

# THE COMMERCIAL FACTOR

Newsletter for the Factoring Industry



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Spring 2000

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## FactorSearch: IFA's Newest Feature

by Bert Goldberg

Although the IFA is still in its first year, so far it has been an extremely successful organization. With this, the third issue of The Commercial Factor, I feel that this demonstrates how far the IFA has come in providing a forum for the factors to communicate.

The IFA web site at <http://www.factoring.org> is the primary means of allowing factors to communicate. The site is currently experiencing an average of nearly 40 hits per business day. The forums are being used and propagated with great information.

Our latest feature, FactorSearch, has been a big success. This new feature matches companies that are looking to be factored with factoring firms. This site is experiencing 14 hits per day and has placed numerous companies with factors.

The original purpose of the IFA was to provide an educational forum. I found that simply due to its web address, we were getting requests from companies looking to be factored. Since Distinctive Solutions is not a factor, we needed to come up with a method to distribute these requests to the members. FactorSearch seemed like the perfect solution.

Both the IFA and FactorSearch are open to all companies that engage in factoring. Signing up and receiving leads from FactorSearch is free. Basic information on the company

looking for factoring is forwarded to you. If you end up booking any deals from FactorSearch, there is a 3% broker commission based on your fees.

In order to sign up for FactorSearch, simply logon onto the IFA web site, select edit/create search criteria from the Membership Directory page. Fill in the information and submit the form. The leads will be forwarded to you automatically.

Companies looking for funding will find the request page at <http://www.factorsearch.com>. They fill out a simple questionnaire and submit it. Thus far the leads have seemed to be a qualified companies due to the fact that they are companies looking expressly for factoring. FactorSearch is designed for factors only, not any other type of financing.

If you have any questions or comments, please forward them to the IFA at [info@factoring.org](mailto:info@factoring.org) or call 800-563-1895.

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**Attention Factoring Companies, Brokers, Banks that Purchase Receivables, CPA's, Accountants, Attorneys or Anyone who Works with Factors or Banks**

**YOU ARE SITTING ON A GOLD MINE . . .  
LET'S DIG THAT GOLD TOGETHER!**

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# The Commercial Factor

Newsletter for the Factoring Industry

The International Factoring Association  
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The International Factoring Association's (IFA) goal is to assist the Factoring community by providing information, training, purchasing power and a resource for the Factors. The IFA provides a way for Commercial Factors to get together and discuss a variety of issues and concerns to the industry. Membership is open to all banks and finance companies that perform financing through the purchase of invoices of other types of accounts receivable.

The Commercial Factor invites the submission of articles of interest to the Factoring industry. For more information on submitting articles or advertisements, please e-mail [info@factoring.org](mailto:info@factoring.org), or call 800-563-1895.

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# FACTORING CUSTOMER'S BANKRUPTCY IS NOT ARMAGEDDON

By Trent L. Rosenthal, Esq.<sup>1</sup> and Gary W. Miller, Esq

Factors face problem customers on the verge of bankruptcy on a daily basis. The typical troubled customer has usually defaulted under the factoring documents, including out of trust situations and/or the factoring of bogus invoices. The factor may sense a customer bankruptcy as it attempts to verify invoices, only to be told that the invoice does not exist or has been paid directly to the customer. Oftentimes, the factor, fearing a customer bankruptcy, will grant unnecessary and detrimental concessions to a customer in an effort to avert a customer's bankruptcy. However, in most situations, the factor would have fared reasonably well in bankruptcy. In fact, the factor may have fared better if the bankruptcy had been filed sooner. A factor should not approach a customer bankruptcy as the "end of the world",

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## There can be benefits of a customer bankruptcy.

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but should instead concentrate its efforts on obtaining the benefits that bankruptcy may offer to creditors in terms of recovery on their claims.

