InBrief

Morgan & Pottinger ATTORNEYS

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The 2010 Amendments to Article 9 Took Effect July 1

John McGarvey

The 2010 Amendments to Article 9 were effective in Kentucky, and most other states, July 1, 2013. The biggest changes are new standards for the form of name that must be used on financing statements for both registered organizations and individuals.

The Amendments give states two options for the form of individual name. Most states, including Kentucky, have selected the "Only If" option. Your financing statement will be sufficient only if it provides the name of the debtor as it appears on his or her unexpired driver's license most recently issued by the state of principal residence. If the debtor does not have a driver's license, the fall-back standard in Kentucky is the surname and first personal name.

Some states, including Ohio, Indiana, Tennessee and Virginia, will allow use of a state issued I.D. card as a source of name for debtors without a driver's license. The surname and first personal name is the second fall-back in those states.

A few states have adopted a less restrictive standard for the form of an individual's name. A secured party will be perfected if it files under the debtor's name as it appears on the driver's license, under the surname and first personal name, or under the individual's name. Perfection may be easier in these states but secured parties will have no direction on the form of name under which to search for other filed financing statements.

For registered organizations, the current name standard is the name in the public record of the office in which the organization was formed. It is not clear whether "public record" is what appears on a search page of the filing office website or, if there is a conflict, the actual record that formed the organization. The new standard is the "public organic record," defined as the actual record through which the organization is formed. For Kentucky registered organizations, that record is available on the Secretary of State's website.

Existing financing statements can be brought into compliance with the new name standards during a five-year transition period. If your financing statement met the name sufficiency standards that existed on June 30, you will not have to amend your debtor's name on the financing statement until you continue the financing statement, and then only if the name differs from the name on the driver's license or public organic record.

When filing on individuals, or amending existing filings, we recommend that you file under the name that appears on the driver's license and, as though filing on a second debtor, under only the surname and first personal name. That way you remain perfected should the debtor's driver's license expire or be revoked.

Consider adding a provision to your loan documentation that requires individual debtors to annually furnish you with a copy their driver's license, and a covenant that individual debtors will notify you of any change in their name on their driver's license or a change in the state from which they have a license. The name change will trigger a required amendment. A change in issuing states will trigger a requirement for a new filing.

The new safe harbor forms for the financing statement and amendment reflect the new name standards. Among several other changes on the forms, there is no longer a requirement to list the type, state and I.D. number for registered organizations. The Kentucky Secretary of State has updated the online filing forms to satisfy these new requirements.

Although the debtor name standards are the most important changes in the 2010 Amendments, there are other changes, including the creation of information statements that can be filed by secured parties, provisions relating to control of collateral in electronic form, and the use of online auctions for disposition of collateral.

Morgan & Pottinger will be happy to give a presentation on the 2010 Amendments to Article 9, "Playing the Name Game," at your bank.

by John McGarvey

601 West Main Street
Louisville, KY 40202
502.589.2780 p.
502.585.3498 f.

133 West Short Street
Lexington, KY 40507
859.253.1900 p.
859.255.2038 f.

5543 Edmondson Pike, #25
Nashville, TN 37211
615.452.4755 p.
615.831.9557 f.

100 E. Spring Street
New Albany, IN 47150
812.946.4386 p.

2013 Legislative Update

During the 2013 Legislative Session and the Special Session of the Kentucky General Assembly, several new laws were enacted that could affect the banking industry. Below is a brief summary of some of those bills:

Foreclosure Redemption Period – Senate Bill 27 amends KRS 426.220 by reducing the foreclosure redemption period from one year to six months. The law remains largely the same but, under Senate Bill 27, if land sold under execution does not bring two-thirds of its appraised value, the defendant and his representatives may redeem it within six months from the day of sale, by paying the purchaser or his representative the original purchase money and ten percent per annum interest thereon.

Uniform Commercial Code Amendments – Senate Bill 93 amends KRS 355.4A-108 (dealing with wire transfers) to prevent a conflict between the Electronic Funds Transfer Act (EFTA) and the Uniform Commercial Code that would have resulted from the expansion of the coverage of EFTA by Dodd-Frank to include certain transfers that could be made by wire. The legislation resolves the conflict by yielding to the EFTA in the event of any inconsistency with state law and wire transfers. This bill also resolves any remaining question regarding the effective date of the new amendments to Article 9 of the Uniform Commercial Code by clearly adopting the model effective date of July 1, 2013. Kentucky joins with over 40 other jurisdictions in adopting the 2010 Amendments to Article 9.

