Does a Vehicle Secured Party's Assignment or Change of Name or Entity Require a New Certificate of Title?

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I. Introduction

Pursuant to Uniform Commercial Code (UCC) section 9-109, a security interest in "goods" (a defined term that includes vehicles) is governed by UCC Article 9, except as section 9-109 provides otherwise. One of the stated exceptions provides that certain types of goods covered by a certificate of title (CT) are subject exclusively to perfection by compliance with the applicable state CT law. Thus, if the collateral is a vehicle subject to perfection under a state CT law, and is not inventoried, the mechanic's lien statutes of perfecting the security interest are governed by the state CT law; however, other interst issues (e.g., the scope of the applicable law, attainment of the security interest, priority, and enforcement) remain subject to the applicable Article 9. Thus, the defenses against a secured party's assignment of a perfected security interest, the assignee need not file to correct the secured party's name on the public record. Again there is some risk that the security interest will become subordinate to a receiver. This article considers whether assignment of a perfected security interest or a change of the secured party's name or entity necessitates application for a new CT to reflect the change, under the UCC and state CT laws. This analysis is based on an academic survey by your author and should not be considered legal advice or a legal opinion, as your author has no knowledge or experience with perfection law in any state other than Oklahoma; moreover, your author has relied substantially on secondary sources of law, and as always the reader should confirm these conclusions by reference to primary law.

II. The UCC

As noted, UCC Article 9 is the primary law applicable to a security interest in a vehicle covered by a CT, but Article 9 section 9-311(a) (together with section 9-303) provides a limited direction to apply the applicable CT law in the pursuit of achieving perfection. Other issues, including the effect of that perfection, remain subject to Article 9, and some relation-related issues are also governed by Article 9. Therefore, for example, section 9-311(b) provides that perfection under the applicable CT law (see section 9-303) will be treated as perfection by filing under Article 9. This makes applicable some of the rules in Article 9 Part 5, e.g., those provisions governing errors in a filed financing statement. These rules provide that perfection in the secured party's name is not essential to perfection, as it does not impact the indexing of our searches for the financing statement. Under Article 9, the result should be the same for a security interest perfected pursuant to section 9-303(a) or (b).

Other Article 9 provisions reinforce this view. Section 9-311(c) says that, upon assignment of a perfected security interest, the assignee need not file to correct the secured party's name on the public record. Again there is some risk that the security interest will become subordinate to a receiver. This is consistent with the Article 9 principle, noted above, that accuracy is not required with regard to the secured party's name. The Official Comment to section 9-311(c) explicitly states its applicability to security interests perfected under a CT law pursuant to section 9-311.

Section 9-311(a) (b) indicates that the applicable law can be determined by what the consumer obtains. Therefore, Article 9 Part 5 remains applicable to perfection of security interests in goods covered by a CT, except to the extent that section 9-311(a) applies otherwise, e.g., as to: provisions such as sections 9-501, 9-502, 9-503, and 9-504 that relate directly to the filing of a financing statement; provisions on lapse of the financing statement at section 9-515; and some sections in Part 5 Subpart 2 (as the rules and operation of the filing office).

Thus, sections 9-506 (effect of errors and omissions) and 9-507 (effect of subsequent events) should be applicable to security interests perfected by compliance with a CT law pursuant to section 9-311(a) and (b). Under the "search continuing" rule at section 9-506(a), an error or inaccuracy in the name of the secured party is not a seriously misleading error, and therefore does not preclude perfection of the security interest by filing a financing statement under section 9-507(b), even if such an error was seriously misleading, a previously perfected security interest in existing collateral would not become unperfection due to a subsequent event such as an assignment of the security interest or a change in the secured party's name.