Prior to bankruptcy, factors should shore up their position. For example, the factor should confirm that it has a valid and perfected lien on all of the customer's collateral, including accounts, general intangibles, inventory, equipment, and reserves. It should go without saying that it is absolutely essential that UCC financing statements be promptly filed in the proper place at the commencement of the factoring relationship. A bankruptcy court will grant significant protection to secured creditors with perfected liens. If the lien is not perfected, the claim is generally treated as an unsecured claim. Although it is not always possible to obtain a lien on the customer's equipment and inventory under the competitive market conditions existing for factors today (i.e., other factors may waive the collateral requirement), such lien can greatly enhance a factor's source of recovery in bankruptcy situations. A blanket lien on the hard assets of the business will effectively provide the factor with control over the entire bankruptcy proceedings as a secured creditor.

There can be benefits of a customer bankruptcy. Outside of bankruptcy, creditors are left to their state law remedies. In some cases, state law remedies are slow and cumbersome. On the other hand, bankruptcy will provide significant controls over the liquidation process. In a chapter 7 case, a Trustee is appointed to liquidate the Debtor's assets. Under certain circumstances, including fraud or mismanagement, a Trustee may be appointed in a chapter 11 case. The Trustee can be a factors' best ally. For example, the Trustee can assist the factor in the liquidation of the collateral. The Trustee can also investigate the Debtor's affairs. Assuming the factor has nothing to hide and that the transaction has been properly documented, the factor should not fear the bankruptcy Trustee, but should instead work with the Trustee to liquidate the collateral.

The debtor will have to fully report to the Court and creditors, and will not be able to freely dispose of assets. There are serious sanctions from improperly transferring assets, including a possible criminal offense for violating the bankruptcy crime statutes. Notably, the bankruptcy laws are designed to deal with both hon-

est and dishonest debtors in financial distress.

A factor may consider filing an involuntary bankruptcy case if the debtor is transferring assets and/or has made preferential payments. Because there are risks associated with the filing of an "improper" involuntary case, this course of action is risky and should be evaluated thoroughly. Alternatively, a factor may elect to aggressively pursue all of its contract and state law rights, which will likely force a bankruptcy filing. For example, a direct notification to all non-factored accounts will insure that the debtor does not have funds to use for operations. This will also insure that the cash flow would go to the factor, and would not be diverted to the customer for use in its operations. Seeking turnover and/or a state court receiver may also force a bankruptcy filing. The customer would be left with few options, other than filing a bankruptcy case.

The following general plan of action should be implemented upon discovery of a customer bankruptcy:

- 1) Hire competent bankruptcy counsel experienced in representing factors in bankruptcy settings. A general practitioner will typically not be able to guide the factor through the complex maze of the bankruptcy process. Counsel should be provided with the relevant documentation and accounting, together with all pleadings received by the factor related to the customer's bankruptcy case.

- 2) Retain any collections from factored accounts and/or non-factored accounts in suspense. However, a factor should immediately file a motion for relief from automatic stay asserting that the factored receivables are not "property of the estate", but instead belong to the factor. Many courts will confirm this issue and allow the continued collection of factored accounts and the application of such accounts to reduce the obligations. Bankruptcy Trustees usually agree to this relief. A factor should also seek relief from the stay to collect the non-factored accounts. If a trustee is appointed, he may be willing to assist in the collection of any non-factored accounts. Alternatively, the Trustee may want the factor to collect the accounts and remit any balance to him.

- 3) If the factor has a lien on hard collateral, such as equipment and inventory, the factor should seek relief from stay and/or adequate protection. The factor should argue that the collateral should be promptly liquidated, and the proceeds used to pay the obligations owing to the factor. Alternatively, a factor should demand adequate protection for the use of the collateral.

- 4) Investigate the debtor's affairs, including any possible sources of recovery. This task will usually be performed by the Trustee; however, the factor may have valuable information to provide to the Trustee.

- 5) File a Proof of Claim evidencing the balance due, and provide all supporting documentation. Failure to file a claim can result in automatic disallowance of the claim.

- 6) Monitor the case. Even motions and pleadings that appear routine can have a significant impact on the pre-petition factor. For example, one of the first pleadings typically filed in a case is the debtor's request to use cash collateral. This typically includes the accounts receivable pledged to the factor. Failure to properly protect the factor's claim at this point in the case can lead to catastrophic consequences.

[continued on page 6](#)

# FACTORING NEWS

## LASHES

Heritage Bank of Commerce and Business Factors, Inc. called off a merger that had been in the works since last September for reasons unknown. The acquisition was designed to boost Heritage Bank's Factoring unit, which has assets of less than \$10 million. BFI has assets of about \$25 million and specializes in Factoring, accounts receivable financing, inventory, and other business loans.

