

## Commercial Law I

January 23, 2003

### Debtor Location

- Where does a creditor file a financing statement to perfect a security interest against a debtor?
- The creditor files the financing statement where the debtor is *located*?
- And, you might ask, just how does one figure out where a debtor is located?

### Debtor Location

- § 9-307 gives the rules for determining debtor location.
- Some special rules to understand:
  - Individual: principal residence
  - Domestic corporation: jurisdiction of organization
  - Foreign corporation: either DC, place of business or location of chief executive office
  - General partnership: place of business or chief executive office

### Debtor Location

- How do we extract these special rules from the text of the statute?
- We start by looking at defined terms:
  - Organization
  - Registered Organization
  - State

### Debtor Location

- Section 1-201 (28) defines *organization*:  
“Organization” includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

### Debtor Location

- Section 9-102(70) defines *registered organization*:  
“Registered organization” means an organization organized solely under the law of a single State or the United States and as to which the State or the United States must maintain a public record showing the organization to have been organized.

### Debtor Location

- Section 9-102(76) defines *State*:  
“State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States

### Debtor Location

- When you consider a debtor that is an artificial entity—a non-natural person—you first must satisfy yourself that the artificial entity is an “organization”
- From the breadth of the definition of “organization” it is hard to see how an artificial entity would not qualify

### Debtor Location

- Once you have an *organization*, then you must decide whether the organization satisfies the definition for *registered organization*
- This is a bit tricky. A foreign corporation, for example formed under the laws of the United Kingdom, Bermuda, Germany, etc., would not satisfy the definition of registered organization.
- A New York, Delaware or Florida corporation each would satisfy the definition.

### Debtor Location

- Note that the defined term “State” includes jurisdictions that we typically do not think of as states in common usage.
- Note also that limited partnerships, as opposed to general partnerships, may be registered organizations--§9-102, Official Comment 11 and §9-307, Official Comment 4.

### Debtor Location

- Thus, we have an important legal question to decide: for registered organizations we look to the jurisdiction of organization and we file in that jurisdiction
- For other organizations, we must make a factual determination—does the debtor have a single place of business or, instead, does it have a chief executive office.

### Debtor Location

- If we are dealing with a filing that must be made in the location of the chief executive office, we must determine where that office is located.
- If we are dealing with a foreign entity, we need to confirm that the applicable law provides generally for nonpossessory security interests in personal property

## Debtor Location

- If the applicable local law does not provide for nonpossessory security interests in personal property, then the UCC purports to designate the District of Columbia as the applicable jurisdiction for filing a financing statement
- The possibility exists that a transaction with foreign entities does not bear any relation to a State or the District of Columbia. In such a case, it is unlikely that the UCC would apply.
  - See Section 1-105(1)
  - The parties can not vary the choice of law rule by contract—see Section 1-105 (2)

## Debtor Location

- We care about debtor location because of §9-301
- Subject to certain exceptions, the UCC provides that while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral

## Debtor Location

- Contrast the general rule that uses debtor location with some of the more particular rules contained in §9-301, especially (2), which specifies the location of collateral for analysis of possessory security interests.

## Financing Statement Basics

- What are the minimum requirements that a record must satisfy in order to be a financing statement?
- Per §9-502, the record must:
  - Provide the name of the debtor
  - Provide the name of the secured party or its representative
  - Indicate the collateral covered

## Financing Statement Basics

- A financing statement may be filed before a security agreement is signed or a security interest otherwise attaches
  - Such an early filing is often referred to as “pre-filing”

## Financing Statement Basics

- A financing statement must include additional information to be a *fixture filing*
  - Indicate that it covers fixtures
  - Indicate that it should be filed in the real estate records
  - Provide a description of the real estate
  - If the debtor does not have a record interest in the real estate, provide the name of a record owner

### Financing Statement Basics

- The general rule, subject to some notable exceptions, is that a financing statement must be filed to perfect a security interest-- §9-310(a)
  - The exceptions are important to learn
  - In some cases, filing a financing statement does not work
  - In other cases, an alternate method such as control or possession is available

### Financing Statement Basics

- When you file a financing statement, you must include the filing fee
- The description of what constitutes filing is found in §9-516(a)
  - Communication of the record to the filing office and tender of the filing fee constitutes filing
  - Alternately, acceptance of the filing constitutes filing

### Financing Statement Basics

- Now, when a filing occurs can be a complicated matter to figure out for a court, though it should not be
- Consider In the Matter of Flagstaff Foodservice Corporation, Text 85
- This is one area where thinking about policy may help you remember the rule

### Financing Statement Basics

- Basically, what the rule does is allocate the risk of mistakes made by the filing office on the party searching the UCC records office and not on the person who makes a correct filing
- It seems that there is no pressure placed on secured filers to check up on their filings

### Financing Statement Basics

- Using the correct debtor name is critical
- You are permitted to file a tradename
  - However, this merely adds additional information to the record
  - A filing that does not use the debtor's full and correct legal name is seriously misleading
  - There is a savings clause that bails out a mistaken name if the filing office search logic finds the filing by searching under the correct name -- §9-506(c)

### Financing Statement Basics

- Just because a financing statement meets the basic requirements does not mean that the filing office must accept the filing. There are a number of other items that permit a filing office to reject a filing.
- In preparing the actual financing statement you should comply with these additional requirements as well as any local rules.