to the file giving the reason why that particular document was used.