Financial News, March 13, 2000

Surety Capital Corp. will record record losses of \$2.6 million because customer money was diverted into the wrong accounts. Surety will refund \$2.1 million to the affected customers and pay them an additional \$500,000 in interest. The diversions occurred in the insurance finance operation. Surety finances small businesses insurance premiums.

The Fort Worth Star-Telegram, March 7, 2000

The UK is now the largest Factoring market in the world, accounting for nearly 20% of the factoring business, according to the Bank of England. The Factors & Discounters Association showed that annual turnover exceed GBP 60bn for the first time. The Factoring industry has been concentrating on the small and growing business sector in recent years. With the economy in good shape, the industry can look forward to new records.

Accountancy Age, February 17, 2000

Bank of Yokohama and Yasuda Fire and Marine Insurance Co. are planning to start factoring operations in April to support activities of nursing service providers. The tie-up is timed to meet the start of Japan's new public nursing insurance system. Payments to nursing service providers are set to be delayed by two months under the insurance system. The two companies hope to help cushion providers against pos-

sible financial difficulties arising from the delay. Hamagin Finance Co., a Bank of Yokohama unit will get accounts receivable from nursing service companies by paying them 70% to 80% of the purchasing price.

Tokyo, February 8, 2000

Celtic Investment, Inc. announced the sale of substantially all assets and business operations of its subsidiary, Goodman Factors, Inc. to Bay View Commercial Finance Group. The proceeds from the sale restructured Celtic's balance sheet by eliminating all long and short term debt, and providing the financial cash equity to expand into other opportunities.

Business Wire, February 4, 2000

BB&T Corporation renamed its High-Point based Factoring arm BB&T Factors Corporation. Formerly named Phillips Factors Corp., the subsidiary was acquired in 1997. BB&T and its subsidiaries offer full-service commercial and retail banking, in addition to financial services such as insurance, investments, retail brokerage, corporate finance, international banking, leasing and trust.

Financial News, January 24, 2000

A lawsuit has been filed against Bank of America by dozens of investors victimized by a Ponzi scheme. The complaint claims that officials at the institution's Millwood branch failed to flag transactions among accounts managed by D.L. Ward & Assoc. Ward opened the accounts on behalf of clients attracted by reported investment returns of more than 30%. Ward operated as a factoring business, however, no factoring was done after 1992, although statements sent to investors included fictitious activity. In 1989, some investors were paid with money taken from other investor accounts.

The Spokesman-Review, January 8, 2000

Officials are investigating two Palm

Beach County companies that have raked in \$23 million from investors. Florida's comptroller's office is investigating whether U.S. Capital Funding and First Capital Services of Boca Raton are in a Ponzi scheme. U.S. Capital solicited investors throughout the country, pitching returns of 9.25% or more, then sent the money to First Capital Services to be used for Factoring. First Capital Services claims the moneys that were used are all accounted for.

Palm Beach Post, December 12, 1999

The CIT Group, Inc. announced that it has completed the acquisition of certain of the domestic assets of Heller Financials Commercial Services unit. As of November 30, 1999, Heller's Commercial Services unit had total net assets of approximately \$375 million.

Business Wire, December 1, 1999

Finantra Capital Inc. signed a letter of intent to buy Prime Capital Corp. in a stock swap. Prime is a provider of capital to the software communications and health care industries. Finantra specializes in accounts receivable financing and equipment leasing, and recently completed a \$36 million acquisition of Travelers Investment Corp.

If you have any news items you would like to include in the next issue of The Commercial Factor, please e-mail them to [info@factoring.org](mailto:info@factoring.org).

# SECONDARY REVENUE SOURCES & MORE FOR FACTOR COMPANIES!!!

by Harry Fink

Factoring companies are sitting on a gold mine and they are not even aware of it. Bill Townsend of Express Business Funding, a factor company in Ft. Meyers, Florida, once told a broker training class, "The industry standard for businesses applying for factoring is forty-five percent - 45% - of those businesses are in "survival" mode versus "growth" mode."

