

***THE NAME OF THE DEBTOR:  
FILINGS AGAINST TRUSTS  
UNDER  
UNIFORM COMMERCIAL CODE ARTICLE 9***

**BY  
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The accurate completion of a UCC financing statement is a critical component in perfecting a security interest. The section of a financing statement that is most likely to be completed improperly because of careless errors and in some cases uncertainty over who is the debtor is the “name of debtor” section. I have heard it estimated that up to 25% of filed financing statements incorrectly name the debtor. Yet the name of the debtor is at the heart of the filing system and a critically important section of the UCC financing statement because financing statements are indexed alphabetically according to the debtor’s name and perfection of the security interest depends on the accuracy of this information. Although an individual name may be incorrectly stated with the use of a nickname or a corporate name may be incorrect because of the use of a tradename, the name of a debtor to insert in box 1 of the UCC financing statement is usually clear, but one instance in which the name of the debtor is not obvious (and even counterintuitive) is where the debtor is a trust or a trustee acting with respect to property held in trust. This article focuses on getting the name of the debtor correct in transactions in which the debtor is a trust or trustee<sup>1</sup>. All section references in this article are to Revised Article 9 of the Uniform Commercial Code as adopted in Illinois.

A debtor trust may be a trust that is used for estate planning purposes, such as a family trust or an insurance trust, a creditors trust created under an assignment for the benefit of creditors, or a statutory trust such as a Delaware statutory trust.

**Rules for Providing the Debtor’s Name on the Financing Statement.** Section 9-503 explains the rules for determining the debtor’s name on the financing statement. In the case where the debtor trust is a registered organization, Section 9-503(a)(1) provides that a financing

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<sup>1</sup> I received insight and some information regarding this article from an article written by Norman M. Powell, Esq. His article originally appeared in the *Uniform Commercial Code Law Journal*, 35 UCC L.P.J. 91 (2002).

statement sufficiently provides the name of the debtor if the financing statement provides the name of the debtor indicated “on the public record of the debtor’s jurisdiction of organization which shows the debtor to have been organized”. The most common instance, I believe, where the debtor is a trust, is the case where the trust is an estate planning type trust such as a family trust and the trust is not a registered organization. The applicable rules for naming the debtor in the financing statement where the debtor is not a registered organization are found in Section 9-503(a)(3). That Section provides that a financing statement sufficiently names the debtor:

“(3) if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

(A) provides the name specified for the trust in its organic documents, or if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

(B) indicates, in the debtor’s name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust;”

Because it is at times not intuitive or clear as to what debtor name is to be used under the 9-503(a)(3) rules, or who is the debtor person having an interest in the collateral, it is my practice to use a “belt and suspenders approach” and file against each debtor name possibility provided for in Section 9-503(a)(3) even though that Section appears to require only the trust name if one is provided in the trust agreement. Therefore, in the case where John H. Smith, Jr. is the settlor of a family trust which is named in the trust agreement as the “John H. Smith, Jr. Family Trust”, I recommend filing one UCC financing statement naming the debtor as “John H. Smith, Jr. Family Trust” and a second one naming the debtor as “John H. Smith, Jr.” In the case where John H. Smith, Jr. is named as the debtor, the miscellaneous section of the financing statement addendum should indicate that debtor Smith is acting in the capacity of a trustee of the trust. In

each case, the appropriate item should be checked in box 17 to indicate if the debtor is a trust or a trustee acting with respect to property held in trust. Two additional precautions: (1) do not include any modification of or words additional to the debtor's name in box 1a or box 1b; and (2) do not use the trustee name in box 1a or box 1b unless you have an unnamed trust whose settlor and trustee are one and the same. Additional words in the debtor box of the financing statement may render it seriously misleading because the applicable search logic would not discover the financing statement in a UCC search.

I have attached to this article a filled-in example of each of the two trust financing statements described in the last paragraph.

**Location of Debtor; Where to File.** Once we have determined who the debtor is, we can determine where to file a financing statement against trusts and trustees. Except for filings with respect to real estate related collateral such as fixtures, timber and as-extracted collateral, Article 9 of the UCC provides for filing in the debtor's location, without regard to the collateral covered by the financing statement. Section 9-307 sets forth the criteria for determining the location of the debtor. If the trust is a statutory trust, it generally is the entity that holds legal title to the trust estate and, therefore, is "a person having an interest in collateral". According to the definition of debtor in the UCC, such a person is the debtor for financing statement purposes. If such a trustee is a registered organization organized under state law, according to Section 9-307(e), it is located in the state under whose law it is organized. For example, Wilmington Trust Company, a Delaware banking corporation, is located in Delaware. If the trustee is an organization but it is not a registered organization organized under state or federal law, it is located at its place of business if it has only one place of business, or its chief executive office if it has more than one place of business. A trustee that is an individual is located at the

individual's principal residence. In accordance with Section 9-501, the place to file the financing statement to perfect a security interest in non-possessory collateral (except for the limited circumstances stated above) for the Delaware organization is the Delaware Secretary of State and the place to file for the Illinois located non-registered organization and Illinois located individuals is the Illinois Secretary of State.

