

Lessons Learned - Lesson One: Get the Name Right on the Financing Statement

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From time-to-time, Cassels Brock gets involved in priority disputes between secured creditors. The recent downturn in the oil market and its spinoff impact in the rest of Canada have caused a number of companies - with multiple secured creditors - to become insolvent. During our involvement in these files, it became apparent that many secured parties made fundamental errors of law that caused them to lose priority in their collateral. Based on this experience, we have developed the **Lessons Learned** series.

This **Lessons Learned** series is not a detailed discussion of the legal principles and case law behind a particular matter – it merely intends to set out the basic rules that should be followed. In many of the cases, there are exceptions to the basic rule which may assist a secured party in certain circumstances. This series should act as a reminder to secured parties as to proper policies and procedures.

Lesson One: Get the Name Right on the Financing Statement

One of the most common mistakes made by secured parties is registering their security using an incorrect name for the debtor. If the name of the debtor is wrong when security is registered, then subject to very few exceptions, the lessor's or secured party's security interest is unperfected, and in an insolvency the secured party will lose its security in the asset to all secured creditors properly perfected.

Further complicating the issue, the debtor's French name must also be included in the financing statement, if the debtor uses a French name in its articles. This rule is strictly enforced, and is the most common reason that secured parties' interests become unperfected. Note that in western provinces, French names need not be included.

A "correct" name must also include a debtor's middle name or middle initial, if it has one, and failure to include this information can also be fatal to a secured party's interest.

It is important to remember that a driver's license is **not** proof of an individual's legal name, and should never be relied on to confirm a debtor's name for the purposes of registering security. The legislation in some provinces is very specific with respect to the proper documents that must be used to confirm a debtor's name.

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If for some reason the debtor's name is unclear, it is prudent to register using multiple iterations of its name to ensure that this relatively minor item does result in the secured party being unperfected.

Lesson Learned

Always confirm the name of your debtor using the appropriate documents, determine if there are any French names and register the name correctly.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.