



OREGON LAW COMMISSION

SUMMARY OF HB 4035

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How this Bill Changes Current Law

Secured transaction laws are the rules for loans in situations where creditors rely on the borrower's personal property as collateral for the loan. (For example, farmer buys farm equipment on credit and the equipment is the collateral securing the loan.) ORS Chapter 79 governs Oregon's secured transactions and is based on a uniform act recommended by the Uniform Law Commission (ULC) and American Law Institute (ALI). Chapter 79's last major revision occurred in 2001 and coincided with nation-wide changes to UCC Article 9. This bill addresses issues that have arisen in the last ten years, largely technical in nature. All 50 states and territories are expected to implement these new changes by the recommended July 13, 2013, effective date. Nine states have already done so and several more are in process. In order to stay in step with other states and for Oregon businesses to realize the cost savings from uniform transactions, it is important for Oregon to adopt the changes by the effective date. This bill comes upon the recommendation of the Oregon Law Commission that formed a Work Group of creditors, the Secretary of State's office (which handles UCC filings), debtor-creditor attorneys, and consumer advocates to review the recommended revisions. As stated, the bill is largely technical but there are 4 key substance provisions.

Key Substantive Points of Bill

- *Public Notice of an Individual Debtor's Secured Loan:* Creditors must file a financing statement to provide notice of a secured transaction; the financing statement must state the individual debtor's name. Also, when weighing the adequacy of a debtor's collateral for a loan, creditors can search the debtor's name in a UCC database (administered by the Secretary of State) showing the prior pledges of collateral. The current law has little guidance on what satisfies the debtor's name requirement. This bill provides that the name on the debtor's valid driver's license or identification card satisfies the requirement and will indeed serve as a "safe harbor" provision. Alternatively, the financing statement may list the debtor's individual name or the debtor's surname and first personal name. **(HB 4035 §§12(d))**
- *Public Notice of an Organizational Debtor's Secured Loan:* Similar to the problem with an individual debtor's name, the bill specifies what name to use for an organizational entity that has a loan. With this bill, the name shall be the one on the public organic record for the entity most recently filed with (or issued by) the state. **(See HB 4035 §§12(1)(a) & §1)**
- *Reliability of Collateral When Debtor's Location Changes:* This bill fixes problems that arise when property like a business's inventory guarantees a loan, but, under the current law, would no longer be included collateral when a business moves out of state. The bill extends the same grace period to file in the new state to four months from the business's relocation. **(HB 4035 §§6(8))**



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is housed at the Willamette
University College of Law,
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administrative and research
support for the Commission.

- *Reliability of Collateral Following Merger*: This bill handles an additional problem of when the debtor undergoes a merger, which causes similar problems for a creditor who intends after-acquired property to be included as collateral. Like the change of location revision, this bill also extends the grace period for creditors to refile to four months. **(HB 4035 §§6(9))**



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UCC Article 9 Work Group

KEEPING SECURED TRANSACTIONS LAW EFFECTIVE

Explanatory Report for HB 4035

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Approved by the Oregon Law Commission at its Meeting on
January 25, 2012



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located at the Willamette
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I. Introduction

The Uniform Commercial Code (“UCC”), which has been the law throughout the United States for several decades, has the principal purpose of encouraging private business transactions by establishing a clear and predictable framework for borrowers and lenders, buyers and sellers, payors and payees, etc. Perhaps the most important type of business deal governed by the UCC is the secured transaction, which is a loan accompanied by personal property collateral (as opposed to mortgages on real property, which is largely left to state-specific non-uniform law). The rules for secured transactions, which appear in UCC Article 9 (ORS Chapter 79 in Oregon), are the subject of the present bill.

In particular the bill resolves a set of practical problems that have arisen since 2001, when the bulk of Article 9’s current rules went into effect in Oregon and across the nation. Chief among the problems resolved are (a) the way in which public notice is communicated of secured loans incurred by individuals, (b) the way in which public notice is communicated of secured loans incurred by organizations such as corporations or limited liability companies, and (c) the reliability of collateral taken by a lender in situations where the borrower’s location changes from one state to another. The bill also provides a set of transition rules devoted to creating a smooth shift from the rules that are currently on the books to the bill’s improved substantive rules.

The UCC as a whole is jointly sponsored by the Uniform Law Commission (“ULC”)¹ and the American Law Institute (the “ALI”). When sufficient cause arises, these two organizations occasionally recommend revisions or amendments to portions of the UCC for enactment by the states, and such a recommendation was the genesis of the current bill. A substantial part of the UCC’s business-enhancing value stems from the fact that all 50 states, plus the District of Columbia, Puerto Rico and the U.S. Virgin Islands, have enacted virtually identical versions of the UCC with only very minor substantive deviations. As a result, the U.S. national economy is much more closely knitted together than it would otherwise be, as parties to business transactions are freed from the uncertainty or high research costs that would result from each state’s laws differing from the laws of other states.

Enactment of this bill is important for keeping Oregon a part of the above-described national framework of commerce. Ten states² have already adopted the Act; an additional ten states³ have already introduced it during these early days of 2012; and introductions and enactments in all of the remaining states are expected during 2012. As explained below, the sound workings of the UCC system call for nationwide effectiveness of the bill’s provisions by July 1, 2013, and for that reason we believe the bill should be acted upon during the coming short Oregon legislative session.

¹ The ULC is also known as the National Conference of Commissioners on Uniform State Laws (“NCCUSL”).

² Washington, Indiana, Minnesota, Nebraska, Nevada, North Dakota, Puerto Rico, Rhode Island, Texas, and Washington.

³ District of Columbia, Florida, Kentucky, Massachusetts, Michigan, New Hampshire, Ohio, Oklahoma, South Dakota, and Virginia.

II. History of the Project

The substance of the bill's proposed amendments was promulgated by the ULC and the ALI in 2010, following a process of study and revision of existing Article 9. First, in 2008 a review committee of the UCC's Permanent Editorial Board⁴ issued a report identifying a number of specific issues to be considered for statutory changes. Then, the ULC and the ALI appointed a Joint Review Committee (JRC) to review the report and draft any recommended changes to the statutory language, or to the UCC's Official Comments. In this task, the JRC was assisted by a number of advisors and observers, including those from the American Bar Association, the American College of Commercial Finance Lawyers, and a working group of lenders under the auspices of the American Bankers Association. In 2009, the ULC and the ALI considered the first draft of the amendments at their respective annual meetings. In 2010, both organizations approved the proposed amendments and recommended them for enactment by the states. The American Bar Association has also endorsed the proposed amendments.

As noted above, 20 states have already formally moved toward enacting the amendments and similar activity is afoot in all other U.S. jurisdictions. There is no opposition to the amendments.⁵

The Oregon Law Commission Work Group was first convened in October, 2011 for the purpose of evaluating the suitability for Oregon of the proposed amendments and, if suitable, preparing a draft bill for legislative introduction. Members of the Work Group were as follows: John Davenport, Davenport & Hasson LLP; Walter Gowell, Haugeberg Rueter Gowell Fredericks Higgins and McKeegen PC; Dave Hilgemann, Garrett Hemann Robertson, P.C.; Joe Hobson, Ritter Hobson LLC; Andy Morrow, Lane Powell PC; Ken Sherman, Sherman Sherman Johnnie & Hoyt LLP; and Thomas Wrosch, Commercial Registries Manager at the State of Oregon Corporation Division, Secretary of State's Office. Statutory drafting was carried out by Sean Brennan, Oregon Deputy Legislative Counsel. Oregon Law Commission support was provided by Deputy Director Wendy J. Johnson, Law Clerks Chad Krepps and John Adams, and Legal Assistant Lisa Ehlers. Oregon State Bar assistance was provided by David Nebel. The Work Group's Chair was Lane Shetterly, Chair of the Oregon Law Commission. The Work Group's Reporter was Carl S. Bjerre, University of Oregon School of Law.⁶ The Work Group was also assisted by the following advisors: Barbara Bradley, Legal Aid Services of Oregon; Paul Cosgrove, Lindsay Hart Neil Weigler; Lana Cully, Oregon Department of Transportation; Sarah Filcher; Susan Grabe, Oregon State Bar; Amy Joyce, Oregon Department of Transportation; John McCulley, Agricultural Cooperative Council of Oregon; Jim Markee, Markee & Associates; and Peter Threlkel, Oregon Secretary of State's Office.