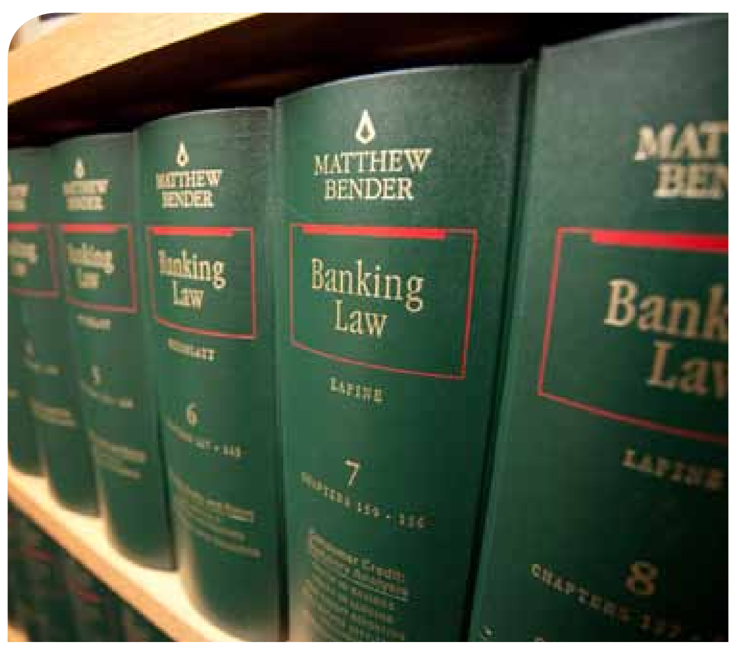
Business Entities and Trusts – Senate Bill 69 simply cleans up and clarifies some of the terms used in the business entity and trust statutes.

Administrative Garnishment of Student Loans – House Bill 49 amends the administrative garnishment process for Kentucky Higher Education Student Loan Corporation loans by requiring that the garnishment process begin no sooner than 180 days after the borrower fails to make payments on the debt that has been due and owing and that the process limits garnishment to no more than ten percent (10%) of the disposable pay of the defaulted borrower. This is all in an effort to ensure the borrower's due process rights are protected.

Other bills passed during the 30 day Session that might be of interest include:

Child protection. House Bill 290 establishes an independent panel to review cases of child deaths and near-fatal injuries. The panel will be given complete access to records of the Cabinet for Health and Family Services as well as information from law enforcement and other agencies involved in those cases.

Hemp. Senate Bill 50 creates an administrative framework for growing industrial hemp in Kentucky if it is authorized by the federal government.



Military voting. SB 1 makes absentee voting easier for Kentuckians serving overseas in the military. It allows members of the armed forces, their spouses and other overseas voters to register to vote and to request and receive absentee ballots electronically.

Human trafficking. HB 3 strengthens human trafficking laws while protecting victims from being prosecuted for crimes they were forced to commit. It also provides financial assistance for agencies that assist victims of human trafficking through fees paid by convicted human traffickers and the sale of forfeited property used in human trafficking.

Newborn health screenings. SB 125 ensures that all newborns will receive critical congenital heart disease testing.

Public pensions. SB 2 helps fix the state's public pension system by establishing a hybrid cash-balance plan for future public employees, other than teachers. The hybrid cash-balance plan requires both the employer and employee to contribute to the plan, as they currently do, and guarantees a four percent return on those contributions. The state will also contribute additional funds to the current plan to ensure that existing employees and retirees will receive their retirement.

School dropouts. SB 97 allows school districts to increase the compulsory attendance age to 18 beginning in the 2015-2016 school year. Districts that do so must have programs and resources in place for students at risk of not graduating. Raising the drop out age to 18 will become mandatory statewide four years after 55 percent of Kentucky school districts adopt the change.

University projects. HB 7 authorizes six state universities to issue agency bonds for 11 specific building construction projects totaling approximately $363 million. The projects will be funded by the universities' own revenue streams, not state dollars.