It should be emphasized again that the application of a CT law perfection mechanism is not based on scope provisions in the CT law. Article 9 is the basic source of the law governing security interests, including the scope of the applicable law, and the CT law applies only to the extent that Article 9 section 9-311(a) defers to it. The reference to the CT law at section 9-311(a) merely allows perfection under the CT law to substitute for the filing of an Article 9 financing statement, as otherwise required under section 9-310. Section 9-311(c) then defers to the CT law as to the duration of that perfection (thereby precluding lapses under sections 9-515). Therefore, perfection as to durational perfection as to the CT law is presented in section 9-311(b) of the CT law. Article 9 otherwise continues to apply, and section 9-311(b) makes clear that the CT law perfection is to be treated like a financing statement for other purposes under Article 9. Thus, Article 9 is the governing law for security interests; until the issue is excluded from Article 9 by section 9-311(a), (b), or (c) and the CT law provides a contrary rule, all perfection issues are to be emphasized with regard to the relation between Article 9 and the applicable CT law. As noted, Article 9 is the primary governing law for security interests; the CT law applies only to the extent that Article 9 defers to it. Article 9 section 9-311(a) provides that the Article 9 requirements to file a financing statement (see section 9-310(a)) do not apply if the collateral is subject to a CT law that provides a contrary rule. A contrary rule is presented in section 9-311(b), that compliance with the CT law requirements for obtaining such
perfection (and therefore priority under Article 9) is equivalent to perfection by filing under Article 9. Neither section 9-31(b) nor section 9-31(a)(b) requires the secured party to comply with all aspects of the CT law; only those CT law provisions not referenced in the applicable CT law and therefore priority under Article 9 are referenced in section 9-31(a). Thus, CT law provisions that require CTS to meet requirements for other purposes (e.g., to reflect name changes or assignments of ownership on penalty of civil fines) should not be applicable for purposes of this analysis, unless the validity of the CT or perfection is directly implicated. Therefore, a secured party's name as indicated on the CT and/or in the CT off- file dates as a means of perfection pursuant to section 9-31(a) should not need to be updated or revised to reflect a change in that name or an assignment of the security interest, in order to preserve the perfection of the security interest, unless that is expressly required for continuing perfection under the applicable CT law.

Thermeneutic question is whether there is anything in the applicable CT law that, pursuant to this analysis, would have the effect of continuing perfection. That issue requires consideration of the applicable state CT law, i.e., a state-by-state analysis.

III. STATE CT LAWS

A. INTRODUCTION

This discussion briefly considers whether the CT laws of the states require an assignment or perfection of that interest or a change in the secured party's name to be indicated on the CT as a condition of continued perfection.13 However, there does not appear to be any statutory requirement to do so, or any indication that such a change is necessary to continue the perfection. Thus, the procedure appears to be optional, and not a prerequisite to continued perfection.

D. ARIZONA

The Arizona CT law does not expressly govern secured party name changes (or other issues relating to assignments of security interests). There is a procedure allowing registration of assignments,22 but again this is not mandatory and there is no indication that it affects perfection. Therefore an assignment of or secured party's name change appears to be governed by Article 9.

E. ARKANSAS

Again there are no express provisions governing secured party name changes or assignments, leaving these issues to other law (i.e., UCC Article 9). As with some other state CT laws, the Arkansas CT law erroneously purports to independently establish its scope with respect to security interests,23 whereas the scope is determined by Article 9. However, even if one erroneously concluded that the CT law is the exclusive means of perfection because the Arkansas CT law says so, the impact of a secured party name change (or assignment) should be recognized as a post-perfection event that does not terminate the existing perfection of the security interest.

F. CALIFORNIA

As with Arkansas law (noted above) and the CT laws of some other states, the California CT law contains some misleading language that could be interpreted to mean that the CT law governs broad scope issues properly covered by Article 9. However, these provisions are substantively consistent with the principle that the CT law does not govern perfected parties name changes, leaving those issues to Article 9 and other law.

G. COLORADO

The Colorado CT law has no provisions expressly governing secured party name changes or assignments. Again, there is potentially misleading language in the CT law apparently claiming to distinguish Article 9, with respect to the filing, recording, releasing, renewal, and extension of security interests.24 As noted above at Part I, the relation (and scope) of the applicable CT law as regards security interests created under UCC Article 9 is governed by Article 9, not the CT law.25 Thus it is misleading for the CT law to claim that it preempts Article 9, beyond the Article 9 deference to the CT law at section 9-31(a)-c. Nonetheless, it does not appear likely that the Colorado CT law scope provision would be applied broadly to as cover secured party name changes or unrecorded assignments.

H. CONNECTICUT

The Connecticut CT law allows assignment of a security interest (and therefore, by implication, a secured party name change, by reason of that being a line of trade change), but as in some other states (and in Article 9 see sections 9-338, 9-506 and 9-507) a party who deals with the assignee is protected until the assignee is named on the CT.26 The assignee is not required to have the CT changed in order to continue the perfection,27 and there is no reason to conclude that a name change would be treated differently in this respect.

I. DELAWARE

There is no express provision in the Delaware CT law governing secured party name changes or assignments. There is a statutory provision requiring the CT to include a space for the signature of the owner, in order to permit transfers of ownership to be recorded on the CT.28 Apparently, some inquiries to the Department of Transportation of Delaware have elicited responses indicating that this requires an assignment of a security interest to include the assignor's signature on the CT, releasing the prior perfection. It seems likely to your author that this reflects an miscommunication or misunderstanding, as the statutory language doesn't contain this view, and such a requirement would have a variety of adverse consequences.

