

# What's in a Name? Plenty

## Sex, the Beatles, and the Uniform Commercial Code

By JAMES B. SHEILS, Esq.

It's a great day when a Beatles song can be used by a lawyer to explore how the metaphysical (what is a name?) interacts with the practical (commercial financing).

When "Let It Be" was released as a single in 1970, the B-side was one of the stranger songs the Beatles recorded — "You Know My Name (Look Up the Number)." But how do I 'know' your name? What is a 'name,' and why is it important in a commercial-loan transaction?

Obviously, and at its most basic, a name identifies an individual. Most of us are given our name by our parents, and many of us keep the same name throughout our life. But it's very easy to change a name; in Massachusetts, you can legally change your name without filing any document with any state or municipal office. Many spouses, male or female, switch to or add their partner's name upon marriage. The name on your driver's license (Richard A. Starkey) might be different from the name on your birth certificate (Richard Starkey) and from the name you use in your business (Ringo Starr).

That flexibility in the use of a name conflicts with the certainty lenders look for in commercial loan transactions, where financing typically involves a security interest/lien on the assets of the business obtaining the financing. To assure the priority of the claim of the lender to the business assets, the law applicable to such matters — the Uniform Commercial Code, or UCC — generally requires a financing statement to be filed, typically with the Secretary of State. Among other things, that document requires the name of the owner of the business asset.

The intention is to have a system where a third party (for example, a subsequent lender) can search the UCC records and determine if the assets of the named owner are already encumbered by a lien. The system also provides for lien priority, and can be used by a bankruptcy trustee to access what the lender thought were secured assets for the benefit of unsecured creditors. Clearly, the use of the correct name is very significant.



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If the owner is a corporation, limited-liability company, or other registered organization, the rules are clear — the name is the one used on the document which created the entity. But what if it's a proprietorship or individual owner/borrower? What is the name that can (or must) be used on the financial statement?

Perhaps surprisingly, the Uniform Commercial Code doesn't give an answer. What is clear is that a trade name (i.e., the name under which the business is conducted) is not sufficient. The issue is very important, because if the wrong name is used, the lender may lose its protection, or someone searching the records may fail to discover the lender's filing. For example, one case held that a filing under "Terry J. Kinderknecht" was insufficient when the borrower's legal name was

Terrance Joseph Kinderknecht.

Revisions to the Uniform Commercial Code have been proposed that would allow a state to choose between two alternatives for their version of the UCC. The first alternative would require the use of the name as it appears on the unexpired driver's license or other specified document issued by the state of the debtor's principal residence. The exact name on the license must be used, even if it has a misspelling (e.g., 'Steven' instead of 'Stephen').

The second alternative would allow the use of the name on the driver's license as a safe harbor, but wouldn't require it.

Many lenders prefer the certainty afforded by the first alternative; most states that have introduced the new amendments have thus far chosen this alternative. A bill was filed in Massachusetts in January, 2011 (HB00025) that

would adopt the first alternative, but as of mid-November, there has been no further action since it was assigned to committee.

For the time being, therefore, we'll just have to let it be. ■

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1 Sadly, those days are gone — neither CDs nor MP3s have "B" sides

2 Salmon Rushdie recently fought (and won) a battle with Facebook, which wanted to require him to use his "legal" name of Ahmed Rushdie; he had posted on Twitter to Mark Zuckerberg: "Come out here and give me back my name"

3 Other interesting name challenges might occur for filings: The Edge (David Howell Evans, of U2); Madonna (her legal name), originally Madonna Louise Ciccone; Prince (Prince Rogers Nelson) later identified by a symbol he called the "Love Symbol":

4 As for sex, the UCC rules do not distinguish between genders as to name issues.