That means that almost half of the businesses who seek factoring are having Accounts PAYABLE problems - problems paying their bills. Just as you may be working with companies who specialize in negotiating with the IRS, there are companies who deal directly in Commercial Debt Management (CDM) and can help companies manage and greatly reduce their outstanding debt. Many of these CDM companies pay a commission to factor companies for referring them business. In addition, they are constantly dealing with companies who need factoring. Therefore, cross-referrals are very common.

It only makes sense. When a company who is having payable problems comes to a factor company for money, by working together with a CDM company and a factor company, the business is provided the funds to reduce and manage their debt, as well as to build and expand their business. The factor company gets them money, a CDM company saves them money. Since the factor company is already talking to the businesses, other than giving the CDM company the referral, there is no additional work required. The factor company can earn a referral fee of about \$25,000.00 to \$40,000.00 on every \$1,000,000.00 in Accounts Payable debt turned over.

So how exactly does a CDM company benefit a business with Accounts Payable problems? In a nutshell, it works with businesses that for whatever reasons, cannot currently pay their bills and are being harassed by creditors, collection agencies and/or attorneys. They are having Accounts "PAYABLE" problems (versus receivable which they may have as well). A CDM company works directly with any or all of the client's creditors and renegotiates better deals for them. All the client has to do is fill out a few forms to allow the CDM company to negotiate with their creditors. Most CDM company do not charge any upfront fees and are paid a percentage of the monies they save the client - thus no savings equals no fee! Some of the major benefits of this service include: 1.) Creditor calls stop immediately because they now have to deal with the CDM company via a Power of Attorney. This alone is an enormous benefit to the client who has to constantly deal with the negative aspects of continually being dunned. 2.) The CDM company buys a business time so they can concentrate on running and beginning to rebuild their business and 3.) The CDM company makes the business money since their fee is derived from a percentage of the monies they save.

Whereas it takes money to settle debt, many of these clients could use other financial services - specifically factoring - so they can generate immediate funding to rebuild and handle the old debt. The cost a CDM company charges a client is usually between 35%-

40% of what the CDM company saves the client. Since the fee is based on savings, it is mathematically impossible for the client to lose money by using this program. The client must be in a strong enough position to designate funds to resolve the old debt. Including the fee to the CDM company, the client should realize an average savings between 35%-50% of the original debt.

In addition to a factor company developing a secondary revenue stream from commissions from a CDM company, by having a CDM company working with your clients who have Accounts Payable problems, they will help to rebuild the financial structure of the clients which would enable many to continue doing business with you for a longer period of time. Thus it truly becomes a "win-win-win" scenario for all involved.

Finally, many times when a company is seeking factoring, you unfortunately determine through your due diligence that due to their Accounts Payable condition and/or the amount of lawsuits or judgments they have, they are too high-risk for you to fund. Instead of throwing the lead in the garbage, now you may have an avenue to help this client and make a healthy commission doing so. If your due diligence currently does not entail your client providing you an aged copy of their Accounts Payable, perhaps it is something you should seriously consider. A final benefit to the factoring company is that once the CDM finishes working with your client, he will hopefully be in a better position to apply for the original funding he was originally seeking.

Harry Fink is President of International Debt Management Corp. (IDM is a Commercial Debt Management company that currently works with factor companies in the US and Canada. For more information on this subject, please call 1- 800-952-9769 / 813-949-8785 or visit their web site at <http://www.idm.cc/>)

... almost half of the  
businesses who  
seek factoring  
are having  
Accounts PAYABLE  
problems ...

## UPCOMING EVENTS

### 7TH ANNUAL FACTORING CONFERENCE

#### TELE-CONFERENCE CALL

Thursday, May 18, 2000 at 1:00pm P.D.T.

Bob Buchan, Esq.

Litigation Techniques

Injunctions and Restraining Orders

This one hour seminar will focus on Litigation. Mr. Buchan specializes in litigation for his factoring clients. He has done extensive research in the area of injunctions and restraining orders and will be discussing how best to use these legal tools. Mr. Buchan is based in Dallas, Texas.

The fee for this teleconference is \$40.00.