⁴ The Permanent Editorial Board is a committee made up of members of the ULC, the ALI, and the American Bar Association (ABA).

⁵ In Kentucky, a bill containing the amendments was vetoed in the last legislative session, but this was only because of an extraneous issue relating to federal tax liens. That federal tax lien issue is not present in either the ULC/ALI recommendations or the present Oregon bill, and even in Kentucky the bill has now been reintroduced without the extraneous issue and is expected to pass.

⁶ The Work Group's Reporter was also a member of the JRC referred to above. He thanks Douglass Barron for excellent research assistance with this Report.

As is usual in the case of the UCC, the ULC and ALI process resulted in Official Comments for each statutory provision, as well as for some current statutory sections that the bill does not amend. The Work Group was guided by these Official Comments as well as by the members' knowledge of the applicable law and practice. (The Official Comments are generally and rightly accorded substantial weight by the courts in construing the UCC, and for that reason the legislature should be guided by them as well in considering and enacting this bill. The Official Comments to amended Article 9 are included as Appendix A.)

III. The Major Problem Areas

A. Public Notice of an Individual Debtor's Secured Loan

A lender having a security interest under UCC Article 9 can protect itself against other creditors of the same debtor by giving public notice of the security interest. This is usually done by filing a simple document, called a financing statement, in the filing system maintained by the Secretary of State's office. The act is roughly akin to recording a mortgage, but for personal property collateral. Financing statements describe the collateral for the loan and identify the debtor, and because the financing statements are publicly available, prospective lenders are able (and expected) to check the filing system before making the loan. (To take one example, if a lender takes a security interest and the debtor files bankruptcy, the lender's recovery in the bankruptcy will be protected if the lender correctly filed its financing statement before the bankruptcy. To take a second important example, if two lenders both take a security interest in the same property and then the debtor borrower is unable to repay both loans, the lender who first correctly filed a financing statement will be paid in full before the other lender.) In this way, when the system works properly, any lender can ascertain whether some past lender's security interest already ranks ahead of its own.

The problem is that the debtor's name is the key to the filing system (that is, prospective lenders will look for other lenders' financing statements by checking under the name of the borrower), but that, when the debtor is an individual, there is no clear guidance on what counts as the debtor's name. In the United States a person may have several different names, or several different versions of a single name, all of which are equally legitimate for the purpose of conducting business transactions. Specifically, existing UCC § 9-503 (ORS 79.0503) requires that a financing statement contain the debtor's name; otherwise the financing statement is not effective to protect the lender. Yet the existing statute does not contain any guidelines as to how an individual debtor's name should be determined, and this has presented substantial difficulties for filers and searchers (not to mention courts), because individuals do not necessarily have a single name. An individual may have one name on his passport, another name on his driver's license, and a third name on his tax return.⁷ A person may also be known in his or her community by a name that is not reflected on any official document at all, but that is nonetheless the person's legitimate name for borrowing and lending purposes. This situation can cause litigation and uncertainty when the debtor's name listed on a financing statement is distinct from what is alleged to be the debtor's "real" name. In this absence of legal certainty, a prospective

⁷ Edwin E. Smith, *A Summary of the 2011 Amendments to Article 9 of the Uniform Commercial Code*, 42 UCC L.J., Art. 4, at 351 (2010).

secured lender may be unable to make educated lending decisions, and may be at risk when relying on collateral.

Illustrating this problem, one court declared a financing statement listing the debtor as “Chris Jones” was ineffective, on the asserted grounds that the debtor’s legal name was Christopher Gary Jones.⁸ In another case, a court found that the financing statement should have provided the debtor’s full legal name, Richard Morgan Stewart, IV, even though the debtor signed an application for credit as “Richard M. Stewart” and a security agreement as “Rick Stewart,” and authorized the financing statement to provide his name as “Richard Stewart.”⁹ Numerous cases could be cited and discussed.

This problem of individual names actually has two facets. The first facet is a problem of filing: a lender making a secured loan cannot be certain that it is filling out the financing statement using the correct version of the individual’s name, and the security interest might not be respected in bankruptcy or similar situations. The second facet is a problem of searching: a lender *considering* making a secured loan cannot be certain that it is searching for other lenders’ financing statements using the correct version of the individual’s name, and the loan might be made based on an incorrect belief that the lender is first in line.¹⁰

B. Public Notice of an Organizational Debtor’s Secured Loan

Under current law, the name to be used on a financing statement when the debtor is an organization such as a corporation or a limited partnership (a “registered organization”) is clearer than for individual debtors, but still subject to an important ambiguity. UCC § 9-503(a)(1) (ORS 79.0503(1)(a)) requires “the name of the debtor indicated on the public record of the debtor’s jurisdiction of organization which shows the debtor to have been organized.” The problem is that this formulation wrongly suggests that there is one and only one such public record. In fact, there may be several records, showing different forms of a name, including among others (a) the certificate of incorporation, certificate of limited partnership, or other analogous document submitted by the organization’s sponsors for the purpose of creating the organization (showing the intended name, e.g. Alpha Shoes, Inc.); (b) the Secretary of State’s reflection of this name in its databases (showing inaccurate transcriptions of the intended name, in some states more than others, e.g. Alfa Shoes, Inc.); (c) an amended certificate of incorporation that changes the original name (e.g. Beta Shoes, Inc.); and (d) a doing-business certificate (often showing a wholly different trade name, e.g. Al’s Main Street Shoe Store). This ambiguity creates problems for searchers and filers analogous to those discussed above for individual debtors.

⁸ *Morris v. Snap-on Credit, LLC (In Re Jones)*, 2006 WL 3590097, at *3 (Bankr. D. Kan. Dec. 7, 2006).

⁹ *Morris v. Snap-on Credit, LLC (In Re Stewart, IV)*, 2006 WL 3193374, at *2 (Bankr/ D. Kan. Nov. 1, 2006)

¹⁰ In fact, these problems have been severe enough that some states have even enacted non-uniform statutory provisions attempting to improve the situation. These individual-state solutions have tended to worsen the problem rather than improve it, because they are drafted in an unclear matter, and because they undermine the national uniformity that helps borrowers from one state transact with lenders in another.

C. Reliability of Collateral When Debtor's Location Changes

UCC Article 9 takes care to protect a secured lender's collateral even when the debtor's location changes, but current law is inadequate to address turnover collateral such as inventory or accounts receivable in this situation.

Debtors may change their jurisdiction, with the result that a new state's law would control the filing of financing statements or other perfection-related actions. For example, if the debtor is an individual residing in Washington, financing statements should be filed against the debtor with the Washington Secretary of State's office, but if the same individual changes her residence to Oregon, then financing statements should be filed against her with the Oregon Secretary of State's office. See UCC §§ 9-301(1) and 9-307(b)(1), ORS 79.0301(1) and 79.0307(2)(a).¹¹ But if a secured lender made the loan before the debtor's move, then the secured lender is ordinarily given a four-month grace period of continued perfection under the new state's law, so that the financing statement filed in Washington remains effective under Oregon law for the four months, during which time the lender is expected to discover the move and file a new financing statement in Oregon. UCC § 9-316(a)(2), ORS 79.0316(1)(b). (Correspondingly, Washington's enactment of UCC § 9-316(a)(2) provides the same grace period to a secured lender to a person who moves from Oregon to Washington.) The problem is that this grace period only applies to collateral in which the secured party's security interest was perfected at the time of the debtor's move; in other words the grace period does not currently apply to after-acquired property.

After-acquired property is property that the debtor acquires after the secured loan was made, but is nonetheless collateral for the loan. It is particularly important for property such as inventory and accounts receivable, which by their nature are subject to turnover and are often covered by after-acquired property clauses. A secured lender making a loan to debtor whose important property is, say, jewelry that the debtor sells to customers, needs to be protected not only in the jewelry items that the debtor owns on the date of the loan, but also in the jewelry items that the debtor acquires later, while the loan is still outstanding, in replacement of the original items that routinely get sold. UCC Article 9 ordinarily protects the lender in this after-acquired property – but it does not do so for after-acquired property acquired after the debtor moves to a new jurisdiction.

