

**Topic:** Upper and Lower Case

**Question By:** Bert Black

**Jurisdiction:** Minnesota

**Date:** July 29, 2013

Jurisdiction	Question(s)
Alabama	
Alaska	Alaska is the same as Utah.
Arizona	
Arkansas	
California	
Colorado	
Connecticut	
Delaware	
District of Columbia	
Florida	
Georgia	
Hawaii	
Idaho	I received a call yesterday from a financial institution that has some concerns over all capitalization. It is the only call I've had on this issue from any other than bogus filers - and we all know how they love to distinguish between all capitalization and upper/lower case names. Regardless, Idaho converts all filing information into all caps.
Illinois	<p>Illinois was seeking a way to expand online filings and asked several service companies how this could be done. We were told that allowing mixed case letters so the organic record was submitted would improve our percentages. It was explained that attorneys interpreting the law felt that mixed case letters made the filing legally sufficient.</p> <p>The explanation is a bit confusing because Illinois required paper filings to be in all upper case per Illinois Administrative Rule, therefore even a paper filing would not have been legally sufficient as an organic record due to Illinois, (or any other jurisdiction) requiring all upper case. Virtually this would mean that 1000's of records submitted in all upper case over the years did not meet the attorneys definitions of organic and therefore are insufficient. Not having a law degree, I can't answer if the documents are organic and legally sufficient or not...</p> <p>So, we went ahead and changed our AR's to allow mixed case letters. What we are finding is our clients are not submitting Organizational names as they were organically registered in their jurisdiction. It is not our duty as filing officers to scrutinize the text as long as the blanks have appropriate text, so we just file the documents as presented.</p>

	<p>The paper documents potentially have misleading organizational names on them....?</p> <p>Example: CNH CAPITAL RECEIVABLES LLC or Cnh Capital Receivables Llc (which is correct and organic) or (are both the same)?</p> <p>With this having been stated, Illinois converts our internal data entry to upper case for storage and retrieval from our data base. Digital images are maintained from replicas of the scanned paper submittal , and electronic submittals are digitally reproduced as submitted.</p>
<b>Indiana</b>	Indiana uses all caps as well. We have had some customer complaints over the years but not many.
<b>Iowa</b>	
<b>Kansas</b>	
<b>Kentucky</b>	
<b>Louisiana</b>	Same as Utah, upper case, no discussions.
<b>Maine</b>	
<b>Maryland</b>	
<b>Massachusetts</b>	
<b>Michigan</b>	
<b>Minnesota</b>	
<b>Mississippi</b>	
<b>Missouri</b>	
<b>Montana</b>	Montana allows users to enter upper and lower case when filing liens online. The information displays to the customer exactly how it was entered through the internal or external applications. Behind the scenes, we normalize the party names to upper case along with other normalized related scripts prior to displaying liens that match the search criteria for a debtor search certificate.
<b>Nebraska</b>	
<b>Nevada</b>	
<b>New Hampshire</b>	
<b>New Jersey</b>	
<b>New Mexico</b>	
<b>New York</b>	
<b>North Carolina</b>	
<b>North Dakota</b>	
<b>Ohio</b>	Ohio's online filing system also normalizes to uppercase, regardless of how it is typed. This is something that is on our IT wish list to be corrected. Ideally, the image created would display the name as it was typed by the filer but would be all caps on the back end.
<b>Oklahoma</b>	Oklahoma uses upper and lower case but we have the same issue with punctuation. We drop the punctuation so that indexing is standard. Customers say the same thing that their name has the comma etc.
<b>Oregon</b>	There are any number of court cases about the relative effectiveness of type case. Every single reference I've ever

	<p>seen, including administrative rulings in our state, say the capitalization of a name makes no difference to the actual name itself and the entity it refers to. Of course, these cases are almost entirely sovereign citizen cases, but the principle is the same.</p> <p>For the record, we convert efilings from whatever they type in to standard uppercase and allow very limited punctuation.</p>
<b>Pennsylvania</b>	
<b>Rhode Island</b>	
<b>South Carolina</b>	
<b>South Dakota</b>	
<b>Tennessee</b>	<p>I agree with Bert. The 9-506(c) safe harbor makes clear that as long as "a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement ... the name provided does not make the financing statement seriously misleading." Because a search with lower case letters will have the same search results as with uppercase letters (or combination thereof), the debtor's name is not seriously misleading even if it has a different case than the actual name.</p> <p>Tennessee inputs all names (debtor and secured party) as uppercase.</p>
<b>Texas</b>	
<b>Utah</b>	Utah uses all upper caps and we have not had this discussion.
<b>Vermont</b>	
<b>Virginia</b>	
<b>Washington</b>	
<b>West Virginia</b>	
<b>Wisconsin</b>	
<b>Wyoming</b>	