Register at: [info@factoring.org](mailto:info@factoring.org)

or call 800-563-1895

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coming this Fall!

[www.factoringconference.com](http://www.factoringconference.com)

# Let Someone Else Do It

by John C. Bennett, Esq.

From looking at financing statements across the country, you would never guess there is anything called the Uniform Commercial Code. Banks, Law Firms, and other companies do not have enough time to worry about the administrative requirements set forth in each county across the country. The upcoming revisions in Article 9 should help in standardizing UCC filings across the board.

As states prepare for the upcoming changes, getting an accurate UCC search in a specific state can be difficult. For example, Georgia has implemented an on-line statewide index through the Clerk's Cooperative Authority called the "Central Index." This was quite a chore given the fact Georgia has one-hundred fifty-nine counties. Even though Georgia has a statewide index, you have to file the UCC in the county to perfect the security interest. The county sends the information to the Cooperative Authority to be indexed centrally. Sending a UCC to be filed with the Secretary of State, or Cooperative Authority will not record a UCC financing statement in Georgia.

Counties tend to have their own rules and regulations. This is true especially in rural areas across the nation. Having a network of people able to deal with all the different requirements is a necessity, especially when it is imperative to file on a timely and accurate basis. Outsourcing UCC filings will not only save you from some headaches, but it will save you time in two ways. First, keeping up with regional rules and practices can take a lot of time and energy. Second, you will save time by getting fewer rejected filings, and having to make fewer corrections. The states and counties will always hold on to as much authority as they can. If you want to have as few problems as possible, use the resources available from a UCC specialist.

John Bennett is the Staff Attorney for Origin Information and Services. He can be reached at 404-524-8400.

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or e-mail: [iccmktg@empireone.net](mailto:iccmktg@empireone.net)

**ARMAGEDDON** continued from page 3

7) Cooperate with the Trustee. Convince the Trustee to confirm the validity and amount of the factor's claims as soon as practicable, and to work with the factor in a cooperative effort to liquidate the collateral.

Recently, the authors of this article were involved in a bankruptcy case involving a significant liability of over \$750,000. The customer had been seriously out of trust, and had factored non-existent invoices. The factor was concerned about a possible substantial deficiency, even though the factor had a lien on all of the customers' collateral, including, accounts, inventory and equipment. The factor was concerned that the customer would divert or dissipate collateral so the factor commenced an action in state court for turnover of the collateral and injunctive relief. The customer filed a chapter 11 bankruptcy to thwart such action. Within days of the filing, a trustee was appointed in the chapter 11 case. The Trustee promptly verified and confirmed the factors' claims, and entered into an agreed order stipulating as to the validity of the factor's claims. The Trustee allowed the factor to continue to collect the factored and non-factored receivables with Bankruptcy Court approval. Thereafter, the Trustee held an auction and liquidated the hard collateral. The liquidation of the collateral generated sufficient funds to pay all obligations owing to the factor, including costs and attorneys' fees, within several months of the filing. The factor was obviously pleased with the outcome. There you have it – at least one true story where a factor embraced his customer's filing of bankruptcy, and came out whole in the end. All bankruptcy stories do not have that happy ending, but understanding bankruptcy as a tool can go a long way in helping a factor protect its rights when the factor's relationship with its customer does not go exactly as planned.

<sup>1</sup> Mr. Rosenthal is Board Certified in Business Bankruptcy Law by the Texas Board of Legal Specialization. Mr. Rosenthal & Mr. Boyar are attorneys with the firm of Boyar & Miller in Houston, Texas. They can be reached at 713-850-7766.

# A SUCCESSFUL FACTOR HAS GOOD PROCEDURES

By Bill Decker

One of the main ingredients in the makeup of a successful Factor is having good, solid procedures. We can attest to this for having observed numerous frauds created by the Factor's Debtors throughout the years. The vast majority of these frauds could have been prevented or reduced to a minimum loss if the Factor had established a set of strong procedures and adhered to them. Too many times the procedures were overlooked or relaxed, especially for competitive purposes. All too often some of the procedures were ignored by the Factor for his more familiar accounts.

Unfortunately, frauds committed by the factor's customers can occur at any time by the least likely suspect. A fraud can result from the Factor performing 99% of his procedures and overlooking just 1% of them.