In the example above, if the Washington resident took out a loan using her jewelry inventory as collateral, and then moved to Oregon and her current jewelry were sold and replaced by new jewelry within the four months, the lender would be left with no collateral at all. Thus, existing 9-316 creates a potentially dangerous situation for the holders of security interests in after-acquired property, forcing them into the choice between wastefully monitoring their debtors over short time periods, or risking losing their collateral. Such a burden is out of keeping with both the pace of modern commerce and the transaction-protecting purpose of the UCC.

¹¹ Similar examples could be given for debtors that are registered organizations and migrate rather than merge, and for debtors that are non-registered organizations and change the location of their place of business or chief executive office.

D. Reliability of Collateral Following Merger

The problem just discussed in connection with a debtor's change of jurisdiction has a close parallel when the debtor merges or otherwise combines itself into an out-of-state entity. Technically such cases do not involve a single continuing debtor which changes jurisdictions, but rather a change from one debtor (incorporated or otherwise organized in, say, Washington) to another debtor (incorporated or otherwise organized in, say, Oregon). Here too, UCC Article 9 takes care to protect a secured lender's collateral, but current law is inadequate to address turnover collateral such as inventory or accounts receivable.

In these out-of-state merger situations, if a secured lender made the loan before the merger, then the secured lender is ordinarily given a one-year grace period of continued perfection under the new state's law, so that the financing statement filed in, say, Washington remains effective under Oregon law for the one year, during which time the lender is expected to discover the merger and file a new financing statement in Oregon. UCC § 9-316(a)(3), ORS 79.0316(1)(c).¹² (And again, correspondingly, Washington's enactment of UCC § 9-316(a)(3) provides the same grace period to a secured lender to a Washington borrower who merges into an Oregon entity.) The problem here, just as above, is that this grace period does not apply to after-acquired property.

As an example, if ABC Inc., a Washington corporation, took out a loan using its jewelry inventory as collateral, and then merged into ABC Inc., an Oregon corporation, and the current jewelry were sold and replaced by new jewelry within four months after the merger, the lender would be left with no collateral at all. Here too, existing law creates a potentially dangerous situation for the holders of security interests in after-acquired property, forcing them into the choice between wastefully monitoring their debtors over short time periods, or risking losing their collateral.

IV. The Bill's Solutions to the Major Problems

A. Public Notice of an Individual Debtor's Secured Loan

In order to provide more certainty for both filers and searchers, the bill would provide a rule making clear that any of the following names for the debtor would be sufficient on a financing statement: (1) the debtor's name as shown on the debtor's driver's license (assuming the debtor holds an unexpired Oregon driver's license, otherwise an Oregon state-issued identification card); (2) the individual name of the debtor, without further guidance, as under current ORS 79.0503, or (3) the debtor's surname and first personal name. HB 4035 § 12(1)(d).

¹² The one-year grace period here is longer than the four-month grace period discussed above, because this section applies not only to easily-discovered events such as mergers, but also to difficult-to-discover events such as ordinary sales from an original owner to a separate owner. On the other hand, the post-merger grace period added by the bill for after-acquired property, discussed in Part IV.D below, is limited to four months because ordinary non-merger sales do not involve the after-acquired property problem with which the bill is concerned. If a Washington corporation merges into an Oregon corporation, after-acquired inventory or accounts receivable are routinely involved, but if a Washington corporation remains independent and simply sells some of its property to an Oregon corporation, only the immediate property is sold, and no turnover collateral is implicated.

The Work Group's recommendation on this issue is unanimous. Under the recommended rule, the debtor's unexpired driver's license name would provide a "safe harbor," under which filers and searchers who follow Article 9's rules can be sure of the effectiveness of their actions.

At the same time, the recommended rule would protect other lenders who, perhaps because they are one-time or nonprofessional lenders and do not know Article 9's intricacies, might use forms of the individual's name other than that which appears on the driver's license. These lenders would still be protected as long as they used either a legitimate individual name as under current ORS 79.0503, or the debtor's surname and first personal name.¹³ (In the Work Group's unanimous view, it would *not* be desirable for the bill to legitimize *only* the driver's license name. One can easily imagine situations where such a narrow rule would create a trap for the unwary. For example, suppose that in 2010 the debtor acquires a driver's license correctly showing her name as Alice Maiden-Name, and further suppose that in 2011 the debtor marries and begins using the name Alice Married-Name in her business matters. If this debtor obtains a secured loan without getting a new driver's license, nonprofessional secured lenders would be much more likely to file a financing statement under the married name than under the old and generally inaccurate maiden name. The Work Group concluded that it would be illogical and unduly harsh to penalize a lender who did not know to file under the old name.) Overall then, the recommended rule provides certainty for those who know the rules, while also allowing a desirable degree of flexibility for those who are not experts in the system.¹⁴

B. Public Notice of an Organizational Debtor's Secured Loan

The bill clarifies the correct name of a registered organization to be included in the financing statement. Under the bill, the name to be provided is "the name that is stated to be the registered organization's name on the public organic record most recently filed with . . . the registered organization's jurisdiction of organization that purports to state, amend or restate the

¹³ The amendments proposed by the ULC and the ALI invite states to choose between two alternative solutions on this issue. In adopting the solution just explained, the bill chooses one of those alternatives, which is sometimes called the "safe harbor" approach because of its combination of certainty and flexibility. The other alternative, which is sometimes called the "only if" approach because of its strictness, was rejected by the Work Group for reasons that are explained in the text. Among the states that have enacted the Act, most have adopted the only if approach, but the Work Group is of the firm view that the safe harbor approach is sounder and creates a better system. We also note that our neighboring state of Washington is one that has adopted the safe harbor approach as we recommend, and that the high volume of cross-border business between Oregon and Washington makes this an important additional reason for Oregon to adopt the safe harbor approach as well.

¹⁴ One might argue that a stricter rule, permitting only the driver's license name without any flexibility for non-experts, would theoretically make it easier for a prospective secured lender to search for prior filings. The Work Group rejected this argument for several reasons. First, the increased easiness of searching comes only at the expense of unwary filers who might not know to follow the stricter rule. Second, searching is hardly burdensome even under the current rules, because electronic searches of the Secretary of State's database of filings are free and nearly instantaneous. Third, any increased ease of searching is probably illusory, because federal tax lien notices are not necessarily filed under the driver's license name, yet virtually every prospective lender searching for prior financing statements will also search for federal tax lien filings. See 26 U.S.C. § 6323(f)(3) (name used on federal tax lien notices is subject only to IRS regulations, not other law); *In re Spearling Tool and Manufacturing Co., Inc.*, 412 F.3d 653 (6th Cir. 2005). And fourth, during the bill's five-year period of transition between the current and revised rules (see Part IV.E below), financing statements filed before July 1, 2013, under names other than the driver's license would continue to be effective, if they were effective under current law.

registered organization's name." HB 4035 § 12(1)(a). "Public organic record," in turn, is defined in pertinent part as "the record initially filed with or issued by a state . . . to form or organize an organization and any record filed with . . . the state . . . that amends or restates the initial record." HB 4035 § 1(000). The effect of this language is to clearly designate the name as it appears on the current version of the certificate of incorporation, certificate of limited partnership, etc. As a result, searchers and filers can carry out their lending decisions with confidence.

On a related point, the bill clarifies the definition of registered organization to which the above rule applies. The new definition covers, in pertinent part, any organization "formed . . . by the filing of a public organic record with . . . the state." HB 4035 § 1(rrr). This directly reflects standard practice in which a corporation, limited partnership, or the like is formed by the filing of the certificates described above. (The same section of the bill also clarifies that a common-law business trust, though formed by private action rather than public filing, is nonetheless a registered organization, if the state's statute governing business trusts requires that the trust's organic record be filed with the state.)

C. Reliability of Collateral When Debtor's Location Changes

The bill extends the four-month grace period to after-acquired property. HB 4035 § 6(8). It does so by providing that "a financing statement filed before the [debtor's] change [of location] pursuant to the law of the jurisdiction designated in ORS 79.0301(1) [i.e. filed in Washington, in our example above] . . . is effective" regarding "collateral to which a security interest attaches within four months" of the change. Secured parties with security interests in after-acquired property are thereby relieved of the dilemma of either constantly checking upon their debtors' locations or of losing their collateral. The amendment remedies the distinction between the treatment of previously acquired and after-acquired property.