J. DISTRICT OF COLUMBIA

In contrast to many of the states, the District of Columbia (D.C.) CT law includes a provision expressly authorizing assignments of security interests.29 This provides that an assignment which meets certain formal requirements (in writing, and containing specified information) may be presented to the D.C. Department of Transportation along with the CT for reissue of the CT indicating the assignee as secured party.30 This statutory procedure appears to be permissive, not mandatory, and therefore should not impair the previous perfection of a security interest upon a secured party's assignment or name change. As in some of the states, there is potentially misleading language in the CT law regarding its scope as regards security interests, providing that the security interest is not "valid" as to third parties unless named on the CT.31 This inartful language is apparently intended to provide for perfection of a security interest by an indication on the CT pursuant to UCC section 9-311(a) and (b). While such language is always subject to the risk of misunderstanding, it is unlikely that this would be viewed as requiring the indication of a name change or assignment.

K. FLORIDA

The Florida CT law provides a procedure for amending the CT to reflect an assignment of the security interest.32 Presumably this procedure could be used to effectuate a secured party name change as well. However, there is nothing to indicate that this is mandatory or a prerequisite to continuing perfection.

As in some other states, the Florida CT law purports to provide that a security interest is not valid unless evidenced in accordance with the CT law.33 This both overstates and incorrectly states the role of the CT law in relation to Article 9.34 It is possible that this inartful language could be used to attack an unrecorded secured party name change or assignment. However, although this statutory language is cumbersome and inaccurate, it appears likely that the effect would be limited to the intent of the CT law and it would not override Article 9 to affect a post-perfection secured party name change or assignment.

15. This section is based on information provided in Commercial Credit Information Systems: Creditors, Consumers, and Other Commercially-Oriented Entities, available from American Bar Association, 11 West Jackson Blvd., Chicago, Ill. 60604.
Georgia follows a number of other states in expressly authorizing assignments of security interests without affecting the perfection of the security interest, while protecting innocent parties who rely on the CT or public record. The assignee may, but is not required to, have the CT reissued so as to indicate the assignee as secured party. Logic dictates that a name change should be treated the same.

Missouri

There are no specific provisions on these issues in the Missouri CT law. Therefore, Article 9 and other general principles of law should govern these issues.

Delaware

The Nevada CT law provides for execution of an assignment on the CT. While it is possible to interpret this type of requirement as mandatory, there is nothing in the Nevada CT law indicating an intent to displace other applicable law, e.g., contract law, property law, the law of assignments, and the UCC. Therefore, while the CT law provision includes a provision permitting a secured party to obtain release of a CT reflecting an assignment or name change, it does not appear to require this in order to preserve perfection.

New Hampshire

The New Hampshire law is similar to those of Massachusetts, Michigan, Minnesota, Mississippi, and Missouri, as noted above.

New Jersey

New Jersey allows an assignee or name change to be noted on the CT, but does not require this. Absent this, the issues should be covered by other law, including the UCC. The New
Jersey CT law expressly recognizes the applicability of UCC Article 9.69

GG. New Mexico


ment of a security interest without consent of the debtor or any effect on the vehicle registration, although it does require that notice of the assignment be given to the debtor.70 This notice should not be required in the case of a secured party’s name change, although there are other reasons why such a notice may or may not be provided. Thus, continu- 71. See First VHC, 384 S.C. 162, 329 S.E.2d 201 (S.C. 1985).

ation and perfection of the security interest should be governed by UCC Article 9.

III. New York

As under the CT laws of Massachusetts, Michigan, Minnesota and Mississippi (as noted above), the Pennsylvania CT law permits assignment of a security interest without affecting its perfection, while protecting innocent parties who rely on the CT or public record.71 There is a procedure for having the CT reissued to reflect the assignee as secured party, but this appears to be optional. Thus, absent such a reissue, the effect should be governed by Article 9. A change of the secured party’s name should be treated the same way. Provision relating to assignments of the CT apparently refer to transfers of ownership by way of the CT, and therefore do not apply to a separate assignment of the security interest or a secured party name change.

II. North Carolina

North Carolina law provides a pro- 9. The assignor may (but need not) have the CT reissued to reflect the assign- ced for reissue of a CT to reflect an assignment of the security interest (or, presumably, a secured party name change) but this appears to be optional.

empts certain securitization transactions from the requirement that a transferee apply for a new CT.72 However, the CT law also indicates that assignments of CTs are subject to the normal ownership transfer requirements.73 This creates some uncertain- 10. See infra note 106 for discussion of the effect of a name change on a CT.

ity as to these issues, but can be read as 11. See infra note 23.

properly restricted to assignments of ownership and not to displace other laws governing assignments of security interests and secured party name changes.