Victim protection. HB 222 establishes a crime victim protection program in the Secretary of State's office to provide an alternate address for voting purposes for victims of domestic violence, stalking or sex crimes and for parents or guardians of a minor who has been the victim of a crime. The legislation allows persons in the program to register to vote and apply for and submit a mail-in absentee ballot.

by Melinda T. Sunderland

Morgan McGarvey

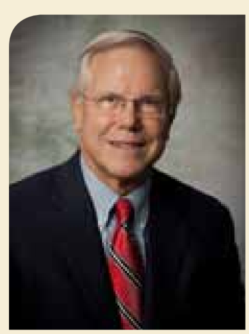
Selected as

FORTY UNDER 40 HONOREE

M&P attorney, Morgan McGarvey, has been selected by Business First of Louisville as a "Forty Under 40" honoree, an achievement that recognizes people under the age of 40 who are leaders in the business community in addition to their strong civic engagement.

Morgan was elected to the Kentucky State Senate in 2012 and represents the 19th District in Jefferson County. Morgan's committee appointments include Banking and Insurance; Licensing, Occupations and Administrative Regulations; State and Local Government; and Transportation.

Morgan's practice focuses on litigation, drawing upon experience he acquired as a Special Assistant Attorney General in Kentucky and in Washington D.C. as a staff member for Congressman Ben Chandler. He's an excellent communicator and has a sharp sense for understanding a client's needs. Morgan began his career as an associate at the largest law firm in Kentucky. He joined M&P in 2010, serves on the firm's Marketing Committee and is a member of the Litigation Practice Group.



John McGarvey

John McGarvey has been appointed chairperson of the Legislative Council of the National Conference of Commissioners on Uniform State Laws. He also received a 2013 Uniform Law Commission Legislative Award for advocacy on behalf of Article 9.

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Louisville, KY 40202

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FirmNews

M&P IS PLEASED TO ANNOUNCE:

Congressman Ben Chandler has joined the firm as "Of Counsel" in our Lexington office. Congressman Chandler will lend his experience and years in public service to provide assistance and consultation to individuals, companies and trade groups who interact with local, state and federal government agencies. He will support several of the firm's practice areas, including ***banking and finance***, ***business law and litigation***, ***white collar crimes*** and ***equine law***.

Branden Gross has joined the firm as "Of Counsel" in our Lexington office. Branden's comprehensive practice will focus on real estate transactions, title examinations, acquisition and financing, planning and zoning, landlord and tenant disputes, loan enforcement and more. He also handles commercial and apartment foreclosures and land disputes. Branden was appointed by Governor Beshear to the Financial Institutions Board in 2009 and continues to serve in that capacity. Branden is currently a director of the Kentucky Land Title Association and a past director of the Fayette County Bar Association.

IN OTHER NEWS:

John McGarvey has been named a 2012 Kentucky Super Lawyer in the areas of Bankruptcy & Creditor/Debtor Rights and **Thurman Senn** has been named a 2012 Kentucky Super Lawyer in Business Litigation.

Six M&P Attorneys Recognized as "Top Lawyers" in Louisville Magazine: *Thomas Coffey, Clyde Foshee, John McGarvey, Molly Rose, Timothy Schenk* and *Deane Stewart.*

Scott White has been elected chairperson of the Lexington-Fayette County Health Department's **Board of Health**.

Mindy Sunderland has been named to the Board of Directors of Family Scholar House and elected treasurer of the Kentucky Bar Foundation's IOLTA Board of Trustees.

John McGarvey presented banking law updates at the 2013 **Kentucky Bankers Association** Spring Conference.

Mindy Sunderland chaired the 2nd Biennial Collection Law Conference at the University of Kentucky College of Law. John McGarvey and Thurman Senn were both presenters.

Scott White and **Sarah Mattingly** successfully defended Boyd and Carter Counties' decision to operate a regional jail from a challenge of unconstitutionality by the Kentucky Jailers Association.

M&P is pleased to announce two new shareholders and two new senior associates: *Molly Rose, Shareholder; Tim Schenk, Shareholder; Taylor Hamilton, Senior Associate; and Bradley Salyer, Senior Associate.*

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