D. Reliability of Collateral Following Merger

The bill extends the same four-month grace period to after-acquired property following a merger as it does to after-acquired property following a single debtor's relocation. HB 4035 § 6(9). It does so by providing that "a financing statement naming an original debtor . . . is effective to perfect a security interest in collateral acquired by a new debtor before, and within four months after" the merger. (The terms "original debtor" and "new debtor" are defined in current ORS 79.0102(ggg) and (ccc) respectively and are not changed by the bill. They may be conveniently understood as referring to the non-surviving and surviving entities in a merger.) Here as above, secured parties holding after-acquired property as collateral are relieved of the dilemma of either constantly checking for mergers by their debtors or of losing their collateral.

E. Transition Rules, Including Uniform Effective Date

In a nationally integrated statutory design such as UCC Article 9, it is important for all relevant jurisdictions' rules to lead to the same result; otherwise unjust results could be reached by forum-shopping, and the fluidity of reaching interstate loan agreements so important to a "uniform" commercial code would be severely impaired. For this reason, every state adopting

the Act is taking care to provide for its version to become effective on the same “uniform effective date,” namely July 1, 2013. See HB 4035, § 28. In order for Oregon to stay in step with the other 52 jurisdictions, it is important for the bill to move through the legislature during the current legislative session.

Other technical questions might also arise as a result of the shift from current law to the bill’s new substantive rules, and these are addressed in HB 4035, §§ 20-27. These “transition rules” are closely modeled on previous transition rules that were used when Oregon and the other 52 jurisdictions moved in 2001 from older law to current Article 9. They are designed to balance the interests of parties who have already successfully entered into transactions under existing law with the interest of the legal system in moving, in due course, to a reliable and universal application of the new rules.¹⁵

V. Conclusion

The bill should be adopted because it provides well-tailored solutions to practical problems that are impeding secured transactions under current law, while also keeping Oregon’s law of commercial transactions substantially uniform with that of its sister states, to the benefit of the state’s and the nation’s economy from improved flow of cross-border commerce.

¹⁵ For example, a financing statement filed before the bill takes effect, and meeting the requirements of ORS chapter 79 before its amendment by the bill, generally remains effective even after the bill’s operative date, for up to five years. See UCC § 9-805(b), HB 4035 § 23(2).

Of course this protection of pre-operative-date financing statements extends only to financing statements meeting the requirements of all applicable ORS chapter 79 sections as in effect before the bill’s operative date, including the sections that the bill does not amend. HB 4035 § 23(2) enumerates the sections of ORS chapter 79 that are being amended by the bill, and states that pre-operative-date financing statements must meet the requirements of those sections as they existed before the bill’s operative date, but this enumeration should not be misunderstood as protecting pre-effective-date financing statements that fail to meet other currently applicable ORS chapter 79 requirements as well. (For example, current ORS 79.0502(1)(c) requires that a financing statement indicate the covered collateral, and this section is not listed in HB 4035 § 23(2) because it is not being amended by the bill, but its absence from the § 23(2) list does not mean that a pre-effective-date financing statement that did not indicate the covered collateral would somehow be protected. On the contrary, ORS 79.0502(1)(c) continues to apply to pre-operative-date financing statements, even after the bill’s operative date, precisely because the bill does not amend it.)

Similarly non-restrictive interpretations are intended of the other bill sections containing similar enumerations of the ORS chapter 79 sections being amended by the bill.

Appendix A

Amendments to Uniform Commercial Code Article 9

2010 Official Text with Comments

**AMENDMENTS TO
UNIFORM COMMERCIAL CODE ARTICLE 9**

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

THE AMERICAN LAW INSTITUTE

REVISED ARTICLE 9. SECURED TRANSACTIONS

2010 OFFICIAL TEXT WITH COMMENTS

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By

THE AMERICAN LAW INSTITUTE

and the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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July 20, 2011

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AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9

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AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9

PART 1

GENERAL PROVISIONS

[SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS]

SECTION 9-101. SHORT TITLE. This article may be cited as Uniform Commercial Code–Secured Transactions.

* * *

Comment

1. **Source.** This Article supersedes former Uniform Commercial Code (UCC) Article 9. As did its predecessor, it provides a comprehensive scheme for the regulation of security interests in personal property and fixtures. For the most part this Article follows the general approach and retains much of the terminology of former Article 9. In addition to describing many aspects of the operation and interpretation of this Article, these Comments explain the material changes that this Article makes to former Article 9. Former Article 9 superseded the wide variety of pre-UCC security devices. Unlike the Comments to former Article 9, however, these Comments dwell very little on the pre-UCC state of the law. For that reason, the Comments to former Article 9 will remain of substantial historical value and interest. They also will remain useful in understanding the background and general conceptual approach of this Article.

Citations to “Bankruptcy Code Section ___” in these Comments are to Title 11 of the United States Code as in effect on ~~December 31, 1998~~ July 1, 2010.

2. **Background and History.** In 1990, the Permanent Editorial Board for the UCC with the support of its sponsors, The American Law Institute and the National Conference of Commissioners on Uniform State Laws, established a committee to study Article 9 of the UCC. The study committee issued its report as of December 1, 1992, recommending the creation of a drafting committee for the revision of Article 9 and also recommending numerous specific changes to Article 9. Organized in 1993, a drafting committee met fifteen times from 1993 to 1998. This Article was approved by its sponsors in 1998. This Article was conformed to revised Article 1 in 2001 and to amendments to Article 7 in 2003. The sponsors approved amendments to selected sections of this Article in 2010.

3. **Reorganization and Renumbering; Captions; Style.** * * *

This Article also includes headings for the subsections as an aid to readers. Unlike section captions, which are part of the UCC, see Section ~~1-109~~, 1-107, subsection headings are not a part of the official text itself and have not been approved by the sponsors. Each

jurisdiction in which this Article is introduced may consider whether to adopt the headings as a part of the statute and whether to adopt a provision clarifying the effect, if any, to be given to the headings. This Article also has been conformed to current style conventions.

4. **Summary of Revisions.** Following is a brief summary of some of the more significant revisions of Article 9 that are included in the 1998 revision of this Article.

* * *

h. **Filing.** Part 5 (formerly Part 4) of Article 9 has been substantially rewritten to simplify the statutory text and to deal with numerous problems of interpretation and implementation that have arisen over the years.

* * *

~~*Correction of records—Defaulting or missing secured parties and fraudulent filings.*~~ In some areas of the country, serious problems have arisen from fraudulent financing statements that are filed against public officials and other persons. This Article addresses the fraud problem by providing the opportunity for a debtor to file a termination statement when a secured party wrongfully refuses or fails to provide a termination statement. See Section 9-509. This opportunity also addresses the problem of secured parties that simply disappear through mergers or liquidations. In addition, Section 9-518 affords a statutory method by which a debtor who believes that a filed record is inaccurate or was wrongfully filed may indicate that fact in the files, ~~by filing a correction an information statement,~~ albeit without affecting the efficacy, if any, of the challenged record.

* * *

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

(a) **[Article 9 definitions.]** In this article:

(1) “Accession” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) “Account”, except as used in “account for”, means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a

vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) “Account debtor” means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) “Accounting”, except as used in “accounting for”, means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) “Agricultural lien” means an interest in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor’s farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) to sign; or

~~(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record~~ with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

(8) "Bank" means an organization that is engaged in the business of banking.

The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) “Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) “Chattel paper” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) “Collateral” means the property subject to a security interest or agricultural lien. The term includes:

- (A) proceeds to which a security interest attaches;
- (B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- (C) goods that are the subject of a consignment.

(13) “Commercial tort claim” means a claim arising in tort with respect to which:

(A) the claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant’s business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) “Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) “Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) “Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.

(17) “Commodity intermediary” means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) “Communicate” means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar

account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in Section 7-201(b).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to Section 9-519(a).

(37) "Filing office" means an office designated in Section 9-501 as the place to

file a financing statement.

(38) “Filing-office rule” means a rule adopted pursuant to Section 9-526.

(39) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying Section 9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) “Goods” means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in

connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) “Governmental unit” means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a State, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) “Health-care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.