NN. Pennsylvania

As with states such as Massachusetts, Michigan, Minnesota and Mississippi (as noted above), the Pennsylvania CT law permits assignment of a security interest without affecting its perfection, while protecting innocent parties who rely on the CT or public record.71 There is a procedure for having the CT reissued to reflect the assignee as secured party, but this appears to be optional. Thus, absent such a reissue, the effect should be governed by Article 9. A change of the secured party’s name should be treated the same way. Provision relating 12. See infra note 93.

able to an option. Further, the issue of continuing perfection after a name change or assign- 72. See infra note 106.

ment should be governed by Article 9.

II. North Carolina

The Oklahoma CT law does not di- 13. For example. 83-16-1 (2014).

rectly cover assignments of security inter- 74. See infra note 106.

ests or secured party name changes, and 75. Tex. Rev. Civ. Stat. Art. 9-311.1

therefore these issues should be covered 76. Tex. Rev. Civ. Art. 9-319.1. See infra notes 88-8.

by other law including UCC Article 9.

MM. Oregon

The Oregon CT law provides that a 77. ORS 833.750 et seq.

security interest may be assigned by ex- 78. ORS 833.730 et seq.

ecuting the CT and delivering it to the as- 79. ORS 833.705 et seq.

ignor.74 This does not appear to preclude other means of assignment, or mandate this procedure to reflect assignments or name changes. The CT law expressly ex- 80. ORS 833.725 et seq.

cepts certain securitization transactions from the requirement that a transferee apply for a new CT.72 However, the CT law also indicates that assignments of CTs are subject to the normal ownership transfer requirements.73 This creates some uncertain- 81. ORS 833.710 et seq.

ity as to these issues, but can be read as 82. ORS 833.700 et seq.

properly restricted to assignments of ownership and not to displace other laws governing assignments of security interests and secured party name changes.

QQ. South Dakota

The South Dakota CT law and related 83. See infra note 23.

administrative rules require to those of 84. See infra note 23.

Massachusetts, Michigan, Minnesota, Mississippi and some others (as described above) on these issues. The Vermont CT law does not directly regulate assign- ments or name changes; these events can occur without affecting perfection of the security interest, but innocent parties are protected; and there is an optional procedure for reissuing the CT to reflect the assignment (or name change) if desired.83

RR. Tennessee


tional, and therefore should not displace other laws applicable to assignments of security interests or secured party name changes, including UCC Article 9.

SS. Texas


ated in a credit sale of motor vehicles that establishes a right of the assignor to have the CT reissued to reflect the assignee as secured party, but this appears to be optional. Therefore, absent such a reissue, these issues should be governed by Article 9.

PP. South Carolina

There is a procedure for notifying the Department of Motor Vehicles of the assignment, in order to have the Department file updated, but this is optional.73 Secured party name changes should be treated the same.

TT. Utah

There are no express provisions man- 89. See infra note 106.

dating action or regulating assignments of 90. See infra note 106.

security interests or secured party name changes. The Utah CT law provides a mechanism for giving notice to the Division of Motor Vehicles, but this does not constitute an assign- ment or displace other applicable law.

UU. Vermont

The Vermont CT law is similar to those of Massachusetts, Michigan, Minnesota, Mississippi and some others (as described above) on these issues. The Vermont CT law does not directly regulate assign- ments or name changes; these events can occur without affecting perfection of the security interest, but innocent parties are protected; and there is an optional procedure for reissuing the CT to reflect the assignment (or name change) if desired.83

VV. Virginia

The Virginia CT law does not govern assignments of security interests or se- cured party name changes.84 Thus, these issues should be governed by Article 9.

WW. Washington

While the language of the State of the Washington CT law is not entirely clear, it appears that the CT law does not apply to assignments and name changes, except as to allow notification to the Department of Licensing and reissue of the CT, if desired.83

XX. West Virginia

The West Virginia CT law recognizes the ability of a secured party to assign the security interest by delivering the as- signment and CT to the assignee; the CT need not be reissued to show the assign- ment.85 This is consistent with and leaves intact the application of UCC Article 9.

YY. Wisconsin

The assignor may (but need not) have the CT reissued to reflect the as- signment.86 The same should be true for a secured party name change.