**Conclusion.** The first and most critical step in the perfection of a security interest in non-possessory collateral is getting the name of the debtor right. This is at the heart of the filing system. Section 9-506 requires that the Section 9-503 name on the financing statement be disclosed by a search using the "correct" name mandated by Article 9 and the filing office's standard search logic. If the debtor's name is not disclosed by such search, it is "seriously misleading" as a matter of law and, therefore, ineffective to perfect the security interest. In addition to getting the debtor's name right, you must get the debtor who has the interest in the collateral right. In the case of trusts the proper name of the debtor is not always obvious or, in some cases, counterintuitive. I hope this article provides some insight into getting the debtor name right with respect to trust debtors.

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

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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<br><b>JOHN H. SMITH, JR. FAMILY TRUST</b> |                                   |                          |                                  |   |
| OR  | 1b. INDIVIDUAL'S LAST NAME        | FIRST NAME               | MIDDLE NAME                      | SUFFIX  |
| 1c. MAILING ADDRESS<br><b>123 MAIN STREET</b>                     |                                   | CITY<br><b>ANYPLACE</b>  | STATE<br><b>IL</b>               | POSTAL CODE<br><b>60000</b>   |
| 1d. <u>SEE INSTRUCTIONS</u>                                       | ADD'L INFO RE ORGANIZATION DEBTOR | 1e. TYPE OF ORGANIZATION | 1f. JURISDICTION OF ORGANIZATION | 1g. ORGANIZATIONAL ID #, if any<br><input checked="" type="checkbox"/> NONE |

**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        | FIRST NAME               | MIDDLE NAME                      | SUFFIX   |
| 2c. MAILING ADDRESS         |                                   | CITY                     | STATE                            | POSTAL CODE  |
| 2d. <u>SEE INSTRUCTIONS</u> | ADD'L INFO RE ORGANIZATION DEBTOR | 2e. TYPE OF ORGANIZATION | 2f. JURISDICTION OF ORGANIZATION | 2g. ORGANIZATIONAL ID #, if any<br><input type="checkbox"/> NONE |

**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<br><b>MAIN STREET BANK</b> |                            |                        |                    |                             |
| OR   | 3b. INDIVIDUAL'S LAST NAME | FIRST NAME             | MIDDLE NAME        | SUFFIX                      |
| 3c. MAILING ADDRESS<br><b>500 MAIN STREET</b>      |                            | CITY<br><b>CHICAGO</b> | STATE<br><b>IL</b> | POSTAL CODE<br><b>60000</b> |

**4. This FINANCING STATEMENT covers the following collateral:**

ALL ASSETS OF DEBTOR NOW OWNED OR HEREAFTER ACQUIRED.

|  |  |   |               |              |          |                |
|--|--|---|---------------|--------------|----------|----------------|
| 5. ALTERNATIVE DESIGNATION [if applicable]:  | LESSEE/LESSOR                            | CONSIGNEE/CONSIGNOR   | BAILEE/BAILOR | SELLER/BUYER | AG. LIEN | NON-UCC FILING |
| 6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum | <input type="checkbox"/> (if applicable) | 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] (optional) | All Debtors   | Debtor 1     | Debtor 2 |                |

**8. OPTIONAL FILER REFERENCE DATA**

IL - Secretary of State

# UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

|  |                            |            |                     |
|--|----------------------------|------------|---------------------|
| 9a. ORGANIZATION'S NAME<br>JOHN H. SMITH, JR. FAMILY TRUST |                            |            |                     |
| OR   | 9b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME, SUFFIX |

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

|                              |                                   |                           |                                   |                                  |                               |         |
|------------------------------|-----------------------------------|---------------------------|-----------------------------------|----------------------------------|-------------------------------|---------|
| 11a. ORGANIZATION'S NAME     |                                   |                           |                                   |                                  |                               |         |
| OR                           | 11b. INDIVIDUAL'S LAST NAME       |                           | FIRST NAME                        | MIDDLE NAME                      | SUFFIX                        |         |
| 11c. MAILING ADDRESS         |                                   |                           | CITY                              | STATE                            | POSTAL CODE                   | COUNTRY |
| 11d. <u>SEE INSTRUCTIONS</u> | ADD'L INFO RE ORGANIZATION DEBTOR | 11e. TYPE OF ORGANIZATION | 11f. JURISDICTION OF ORGANIZATION | 11g. ORGANIZATIONAL ID #, if any |                               |         |
|                              |                                   |                           |                                   |                                  | <input type="checkbox"/> NONE |         |