(47) “Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) “Inventory” means goods, other than farm products, which:

- (A) are leased by a person as lessor;
- (B) are held by a person for sale or lease or to be furnished under a contract of service;
- (C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) “Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) “Jurisdiction of organization”, with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(51) “Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) “Lien creditor” means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) “Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the

manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) “Manufactured-home transaction” means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) “Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) “New debtor” means a person that becomes bound as debtor under Section 9-203(d) by a security agreement previously entered into by another person.

(57) “New value” means (i) money, (ii) money’s worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) “Noncash proceeds” means proceeds other than cash proceeds.

(59) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) “Original debtor”, except as used in Section 9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under

Section 9-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to", with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to", with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);

(D) the spouse of an individual described in subparagraph (A), (B), or (C);

or

(E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds", except as used in Section 9-609(b), means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other

disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 9-620, 9-621, and 9-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a State or a governmental unit of a State.

(68) "Public organic record" means a record that is available to the public for

inspection and is:

(A) a record consisting of the record initially filed with or issued by a State or the United States to form or organize an organization and any record filed with or issued by the State or the United States which amends or restates the initial record;

(B) an organic record of a business trust consisting of the record initially filed with a State and any record filed with the State which amends or restates the initial record, if a statute of the State governing business trusts requires that the record be filed with the State;
or

(C) a record consisting of legislation enacted by the legislature of a State or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the State or the United States which amends or restates the name of the organization.

(68) (69) “Pursuant to commitment”, with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.

(69) (70) “Record”, except as used in “for record”, “of record”, “record or legal title”, and “record owner”, means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) (71) “Registered organization” means an organization formed or organized solely under the law of a single State or the United States and as to which the State or the United States must maintain a public record showing the organization to have been organized by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the State or the United States. The term includes a business trust that

is formed or organized under the law of a single State if a statute of the State governing business trusts requires that the business trust's organic record be filed with the State.

~~(71)~~ (72) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation

secured by collateral against the debtor, another obligor, or property of either.

~~(72)~~ (73) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under Section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210, or 5-118.

~~(73)~~ (74) "Security agreement" means an agreement that creates or provides for a security interest.

~~(74)~~ (75) "Send", in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it

would have been received if properly sent under subparagraph (A).

~~(75)~~ (76) “Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

~~(76)~~ (77) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

~~(77)~~ (78) “Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

~~(78)~~ (79) “Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

~~(79)~~ (80) “Termination statement” means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

~~(80)~~ (81) “Transmitting utility” means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) [Definitions in other articles.] “Control” as provided in Section 7-106 and the following definitions in other articles apply to this article:

“Applicant”	Section 5-102.
“Beneficiary”	Section 5-102.
“Broker”	Section 8-102.
“Certificated security”	Section 8-102.
“Check”	Section 3-104.
“Clearing corporation”	Section 8-102.
“Contract for sale”	Section 2-106.
“Customer”	Section 4-104.
“Entitlement holder”	Section 8-102.
“Financial asset”	Section 8-102.
“Holder in due course”	Section 3-302.
“Issuer” (with respect to a letter of credit or letter-of-credit right)	Section 5-102.
“Issuer” (with respect to a security)	Section 8-201.
“Issuer” (with respect to a document of title)	Section 7-102.
“Lease”	Section 2A-103.
“Lease agreement”	Section 2A-103.
“Lease contract”	Section 2A-103.
“Leasehold interest”	Section 2A-103.
“Lessee”	Section 2A-103.
“Lessee in ordinary course of business”	Section 2A-103.

“Lessor”	Section 2A-103.
“Lessor’s residual interest”	Section 2A-103.
“Letter of credit”	Section 5-102.
“Merchant”	Section 2-104.
“Negotiable instrument”	Section 3-104.
“Nominated person”	Section 5-102.
“Note”	Section 3-104.
“Proceeds of a letter of credit”	Section 5-114.
“Prove”	Section 3-103.
“Sale”	Section 2-106.
“Securities account”	Section 8-501.
“Securities intermediary”	Section 8-102.
“Security”	Section 8-102.
“Security certificate”	Section 8-102.
“Security entitlement”	Section 8-102.
“Uncertificated security”	Section 8-102.

(c) [Article 1 definitions and principles.] Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Comment

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5. Receivables-related Definitions.

a. “Account”; “Health-Care-Insurance Receivable”; “As-Extracted Collateral.” The definition of “account” has been expanded and reformulated. It is no longer limited to rights to payment relating to goods or services. Many categories of rights to payment

that were classified as general intangibles under former Article 9 are accounts under this Article. Thus, if they are sold, a financing statement must be filed to perfect the buyer's interest in them. As used in the definition of "account," a right to payment "arising out of the use of a credit or charge card or information contained on or for use with the card" is the right of a card issuer to payment from its cardholder. A credit-card or charge-card transaction may give rise to other rights to payments; however, those other rights do not "arise out of the use" of the card or information contained on or for use with the card. Among the types of property that are expressly excluded from the definition of account is "a right to payment for money or funds advanced or sold." As defined in Section 1-201, "money" is limited essentially to currency. As used in the exclusion from the definition of "account," however, "funds" is a broader concept (although the term is not defined). For example, when a bank-lender credits a borrower's deposit account for the amount of a loan, the bank's advance of funds is not a transaction giving rise to an account.

The definition of "health-care-insurance receivable" is new. It is a subset of the definition of "account." However, the rules generally applicable to account debtors on accounts do not apply to insurers obligated on health-care-insurance receivables. See Sections 9-404(e), 9-405(d), 9-406(i).

Note that certain accounts also are "as-extracted collateral." See Comment 4.c., Examples 6 and 7.

b. "Chattel Paper"; "Electronic Chattel Paper"; "Tangible Chattel Paper." "Chattel paper" consists of a monetary obligation together with a security interest in or a lease of specific goods if the obligation and security interest or lease are evidenced by "a record or records." The definition has been expanded from that found in former Article 9 to include records that evidence a monetary obligation and a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, or a lease of specific goods and license of software used in the goods. The expanded definition covers transactions in which the debtor's or lessee's monetary obligation includes amounts owed with respect to software used in the goods. The monetary obligation with respect to the software need not be owed under a license from the secured party or lessor, and the secured party or lessor need not be a party to the license transaction itself. Among the types of monetary obligations that are included in "chattel paper" are amounts that have been advanced by the secured party or lessor to enable the debtor or lessee to acquire or obtain financing for a license of the software used in the goods. The definition also makes clear that rights to payment arising out of credit-card transactions are not chattel paper.

Charters of vessels are expressly excluded from the definition of chattel paper; they are accounts. The term "charter" as used in this section includes bareboat charters, time charters, successive voyage charters, contracts of affreightment, contracts of carriage, and all other arrangements for the use of vessels.

Under former Section 9-105, only if the evidence of an obligation consisted of "a writing or writings" could an obligation qualify as chattel paper. In this Article, traditional, written chattel paper is included in the definition of "tangible chattel paper." "Electronic chattel paper" is chattel paper that is stored in an electronic medium instead of in tangible form. The concept

of an electronic medium should be construed liberally to include electrical, digital, magnetic, optical, electromagnetic, or any other current or similar emerging technologies.

~~The definition of electronic chattel paper does not dictate that it be created in any particular fashion. For example, a record consisting of a tangible writing may be converted to electronic form (e.g., by creating electronic images of a signed writing). Or, records may be initially created and executed in electronic form (e.g., a lessee might authenticate an electronic record of a lease that is then stored in electronic form). In either case the resulting records are electronic chattel paper.~~

* * *

d. **“General Intangible”;** **“Payment Intangible.”** “General intangible” is the residual category of personal property, including things in action, that is not included in the other defined types of collateral. Examples are various categories of intellectual property and the right to payment of a loan of funds that is not evidenced by chattel paper or an instrument. As used in the definition of “general intangible,” “things in action” includes rights that arise under a license of intellectual property, including the right to exploit the intellectual property without liability for infringement. The definition has been revised to exclude commercial tort claims, deposit accounts, and letter-of-credit rights. Each of the three is a separate type of collateral. One important consequence of this exclusion is that tortfeasors (commercial tort claims), banks (deposit accounts), and persons obligated on letters of credit (letter-of-credit rights) are not “account debtors” having the rights and obligations set forth in Sections 9-404, 9-405, and 9-406. In particular, tortfeasors, banks, and persons obligated on letters of credit are not obligated to pay an assignee (secured party) upon receipt of the notification described in Section 9-404(a). See Comment 5.h. Another important consequence relates to the adequacy of the description in the security agreement. See Section 9-108.