**Additional Comments:**

**Reply from Tom Wrosch (Oregon) in response to answer from Dennis Hankins (Illinois):** Dennis, you raise a good point. That's only the tip of the iceberg. There are good solid reasons why databases normalized to upper case; it wasn't just a programming issue of old languages like COBOL and FORTRAN.

Again, the overwhelming opinion of courts throughout America - at state and federal levels - is that type case makes no difference to entity identity. I think the attorneys are just being nervous, and confusing IP law with administrative law. Sure, it might make a difference in trademarks, but not in this arena.

The reason I'm so adamant about this is I think it's a very bad idea to cater to this misconception. Once states start allowing for mixed case on the basis of "it reflects the organic name", it creates the presumption that there is something wrong if you don't allow mixed case. But mixed case does

not reflect an organic name any better than all caps (or all lower case, for that matter). **Case makes no difference.** That is the legal principle, and that's what we should recognize. Please don't give credence to the strawman argument, or next thing you know, we'll be putting tassels on all our flags.

**Response from Kathy Berg (Utah):** I agree, Tom, and it also caters to our "political zealots" who are the usual culprits of mixed case demands.

**Comment from Darrell Pierce (Dykema Gossett):** A filer is protected if it submits the actual debtor name (not the name as you normalize it) under 9-503. Other versions of the name may be adequate, if a search using the correct name and the filing office's standard search logic will find them, but that depends on the actual operation of the search logic from time to time. If the search logic changes, a filing may no longer be found and may be rendered ineffective as a result. That's why filers want to submit the name exactly as it appears in the public organic record (usually title case).

The problem for the attorneys is a theoretical one. If they do not submit the name exactly as it is, and if case makes a difference in your search results, submitting the name in the wrong case would be a "fatal" error. I understand the fact is that case does NOT make a difference under current filing office procedures in any state, but the attorneys will be concerned that current procedures might change. The only assured way of protecting a filing against subsequent search logic and indexing changes is to submit the precisely correct debtor name.

**Comment from Thomas Ose (Ose Micro Solutions, Inc.):** I believe this discussion has been brought up many time before and relates to a separate issue. The real issue is storing names as presented or as indexed. Ideally the user should be able to type information in and get what they typed in returned to them on the form or during a search ( this also relates to allowing special characters or not). A modern system should accept information as entered and then build a search key that is normalized (either upper or lower case, characters and noises removed, etc). This search key is then stored along with the record and used whenever a search is requested. Once a record is found then the original (as entered) data will be presented to the user. Just like we remove characters now when we build the index (punctuation, etc.) we would still present the name as it was entered. So casing is just one more rule to the puzzle.

Perception is everything and if a user does not perceive that the system is doing what they feel is correct then it will not be used (or complained about). I agree also that there is no legal restrictions (from a non-legal person) as to the case of the information.

### **Full Text of Original Email:**

Minnesota's Online Filing system allows for the listing of a debtor name ( or secured party name, for that matter) only in all caps, no matter how you try to type it in.

Some financial institution staff are nervous about filing online if an organization name has upper and lower case letters in the name on the articles of incorporation or other organic document. They claim that the fact that our system converts their name to all caps renders their online filing ineffective as it is not the same name as listed in the organic document.

They also suggest that a paper filing that had the upper and lower case letters on the financing statement would be effective.

In our system, we turn the entry for the paper document into all caps as well, so all names in the MN UCC system database are all caps. We search only on A to Z, 0 to 9. Upper and lower case are irrelevant to our search. A search would find a name regardless of whether it was listed in all caps, upper and lower case or all lower case on an original filing as long as the characters were in the correct sequence. I would suggest that 9-506 (c ) means that this name is not seriously misleading and that the filing would be effective.

Have any of you had this discussion and have you reached similar or different conclusions than I have stated?