A suggested general guideline for the Factor to follow to mitigate the risk of fraud and dishonest acts by his customer is as follows:

## Customer Identity, Authority & Pledge Validity

The Factor should perform diligence in booking and documenting the relationship with a Debtor. Generally, the Factor should identify and document the correct business entity (corporation, partnership, proprietorship, etc.); its correct name and good standing, and that the signatory has the capability to commit and the authority to sign on behalf of the entity. Document closings should be done face-to-face, particularly when a broker has generated the new client. The Factor should perform lien searches and filing procedures, necessitating that the Factor obtains perfected priority security interest in the A/R of the Debtor prior to purchasing invoices.

## Eligible Accounts Receivable

The Factor should analyze those types of accounts eligible on a normal basis, and those requiring higher servicing mandates. Generally, most types of Medical A/R and Construction contractors require more servicing performed either by the Factor or outsourced to an acceptable third party. Other additional service categories include progress billings, retainage, contra accounts, intercompany/affiliate accounts, foreign accounts, and non-assignable accounts unless the Factor has complied with special requirements (i.e. Federal government Assignment of Claims). Additionally, invoices being purchased that are already more than 30 days old, except at the initial purchase, and are normally ineligible.

## Limits

Generally, the Factor should institute internal controls and procedures such that abnormal activity requires special approval by a Factor's officer. Thus, these controls may relate to the Factor's establishment of Debtor maximum credit lines, maximum invoice limits, concentration limits and Account Debtor credit limits.

## Billing & Collections

The Factor's agreement should stipulate use of a lockbox under Factor control for payments. Additionally, the largest percentage of the portfolio should be on a notification basis; otherwise invoices should be stamped or annotated directing payments. It is preferable that the Factor mail invoices or statements directly to the Account Debtors.

## Validity

Generally, a large percentage of accounts should be verified pre-funding on the initial purchase for new relationships. Addition-

ally it is recommended that pre-funding verifications be performed during the first quarter of the relationship and whenever activity exceeding an established limit is being approved. On an ongoing basis, absent pre-funding verifications, the Factor should obtain copies of documents establishing proof of delivery or acceptance of service. Percentages should be established for random or other account confirmations (post-funding) on a quarterly basis and in conjunction with line renewal.

## Reserves

A minimum reserve percentage of 10% should be established. The timing of reserving or paying from the reserve, for those invoices over a certain age should be established. A recommended period of time is ninety days.

The above guidelines alone may not be able to eliminate 100% of all fraud but definitely will reduce the risk factor percentage. There are other tools available in the marketplace today, that the Factor may use along with strong procedures, which can help reduce the risk factor percentage. One of these tools would be the usage of all the programs that the Distinctive Solutions Software provides. Also, there is Fraud Insurance available for Factors.

However, establishing and maintaining solid procedures is a good starting point.

Bill Decker has been in the Collateral Control Industry for over 25 years. He is currently the Collateral Servicer for the CollateralShield™ Fraud Protection Program sponsored by Reliance Surety Company. If you would like further information concerning the CollateralShield™ Fraud Protection Program, call Bill or Jerry Petrizzi @ 212-698-8570.

**\$11,400,000**

## **GOODMAN FACTORS, INC.**

**has been acquired by the factoring subsidiary  
of a national bank holding company**

**Glick Morganstern Capital Group, LLC  
served as financial advisor, initiated, structured  
and assisted in negotiating the transaction on  
behalf of Goodman Factors, Inc.**

**Glick Morganstern Capital Group, LLC  
15821 VENTURA BLVD. SUITE 490  
ENCINO, CA 91436  
Telephone: 818-461-1875  
Contact: Barry G. Morganstern  
e-mail: barry@glickmorganstern.com**

# PRACTICAL TIPS IN ANTICIPATION OF RA9

by David L. Wanetik, Esq.

Assuming that most states will adopt some form of the Model Act, Revised Article 9 (RA9) of the Uniform Commercial Code will not be effective until July 1<sup>st</sup>, 2001. While that date is more than one year away, there are some simple practical tips which can be highly beneficial prior to the effective date.