“Payment intangible” is a subset of the definition of “general intangible.” The sale of a payment intangible is subject to this Article. See Section 9-109(a)(3). Virtually any intangible right could give rise to a right to payment of money once one hypothesizes, for example, that the account debtor is in breach of its obligation. The term “payment intangible,” however, embraces only those general intangibles “under which the account debtor’s *principal* obligation is a monetary obligation.” (Emphasis added.) A debtor’s right to payment from another person of amounts received by the other person on the debtor’s behalf, including the right of a merchant in a credit-card, debit-card, prepaid-card, or other payment-card transaction to payment of amounts received by its bank from the card system in settlement of the transaction, is a “payment intangible.” (In contrast, the right of a credit-card issuer to payment arising out of the use of a credit card is an “account.”)

In classifying intangible collateral, a court should begin by identifying the particular rights that have been assigned. The account debtor (promisor) under a particular contract may owe several types of monetary obligations as well as other, nonmonetary obligations. If the promisee’s right to payment of money is assigned separately, the right is an account or payment intangible, depending on how the account debtor’s obligation arose. When all the promisee’s rights are assigned together, an account, a payment intangible, and a general intangible all may be involved, depending on the nature of the rights.

A right to the payment of money is frequently buttressed by ancillary covenants rights, such as rights arising from covenants in a purchase agreement, note, or mortgage requiring insurance on the collateral or forbidding removal of the collateral, or rights arising from covenants to preserve the creditworthiness of the promisor, such as covenants restricting dividends and the like and the lessor's rights with respect to leased goods that arise upon the lessee's default (see Section 2A-523). This Article does not treat these ancillary rights separately from the rights to payment to which they relate. For example, attachment and perfection of an assignment of a right to payment of a monetary obligation, whether it be an account or payment intangible, also carries these ancillary rights. Thus, an assignment of the lessor's right to payment under a lease also transfers the lessor's rights with respect to the leased goods under Section 2A-523. If, taken together, the lessor's rights to payment and with respect to the leased goods are evidenced by chattel paper, then, contrary to *In re Commercial Money Center, Inc.*, 350 B.R. 465 (Bankr. App. 9th Cir. 2006), an assignment of the lessor's right to payment constitutes an assignment of the chattel paper. Although an agreement excluding the lessor's rights with respect to the leased goods from an assignment of the lessor's right to payment may be effective between the parties, the agreement does not affect the characterization of the collateral to the prejudice of creditors of, and purchasers from, the assignor.

Every "payment intangible" is also a "general intangible." Likewise, "software" is a "general intangible" for purposes of this Article. See Comment 25. Accordingly, except as otherwise provided, statutory provisions applicable to general intangibles apply to payment intangibles and software.

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11. Choice-of-Law-Related Definitions: "Certificate of Title"; "Governmental Unit"; "Jurisdiction of Organization"; "Public Organic Record"; "Registered Organization"; "State." These new definitions reflect the changes in the law governing perfection and priority of security interests and agricultural liens provided in Part 3, Subpart 1.

Statutes often require applicants for a certificate of title to identify all security interests on the application and require the issuing agency to indicate the identified security interests on the certificate. Some of these statutes provide that priority over the rights of a lien creditor (i.e., perfection of a security interest) in goods covered by the certificate occurs upon indication of the security interest on the certificate; that is, they provide for the indication of the security interest on the certificate as a "condition" of perfection. Other statutes contemplate that perfection is achieved upon the occurrence of another act, e.g., delivery of the application to the issuing agency, that "results" in the indication of the security interest on the certificate. A certificate governed by either type of statute can qualify as a "certificate of title" under this Article. The statute providing for the indication of a security interest need not expressly state the connection between the indication and perfection. For example, a certificate issued pursuant to a statute that requires applicants to identify security interests, requires the issuing agency to indicate the identified security interests on the certificate, but is silent concerning the legal consequences of the indication would be a "certificate of title" if, under a judicial interpretation of the statute, perfection of a security interest is a legal consequence of the indication. Likewise, a certificate would be a "certificate of title" if another statute provides, expressly or as interpreted, the requisite connection between the indication and perfection.

The first sentence of the definition of “certificate of title” includes certificates consisting of tangible records, of electronic records, and of combinations of tangible and electronic records.

In many States, a certificate of title covering goods that are encumbered by a security interest is delivered to the secured party by the issuing authority. To eliminate the need for the issuance of a paper certificate under these circumstances, several States have revised their certificate-of-title statutes to permit or require a State agency to maintain an electronic record that evidences ownership of the goods and in which a security interest in the goods may be noted. The second sentence of the definition provides that such a record is a “certificate of title” if it is in fact maintained as an alternative to the issuance of a paper certificate of title, regardless of whether the certificate-of-title statute provides that the record is a certificate of title and even if the statute does not expressly state that the record is maintained instead of issuing a paper certificate.

Not every organization that may provide information about itself in the public records is a “registered organization.” For example, a general partnership is not a “registered organization,” even if it files a statement of partnership authority under Section 303 of the Uniform Partnership Act (1994) or an assumed name (“dba”) certificate. This is because the State under whose law the partnership is organized is not required to maintain a public record showing that the partnership has been organized such a partnership is not formed or organized by the filing of a record with, or the issuance of a record by, a State or the United States. In contrast, corporations, limited liability companies, and limited partnerships ordinarily are “registered organizations.”

Not every record concerning a registered organization that is filed with, or issued by, a State or the United States is a “public organic record.” For example, a certificate of good standing issued with respect to a corporation or a published index of domestic corporations would not be a “public organic record” because its issuance or publication does not form or organize the corporations named.

When collateral is held in a trust, one must look to non-UCC law to determine whether the trust is a “registered organization.” Non-UCC law typically distinguishes between statutory trusts and common-law trusts. A statutory trust is formed by the filing of a record, commonly referred to as a certificate of trust, in a public office pursuant to a statute. See, e.g., Uniform Statutory Trust Entity Act § 201 (2009); Delaware Statutory Trust Act, Del. Code Ann. tit. 12, § 3801 et seq. A statutory trust is a juridical entity, separate from its trustee and beneficial owners, that may sue and be sued, own property, and transact business in its own name. Inasmuch as a statutory trust is a “legal or commercial entity,” it qualifies as a “person other than an individual,” and therefore as an “organization,” under Section 1-201. A statutory trust that is formed by the filing of a record in a public office is a “registered organization,” and the filed record is a “public organic record” of the statutory trust, if the filed record is available to the public for inspection. (The requirement that a record be “available to the public for inspection” is satisfied if a copy of the relevant record is available for public inspection.)

Unlike a statutory trust, a common-law trust—whether its purpose is donative or commercial—arises from private action without the filing of a record in a public office. See Uniform Trust Code § 401 (2000); Restatement (Third) of Trusts § 10 (2003). Moreover, under

traditional law, a common-law trust is not itself a juridical entity and therefore must sue and be sued, own property, and transact business in the name of the trustee acting in the capacity of trustee. A common-law trust that is a “business trust,” i.e., that has a business or commercial purpose, is an “organization” under Section 1-201. However, such a trust would not be a “registered organization” if, as is typically the case, the filing of a public record is not needed to form it.

In some states, however, the trustee of a common-law trust that has a commercial or business purpose is required by statute to file a record in a public office following the trust’s formation. See, e.g., Mass. Gen. Laws Ch. 182, § 2; Fla. Stat. Ann. § 609.02. A business trust that is required to file its organic record in a public office is a “registered organization” under the second sentence of the definition if the filed record is available to the public for inspection. Any organic record required to be filed, and filed, with respect to a common-law business trust after the trust is formed is a “public organic record” of the trust. Some statutes require a trust or other organization to file, after formation or organization, a record other than an organic record. See, e.g., N.Y. Gen Assn’s Law § 18 (requiring associations doing business within New York to file a certificate designating the secretary of state as an agent upon whom process may be served). This requirement does not render the organization a “registered organization” under the second sentence of the definition, and the record is not a “public organic record.”

