Correct Debtor Descriptions For Registration Under The Personal Property Security Act

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Registration of financing statements under The Personal Property Security Act is a routine part of commercial and consumer lending. The mechanics of the registration system are fairly simple and most lenders do it themselves or rely on a registration service. Unfortunately, many lenders make expensive mistakes because they do not understand the rules for determining the correct name of the debtor.

In a typical secured transaction, such as a lease or purchase of a vehicle, a prudent lender asks the debtor for identification and the debtor will likely produce a driver's licence. The lender registers a financing statement in the Personal Property Security Registry against the debtor's name exactly as it appears in the driver's licence. If the debtor becomes bankrupt, the trustee in bankruptcy can reject the lender's claim as a secured creditor on the grounds that the lender did not register its financing statement against the correct debtor name.

The lender's mistake was to rely on the driver's licence to determine the debtor's name for registration purposes. A Manitoba driver's licence shows only a first name, last name and middle initial. However, the regulations under The Personal Property Security Act require that the debtor's middle name(s) be listed in full.
An error in a debtor name will invalidate the registration of a financing statement if a search of the Registry under the correct debtor name would not reveal the registration.

The Personal Property Security Act Regulations contain detailed rules for determining the correct name of a debtor for registration purposes.
For a corporation, the name is the full corporate name as recorded at the Companies Office. Registration against a business name or trademark name is ineffective. If the corporation has both English and French versions of its name or a bilingual name, all forms of the name must be listed in the financing statement.

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For individual debtors who are born in Canada, the correct name is the name shown on the debtor's birth certificate.

For individuals who do not have a Canadian birth certificate, the name is the one shown on the following documents, in order of preference:

- current Canadian passport;
- Social Insurance card;
- current passport issued by another country where the debtor habitually resides;
- certificate of Canadian citizenship;
- visa issued by the Government of Canada;
- birth certificate issued by the place outside of Canada where the debtor was born.

If the debtor cannot produce any two of the above documents, the debtor's name is the name stated in any two of the documents issued by the Government of Canada or a province or territory:

- current driver's licence;
- current vehicle registration;
- current medical insurance card.

Under the Regulations, these documents are a last resort, although in practice they are often the only ones that lenders check.

Where an individual has changed his or her name after marriage or through a legal change of name, the correct form of name is the name shown on the marriage certificate or change of name certificate.

A financing statement may be registered against a limited partnership using the name of the partnership as registered under The Business Names Registration Act or, if the partnership is not registered, the name shown in the security agreement. If the partnership is not a limited partnership, the financing statement must also be registered against the correct name of each partner.

If the collateral includes a motor vehicle, mobile home, aircraft or other items which are defined in the Regulations as "serial numbered goods", it is also necessary to include the serial numbers in the financing statement. If the goods are consumer goods, an error or omission in the serial number will invalidate the registration of the financing statement. If the goods are not consumer goods, a registration with an error in the serial number will be valid for some purposes, such as against a trustee in bankruptcy, but the registration will be subordinate to any later registration which does include the correct serial number.

There is an argument that if a financing statement correctly describes the serial number of the collateral, it should be valid even if it contains a minor error in the debtor name. The

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reasoning is that a reasonable person would search both the serial number and the debtor name and would therefore not be misled by the error. There are some cases which support this position, but most of them were decided before amendments to The Personal Property Security Act in 2000 which changed the rules regarding correction of errors. There is a recent case from New Brunswick, where the legislation closely resembles The Manitoba Act, which held that registration by serial number will not save a registration against an incorrect debtor name. There are no reported Manitoba cases on this point.

The Regulations as they stand are a trap for the unwary. Most people carry their driver's licence, vehicle registration and medical insurance card in their wallets, but keep their birth certificate and passport (if they have one) safe at home. Social Insurance cards have a person's full middle name, but potential customers may object to producing their Social Insurance card to a lender on privacy grounds.

The Provincial Government could solve the problem either by issuing driver's licences using a person's full legal name or by changing the registration regulations to make the form of name in the driver's licence a valid form of name for registration. Meanwhile, lenders need to be aware of the Regulations and train their staff to obtain proper identification from customers.

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