12.  ADDITIONAL SECURED PARTY'S or  ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

|                          |                             |  |            |             |             |         |
|--------------------------|-----------------------------|--|------------|-------------|-------------|---------|
| 12a. ORGANIZATION'S NAME |                             |  |            |             |             |         |
| OR                       | 12b. INDIVIDUAL'S LAST NAME |  | FIRST NAME | MIDDLE NAME | SUFFIX      |         |
| 12c. MAILING ADDRESS     |                             |  | CITY       | STATE       | POSTAL CODE | COUNTRY |

13. This FINANCING STATEMENT covers  timber to be cut or  as-extracted collateral, or is filed as a  fixture filing.

14. Description of real estate:

16. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.

Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box.

- Debtor is a TRANSMITTING UTILITY
- Filed in connection with a Manufactured-Home Transaction — effective 30 years
- Filed in connection with a Public-Finance Transaction — effective 30 years

# UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

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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: SMITH      FIRST NAME: JOHN      MIDDLE NAME: H.      SUFFIX: JR.

1c. MAILING ADDRESS: 123 MAIN STREET      CITY: ANYPLACE      STATE: IL      POSTAL CODE: 60000      COUNTRY: USA

1d. SEE INSTRUCTIONS      ADD'L INFO RE ORGANIZATION DEBTOR      1e. TYPE OF ORGANIZATION      1f. JURISDICTION OF ORGANIZATION      1g. ORGANIZATIONAL ID #, if any  NONE

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      FIRST NAME      MIDDLE NAME      SUFFIX

2c. MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY

2d. SEE INSTRUCTIONS      ADD'L INFO RE ORGANIZATION DEBTOR      2e. TYPE OF ORGANIZATION      2f. JURISDICTION OF ORGANIZATION      2g. ORGANIZATIONAL ID #, if any  NONE

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: MAIN STREET BANK

OR

3b. INDIVIDUAL'S LAST NAME      FIRST NAME      MIDDLE NAME      SUFFIX

3c. MAILING ADDRESS: 500 MAIN STREET      CITY: CHICAGO      STATE: IL      POSTAL CODE: 60000      COUNTRY: USA

4. This FINANCING STATEMENT covers the following collateral:

ALL ASSETS OF DEBTOR NOW OWNED OR HEREAFTER ACQUIRED.

5. ALTERNATIVE DESIGNATION (if applicable):  LESSEE/LESSOR     CONSIGNEE/CONSIGNOR     BAILEE/BAILOR     SELLER/BUYER     AG. LIEN     NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum  if applicable      7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (ADDITIONAL FEE)  (optional)       All Debtors     Debtor 1     Debtor 2

8. OPTIONAL FILER REFERENCE DATA

IL - Secretary of State



# UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

## 9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

|                            |            |                     |
|----------------------------|------------|---------------------|
| 9a. ORGANIZATION'S NAME    |            |                     |
| OR                         |            |                     |
| 9b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME, SUFFIX |
| SMITH                      | JOHN       | H., JR.             |

## 10. MISCELLANEOUS:

JOHN H. SMITH, JR., AS TRUSTEE OF THE  
JOHN H. SMITH, JR. FAMILY TRUST

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

## 11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

|                             |                                   |                           |                                   |  |
|-----------------------------|-----------------------------------|---------------------------|-----------------------------------|--|
| 11a. ORGANIZATION'S NAME    |                                   |                           |                                   |  |
| OR                          |                                   |                           |                                   |  |
| 11b. INDIVIDUAL'S LAST NAME | FIRST NAME                        | MIDDLE NAME               | SUFFIX                            |  |
| 11c. MAILING ADDRESS        | CITY                              | STATE                     | POSTAL CODE                       | COUNTRY  |
| 11d. SEE INSTRUCTIONS       | ADD'L INFO RE ORGANIZATION DEBTOR | 11e. TYPE OF ORGANIZATION | 11f. JURISDICTION OF ORGANIZATION | 11g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE |

## 12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

|                             |            |             |             |         |
|-----------------------------|------------|-------------|-------------|---------|
| 12a. ORGANIZATION'S NAME    |            |             |             |         |
| OR                          |            |             |             |         |
| 12b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX      |         |
| 12c. MAILING ADDRESS        | CITY       | STATE       | POSTAL CODE | COUNTRY |

13. This FINANCING STATEMENT covers  timber to be cut or  as-extracted collateral, or is filed as a  fixture filing.

14. Description of real estate:

16. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.

Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box.

- Debtor is a TRANSMITTING UTILITY
- Filed in connection with a Manufactured-Home Transaction — effective 30 years
- Filed in connection with a Public-Finance Transaction — effective 30 years