* * *

14. Consignment-Related Definitions: “Consignee”; “Consignment”; “Consignor.” The definition of “consignment” excludes, in subparagraphs (B) and (C), transactions for which filing would be inappropriate or of insufficient benefit to justify the costs. A consignment excluded from the application of this Article by one of those subparagraphs may still be a true consignment; however, it is governed by non-Article 9 law. The definition also excludes, in subparagraph (D), what have been called “consignments intended for security.” These “consignments” are not bailments but secured transactions. Accordingly, all of Article 9 applies to them. See Sections ~~1-201(37)~~; 1-201(b)(35), 9-109(a)(1). The “consignor” is the person who delivers goods to the “consignee” in a consignment.

* * *

16. “Document.” The definition of “document” incorporates both tangible and electronic documents of title. See Section ~~1-201(15)~~~~[1-201(b)16]~~ 1-201(b)(16) and Comment ~~15~~ 16.

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SECTION 9-104. CONTROL OF DEPOSIT ACCOUNT.

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Comment

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3. **Requirements for “Control.”** This section derives from Section 8-106 of Revised Article 8, which defines “control” of securities and certain other investment property. Under subsection (a)(1), the bank with which the deposit account is maintained has control. The effect of this provision is to afford the bank automatic perfection. No other form of public notice is necessary; all actual and potential creditors of the debtor are always on notice that the bank with which the debtor’s deposit account is maintained may assert a claim against the deposit account.

Example: D maintains a deposit account with Bank A. To secure a loan from Banks X, Y, and Z, D creates a security interest in the deposit account in favor of Bank A, as agent for Banks X, Y, and Z. Because Bank A is a “secured party” as defined in Section 9-102, the security interest is perfected by control under subsection (a)(1).

Under subsection (a)(2), a secured party may obtain control by obtaining the bank’s authenticated agreement that it will comply with the secured party’s instructions without further consent by the debtor. The analogous provision in Section 8-106 does not require that the agreement be authenticated. An agreement to comply with the secured party’s instructions suffices for “control” of a deposit account under this section even if the bank’s agreement is subject to specified conditions, e.g., that the secured party’s instructions are accompanied by a certification that the debtor is in default. (Of course, if the condition is the *debtor’s* further consent, the statute explicitly provides that the agreement would *not* confer control.) See revised Section 8-106, Comment 7.

Under subsection (a)(3), a secured party may obtain control by becoming the bank’s “customer,” as defined in Section 4-104. As the customer, the secured party would enjoy the right (but not necessarily the exclusive right) to withdraw funds from, or close, the deposit account. See Sections 4-401(a), 4-403(a).

As is the case with possession under Section 9-313, in determining whether a particular person has control under subsection (a), the principles of agency apply. See Section 1-103 and Restatement (3d), Agency § 8.12, Comment b.

* * *

SECTION 9-105. CONTROL OF ELECTRONIC CHATTEL PAPER.

(a) [General rule: control of electronic chattel paper.] A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) [Specific facts giving control.] A system satisfies subsection (a) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

- (1) a single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
- (2) the authoritative copy identifies the secured party as the assignee of the record or records;
- (3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;
- (4) copies or ~~revisions~~ amendments that add or change an identified assignee of the authoritative copy can be made only with the ~~participation~~ consent of the secured party;
- (5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (6) any ~~revision~~ amendment of the authoritative copy is readily identifiable as an authorized or unauthorized ~~revision~~.

Comment

* * *

2. **“Control” of Electronic Chattel Paper.** This Article covers security interests in “electronic chattel paper,” a new term defined in Section 9-102. This section governs how “control” of electronic chattel paper may be obtained. Subsection (a), which derives from Section 16 of the Uniform Electronic Transactions Act, sets forth the general test for control. Subsection (b) sets forth a safe harbor test that, if satisfied, establishes control under the general test in subsection (a).

A secured party’s control of electronic chattel paper (i) may substitute for an authenticated security agreement for purposes of attachment under Section 9-203, (ii) is a method of perfection under Section 9-314, and (iii) is a condition for obtaining special, non-temporal priority under Section 9-330. Because electronic chattel paper cannot be transferred, assigned, or possessed in the same manner as tangible chattel paper, a special definition of control is necessary. In descriptive terms, this section provides that control of electronic chattel paper is the functional equivalent of possession of “tangible chattel paper” (a term also defined in Section 9-102).

3. **Development of Control Systems.** This Article leaves to the marketplace the development of systems and procedures, through a combination of suitable technologies and business practices, for dealing with control of electronic chattel paper in a commercial context. Systems that evolve for control of electronic chattel paper may or may not involve a third party

custodian of the relevant records. As under UETA, a system must be shown to reliably establish that the secured party is the assignee of the chattel paper. Reliability is a high standard and encompasses the general principles of uniqueness, identifiability, and unalterability found in subsection (b) without setting forth specific guidelines as to how these principles must be achieved. However, the standards applied to determine whether a party is in control of electronic chattel paper should not be more stringent than the standards now applied to determine whether a party is in possession of tangible chattel paper. For example, just as a secured party does not lose possession of tangible chattel paper merely by virtue of the possibility that a person acting on its behalf could wrongfully redeliver the chattel paper to the debtor, so control of electronic chattel paper would not be defeated by the possibility that the secured party's interest could be subverted by the wrongful conduct of a person (such as a custodian) acting on its behalf.

This section and the concept of control of electronic chattel paper are not based on the same concepts as are control of deposit accounts (Section 9-104), security entitlements, a type of investment property (Section 9-106), and letter-of-credit rights (Section 9-107). The rules for control of those types of collateral are based on existing market practices and legal and regulatory regimes for institutions such as banks and securities intermediaries. Analogous practices for electronic chattel paper are developing nonetheless. The flexible approach adopted by this section, moreover, should not impede the development of these practices and, eventually, legal and regulatory regimes, which may become analogous to those for, e.g., investment property.

3 4. **“Authoritative Copy” of Electronic Chattel Paper.** One requirement for establishing control under subsection (b) is that a particular copy be an “authoritative copy.” Although other copies may exist, they must be distinguished from the authoritative copy. This may be achieved, for example, through the methods of authentication that are used or by business practices involving the marking of any additional copies. When tangible chattel paper is converted to electronic chattel paper, in order to establish that a copy of the electronic chattel paper is the authoritative copy it may be necessary to show that the tangible chattel paper no longer exists or has been permanently marked to indicate that it is not the authoritative copy.

~~4. **Development of Control Systems.** This Article leaves to the marketplace the development of systems and procedures, through a combination of suitable technologies and business practices, for dealing with control of electronic chattel paper in a commercial context. However, achieving control under this section requires more than the agreement of interested persons that the elements of control are satisfied. For example, paragraph (4) contemplates that control requires that it be a physical impossibility (or sufficiently unlikely or implausible so as to approach practical impossibility) to add or change an identified assignee without the participation of the secured party (or its authorized representative). It would not be enough for the assignor merely to agree that it will not change the identified assignee without the assignee-secured party's consent. However, the standards applied to determine whether a party is in control of electronic chattel paper should not be more stringent than the standards now applied to determine whether a party is in possession of tangible chattel paper. Control of electronic chattel paper contemplates systems or procedures such that the secured party must take some action (either directly or through its designated custodian) to effect a change or addition to the authoritative copy. But just as a secured party does not lose possession of tangible chattel paper~~

merely by virtue of the possibility that a person acting on its behalf *could* wrongfully redeliver the chattel paper to the debtor, so control of electronic chattel paper would not be defeated by the possibility that the secured party's interest *could* be subverted by the wrongful conduct of a person (such as a custodian) acting on its behalf.

Systems that evolve for control of electronic chattel paper may or may not involve a third party custodian of the relevant records. However, this section and the concept of control of electronic chattel paper are not based on the same concepts as are control of deposit accounts (Section 9-104), security entitlements, a type of investment property (Section 9-106), and letter-of-credit rights (Section 9-107). The rules for control of that collateral are based on existing market practices and legal and regulatory regimes for institutions such as banks and securities intermediaries. Analogous practices for electronic chattel paper are developing nonetheless. The flexible approach adopted by this section, moreover, should not impede the development of these practices and, eventually, legal and regulatory regimes, which may become analogous to those for, e.g., investment property.