ZZ. Wyoming

The Wyoming CT law does not con- 91. See infra notes 92-94.

tain any provisions expressly governing the continued perfection of a security interest upon its assignment, or provid- ing procedures to record such an assign- ment. However, somewhat ambiguous statutory language could be interpreted as requiring the execution of the CT as part of such an assignment (but not, ap- parently, its reissue).91 Nonetheless, it is unlikely that a court would interpret this to displace otherwise broadly applicable laws, including the law of assignment and UCC Article 9. In any event, it would not apply to name changes.

IV. Impact on Lessor

A. Introduction

The analysis changes if the vehicles are titled in the name of a lessee or se- cured party as owner. This is different for at least two reasons: (1) if the trans- action is exclusively a genuine lease and the vehicle is titled in the name of the lessee as owner of the vehicle, then UCC Article 9 does not apply (and the Article 9 name change and assignment provisions discussed above at Part II,
do not apply); and (2) in that case, the CT and its transfer or reissue typically are governed by different parts of the state law, pertaining to changes in ownership rather than changes relating to a second party. On the other hand, if the transaction is in the form of a lease, the CT is issued in the name of the lessor, but the transaction is properly characterized as creating Article 9 security interest under the legal provisions governing changes of ownership. These issues are discussed further below.

B. The True Lease

If the transaction is a true lease, and is not properly characterized as creating a security interest, then UCC Article 2A and not Article 9 will apply. If Article 9 does not apply, then the Article 9 provisions and analysis noted above do not apply to supplement or displace applicable provisions or gaps in the CT law. This means there is little choice but to comply with the CT law (which may require changes in ownership or the owner changes of ownership or the owner's name to be recorded in the CT office or on the CT within a specified deadline), unless the applicable law provides some relief or the penalty for noncompliance is deemed worthy of a business risk. These issues are beyond the scope of this discussion.

C. Lessor as Secured Party

If the lease is recharacterized as a security agreement subject to UCC Article 9, the security interest is perfected by having the CT issued in the name of the secured party, the interface between Article 9 and the CT law has changed yet again, requiring a reexamination of the issues discussed here.

Clearly Article 9 applies to a security interest, regardless of its form, pursuant to section 9-109(a). Article 9 and section 9-311(a) essentially provides that filing a financing statement is unnecessary and ineffective to perfect a security interest in goods subject to perfection under an applicable CT law. This requires examination of the applicable CT law to determine whether issuance of the CT in the name of the secured party is sufficient to provide priority over the rights of a lien creditor under section 9-317. This should be the case, meaning that the security interest is perfected under Article 9. But even so, the question remains: What is the impact on this Article 9 perfection of a change in the name of the secured party or an assignment to a new secured party? Under Article 9, the analysis is the same as noted above at Part II; once the security interest is perfected pursuant to section 9-311(a) and (b), subsequent changes in the name of the secured party should not affect that perfection, except possibly under section 9-507. The Article 9 defeasance in the applicable CT law at section 9-311(a) and (c) is limited to the mechanics and duration of perfection, and should not extend to the effects of that perfection (including the impact of minor errors, name changes, and subsequent events).55

Unfortunately, as noted supra at Part II, this is less clear in the context where the applicable CT law has a specific prohibition to the contrary, e.g., a requirement that changes of name or ownership must be recorded with the CT office within a specified period of time and/or reflected on the CT. By listing the secured party as owner of the vehicle, the secured party may have brought the CT within the scope of these requirements. If the state CT law includes a "―marketplace error" provision (e.g., like Article 9 section 9-506), or a streamlined process for registering name changes in bulk, this may resolve the issue. But, a difficult and uncertain potential conflict can be set up between Article 9 and the CT law.

In resolving this issue, it should be emphasized again that Article 9 is the primary governing law as regards security interests. Compliance with the applicable CT law is the means of achieving perfection under Article 9 pursuant to sections 9-102(a)(10), 9-105, 9-310(b)(3) and 9-311(a)-(c); once perfection is achieved and as long as it continues pursuant to these provisions and the CT law, the effects of that perfection (including priority) are governed by Article 9; and related Article 9 issues such as assignment, the effect of minor, harmless errors, and changes in the name of the secured party indicated on the CT should be governed primarily by Article 9, absent specific contrary provisions in the applicable CT law governing perfection.

It is also apparent that, due to variances in state CT laws, their unity relative to UCC Article 9, and in some cases poor draftedness, considerable uncertainty and potential for mischief exist with regard to important and common CT transactions. This argues strongly for enactment of a simple, modern, and consistent solution such as the Uniform Certificate of Title Act.