Filers will be required to provide two major portions of information regarding the debtor: the exact name of the debtor and for a registered organization, such as a corporation, the state where the debtor is registered or organized.

RA9 puts the onus of getting the debtor name right on the secured party. The forms and instructions that accompany RA9 help the secured party get the name right. Form instructions say that adding other names of the debtor is not recommended. Therefore, tradenames or any d/b/a should not be included. Instructions also state that the debtor name should be exactly the same as stated on the debtor's charter document. There is a dramatic impact for failure to get the name exactly correct. RA9 states that

an incorrect name is seriously misleading when a standard search does not find it. For example, if a search of a name such as American Tool & Equipment Corp does not reveal a filing made under the name of American Tool Corp., the American Tool Corp. filing would be deemed seriously

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... getting the name correct and the state of organization is key under RA9.

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misleading and ineffective. While RA9 provides for a grace period of one year to correct filings made prior to the enactment date of July 1, 2001, the simpler solution is to get all of the information correct now.

Revised Article 9 simplifies where financing statements are to be filed and makes the location of collateral irrelevant. If the debtor is a registered organization, the financing statement would be filed in the state where the debtor is registered or organized. The impact on the number of required filings is considerable. In an example where a corporate debtor filed its Certificate of Incorporation in Delaware and has authority to do business in all other 49 states, if inventory was located in all 50 states, the lender would have to file only one UCC financing statement in the state of Delaware.

Most filers have relied on the expertise of service companies as to where to file their financing statements. The client service representative reads the information, including location of collateral, and then determines where the filing should be directed. Based upon the state involved, dual filing at the county level may also be required.

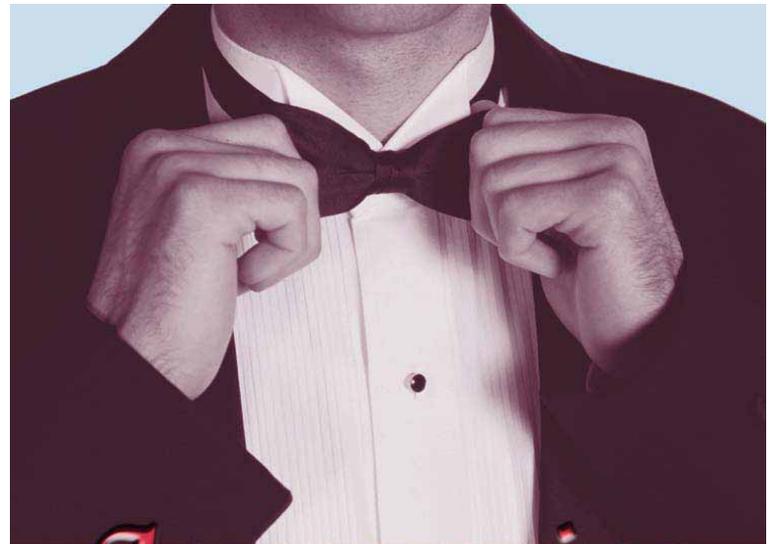
That will change under RA9. There is a box on the form that must be filled in when the debtor is a registered organization. It requests the filer to indicate the state of organization or registration. By filling in that box with a state abbreviation, they have given a direction to the service company. Therefore, if the abbreviation

is listed as "DE", the filer has directed the service company to file this document in Delaware. No other direction is required. If the state or organization is incorrect, the UCC will be filed in the wrong state and be ineffective. The filer has the onus to get the state of organization correct.

Accordingly, getting the name correct and the state of organization is key under RA9. That information is available today through various means of searching and should be conducted prior to any search or filing. Requesting a status check will provide an uncertified search of the debtor's name and state or organization. A Certificate of Good Standing is a certified document with the same information. If you get the name and state of incorporation correct today, it will aid you as we move into the transition period of RA9.

Be sure to check Intercounty's RA9 Scoreboard at [www.intercountyclearance.com](http://www.intercountyclearance.com) to keep up to date on the progress of RA9 in the various states. You can also utilize Intercounty's free Revised Article 9 Resource Center to download the latest articles and information on RA9.

Mr. Wanetik is CEO and General Counsel for Intercounty Clearance Corporation. He can be reached at 800-342-3676.



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