

# RECENT LEGISLATIVE CHANGES TO ARTICLE 9 OF PENNSYLVANIA'S UNIFORM COMMERCIAL CODE (THE "PENNSYLVANIA UCC")

## *Part One*

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On June 27, 2013, Governor Tom Corbett signed into law Senate Bill 381, which amends several sections of Article 9 of the Pennsylvania UCC (13 Pa. C.S.A. §§9101-9710). Senate Bill 381 was introduced to the Senate floor on February 5, 2013, primarily to enact the 2010 amendments to the Uniform Commercial Code promulgated by The American Law Institute and the Uniform Law Commission (the "2010 Amendments"). The 2010 Amendments to the Pennsylvania UCC became effective on July 1, 2013. This is the first in a three-part series of articles summarizing the more notable and relevant provisions of the 2010 Amendments.

### PROPER ORGANIZATIONAL NAME TO BE USED FOR CORPORATIONS, LIMITED LIABILITY COMPANIES AND OTHER ENTITIES ON UCC FINANCING STATEMENTS

Prior to the 2010 Amendments, §9102(a) of Article 9 stated that the correct name for a "registered organization," such as a corporation or limited liability company, for inclusion on a financing statement was the name on the "public record" maintained by the state in which the organization was organized. The Pennsylvania UCC, however, never defined what composed a "public record." This caused uncertainty as to what constituted a "registered organization" or what document a secured creditor should rely on in order to determine the organization's legal name for purposes of completing the financing statement.

In order to correct this error of omission, the amended §9102(a) redefines a "registered organization" as an organization formed by the filing of a "public organic record." The 2010 Amendments then define a "public organic record" as a record initially filed with a state to form an organization, such as articles of incorporation for a Pennsylvania corporation, a certificate of organization for a Pennsylvania limited liability company, and a certificate of limited partnership for a Pennsylvania limited partnership. All of these records are filed with the Pennsylvania Department of State.

Additionally, under the amended §9102(a), the "registered organization" definition now also includes statutory trusts formed pursuant to a state statute requiring the trusts to file their organic records with the state, as opposed to common law trusts which are not formed by statute. Prior to the 2010 Amendments, Article 9 made no distinction between statutory trusts and common law trusts. Secured creditors should now look to the "public organic records" of these statutory trusts to determine the name to be used on the financing statement as the name of the trust. An example of a Pennsylvania statutory trust is a business trust formed in accordance with 15 Pa. C.S.A. §§9501-9507.

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## CLARIFICATION OF RULES RELATING TO “CONTROL” OF ELECTRONIC CHATTEL PAPER

Prior to the 2010 Amendments, §9105 of the UCC only provided a six-factor test to determine whether a secured party had “control” of electronic chattel paper (“ECP”). Under the 2010 Amendments, a subsection §9105(a) has been introduced, which establishes a general test to determine the control of ECP. Under this general test requirement, a secured creditor only needs to demonstrate that the system employed to evidence the transfer of ECP “reliably establishes the secured party as the person to which the chattel paper was assigned.”

It is important to note that the original six-factor test of pre-amendment §9105 remains in full force and effect at the newly introduced subsection §9105(b), but is maintained only as a safe harbor – not as a mandatory set of requirements. While we suggest that a secured party continue to follow the six factor test as a safe harbor, the general test established by the 2010 Amendments appears to create another opportunity to establish perfection by control, even if one of the six factors is inadvertently not met.

These amendments to the Pennsylvania UCC substantively correspond to 73 P.S. §2260.312 of Pennsylvania’s Uniform Electronic Transactions Act.

## LOCATION OF DEBTORS NOT ORGANIZED UNDER STATE LAW TO BE USED WHEN FILING THE UCC FINANCING STATEMENT

Section 9307(f) provides the rules for determining a federally-organized debtor’s “location,” and thus the state in which a financing statement naming that debtor must be filed. The 2010 Amendments to §9307(f) clarify that for registered entities organized under federal law (most commonly banks), the state in which the “main office,” “home office,” or other “comparable office” (terms frequently used in the federal statutes) of the debtor is the organization’s “location” for purposes of filing the financing statement.

## REMOVAL OF ORGANIZATIONAL INFORMATION ON A FINANCING STATEMENT

Prior to the 2010 Amendments, §9516(b)(5) of the Pennsylvania UCC provided that a financing statement could be rejected if it failed to state the debtor’s (1) type of organization, (2) jurisdiction of organization, and (3) organizational identification number. The 2010 Amendments eliminate any requirement for this data, and financing statements will no longer be rejected for failure to include such information. Notwithstanding this change, we strongly recommend that you continue to include this readily available information on all UCC financing statements unless there is a compelling reason why the filing should be made without the inclusion of this information.

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## USE OF A UCC-5 INFORMATION STATEMENT

Prior to the 2010 Amendments, §9518 of the Pennsylvania UCC allowed a debtor to file a “Correction Statement” when it desired to indicate that a record indexed under the debtor’s name was inaccurate or was wrongfully filed. However, notwithstanding a debtor’s ability under §9518 to file a Correction Statement, the Correction Statement was for informational purposes only and did not render the underlying UCC filing invalid.

Under the 2010 Amendments, “Correction Statements” are now referred to as “Information Statements” and secured parties as well as debtors are now authorized to file such statements. However, as with Correction Statements, the Information Statements, whether filed by a debtor or a secured party are for informational purposes only and do not render the underlying UCC filing invalid. The actual removal of an improperly filed or unauthorized financing statement must still be resolved by an appropriate administrative or legal proceeding.

## CHANGES TO MULTI-STATE APPROVED UCC FORMS (UCC-1 AND UCC-3)

The 2010 Amendments also incorporate by reference and authorize the use as safe harbor forms in Pennsylvania the new versions of UCC-1 and UCC-3 financing statements developed the American Law Institute and the Uniform Law.

***Two more articles highlighting additional changes to Pennsylvania’s UCC will be published over the next four weeks.***

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