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SECTION 9-109. SCOPE.

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Comment

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2. **Basic Scope Provision.** Subsection (a)(1) derives from former Section 9-102(1) and (2). These subsections have been combined and shortened. No change in meaning is intended. Under subsection (a)(1), all consensual security interests in personal property and fixtures are covered by this Article, except for transactions excluded by subsections (c) and (d). As to which transactions give rise to a "security interest," the definition of that term in Section 1-201 must be consulted. When a security interest is created, this Article applies regardless of the form of the transaction or the name that parties have given to it. Likewise, the subjective intention of the parties with respect to the legal characterization of their transaction is irrelevant to whether this Article applies, as it was to the application of former Article 9 under the proper interpretation of former Section 9-102.

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SECTION 9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST; PROCEEDS; SUPPORTING OBLIGATIONS; FORMAL REQUISITES.

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Comment

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3. **Security Agreement; Authentication.** Under subsection (b)(3), enforceability requires the debtor's security agreement and compliance with an evidentiary requirement in the nature of a Statute of Frauds. Paragraph (3)(A) represents the most basic of the evidentiary alternatives, under which the debtor must authenticate a security agreement that provides a description of the collateral. Under Section 9-102, a "security agreement" is "an agreement that creates or provides for a security interest." Neither that definition nor the requirement of paragraph (3)(A) rejects the deeply rooted doctrine that a bill of sale, although absolute in form, may be shown in fact to have been given as security. Under this Article, as under prior law, a debtor may show by parol evidence that a transfer purporting to be absolute was in fact for security. Similarly, a self-styled "lease" may serve as a security agreement if the agreement creates a security interest. See Section ~~1-201(37)~~ 1-203 (distinguishing security interest from lease).

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SECTION 9-207. RIGHTS AND DUTIES OF SECURED PARTY HAVING POSSESSION OR CONTROL OF COLLATERAL.

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Comment

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2. **Duty of Care for Collateral in Secured Party's Possession.** Like former section 9-207, subsection (a) imposes a duty of care, similar to that imposed on a pledgee at common law, on a secured party in possession of collateral. See Restatement, Security §§ 17, 18. In many cases a secured party in possession of collateral may satisfy this duty by notifying the debtor of action that should be taken and allowing the debtor to take the action itself. If the secured party itself takes action, its reasonable expenses may be added to the secured obligation. The revised definitions of "collateral," "debtor," and "secured party" in Section 9-102 make this section applicable to collateral subject to an agricultural lien if the collateral is in the lienholder's possession. Under Section ~~1-102~~ 1-302 the duty to exercise reasonable care may not be disclaimed by agreement, although under that section the parties remain free to determine by agreement standards that are not manifestly unreasonable as to what constitutes reasonable care. Unless otherwise agreed, for a secured party in possession of chattel paper or an instrument, reasonable care includes the preservation of rights against prior parties. The secured party's right to have instruments or documents indorsed or transferred to it or its order is dealt with in the relevant sections of Articles 3, 7, and 8. See Sections ~~3-201~~, 3-203(c), 7-506, 8-304(d).

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SECTION 9-301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS.

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Comment

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2. **Scope of This Subpart.** Part 3, Subpart 1 (Sections 9-301 through 9-307) contains choice-of-law rules similar to those of former Section 9-103. Former Section 9-103 generally addresses which State's law governs "perfection and the effect of perfection or non-perfection of" security interests. See, e.g., former Section 9-103(1)(b). This Article follows the broader and more precise formulation in former Section 9-103(6)(b), which was revised in connection with the promulgation of Revised Article 8 in 1994: "perfection, the effect of perfection or non-perfection, and the priority of" security interests. Priority, in this context, subsumes all of the rules in Part 3, including "cut off" or "take free" rules such as Sections 9-317(b), (c), and (d), 9-320(a), (b), and (d), and 9-332. This subpart does not address choice of law for other purposes. For example, the law applicable to issues such as attachment, validity, characterization (e.g., true lease or security interest), and enforcement is governed by the rules in Section ~~1-105~~; 1-301; that governing law typically is specified in the same agreement that contains the security agreement. And, another jurisdiction's law may govern other third-party matters addressed in this Article. See Section 9-401, Comment 3.

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5. **Law Governing Perfection: Exceptions.** The general rule is subject to several exceptions. It does not apply to goods covered by a certificate of title (see Section 9-303), deposit accounts (see Section 9-304), investment property (see Section 9-305), or letter-of-credit rights (see Section 9-306). Nor does it apply to possessory security interests, i.e., security interests that the secured party has perfected by taking possession of the collateral (see paragraph (2)), security interests perfected by filing a fixture filing (see subparagraph (3)(A)), security interests in timber to be cut (subparagraph (3)(B)), or security interests in as-extracted collateral (see paragraph (4)).

* * *

b. **Fixtures-Fixture Filings.** ~~Application of~~ Under the general rule in paragraph (1), a security interest in fixtures may be perfected by filing in the office specified by Section 9-501(a) as enacted in the jurisdiction in which the debtor is located. However, application of this rule to perfection of a security interest in fixtures would by filing a fixture filing could yield

strange results. For example, perfection of a security interest in fixtures located in Arizona and owned by a Delaware corporation would be governed by the law of Delaware. Although Delaware law would send one to a filing office in Arizona for the place to file a financing statement as a fixture filing, see Section 9-501, Delaware law would not take account of local, nonuniform, real-property filing and recording requirements that Arizona law might impose. For this reason, paragraph (3)(A) contains a special rule for security interests perfected by a fixture filing; the law of the jurisdiction in which the fixtures are located governs perfection, including the formal requisites of a fixture filing. Under paragraph (3)(C), the same law governs priority. Fixtures are “goods” as defined in Section 9-102.

The filing of a financing statement to perfect a security interest in collateral of a transmitting utility constitutes a fixture filing with respect to goods that are or become fixtures. See Section 9-501(b). Accordingly, to perfect a security interest in goods of this kind by a fixture filing, a financing statement must be filed in the office specified by Section 9-501(b) as enacted in the jurisdiction in which the goods are located. If the fixtures collateral is located in more than one State, filing in all of those States will be necessary to perfect a security interest in all the fixtures collateral by a fixture filing. Of course, a security interest in nearly all types of collateral (including fixtures) of a transmitting utility may be perfected by filing in the office specified by Section 9-501(b) as enacted in the jurisdiction in which the transmitting utility is located. However, such a filing will not be effective as a fixture filing except with respect to goods that are located in that jurisdiction.

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SECTION 9-302. LAW GOVERNING PERFECTION AND PRIORITY OF AGRICULTURAL LIENS.

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Comment

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2. **Agricultural Liens.** This section provides choice-of-law rules for agricultural liens on farm products. Perfection, the effect of perfection or nonperfection, and priority all are governed by the law of the jurisdiction in which the farm products are located. Other choice-of-law rules, including Section ~~1-105~~, 1-301, determine which jurisdiction’s law governs other matters, such as the secured party’s rights on default. See Section 9-301, Comment 2. Inasmuch as no agricultural lien on proceeds arises under this Article, this section does not expressly apply to proceeds of agricultural liens. However, if another statute creates an agricultural lien on proceeds, it may be appropriate for courts to apply the choice-of-law rule in this section to determine priority in the proceeds.

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**SECTION 9-305. LAW GOVERNING PERFECTION AND PRIORITY OF
SECURITY INTERESTS IN INVESTMENT PROPERTY.**

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Comment

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5. **Change in Law Governing Perfection.** When the issuer's jurisdiction, the securities intermediary's jurisdiction, or commodity intermediary's jurisdiction changes, the jurisdiction whose law governs perfection under subsection (a) changes, as well. Similarly, the law governing perfection of a possessory security interest in a certificated security changes when the collateral is removed to another jurisdiction, see subsection (a)(1), and the law governing perfection by filing changes when the debtor changes its location. See subsection (c). Nevertheless, these changes will not result in an immediate loss of perfection. See Section 9-316(f), (g).

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PART 3

PERFECTION AND PRIORITY

[SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY]

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SECTION 9-307. LOCATION OF DEBTOR.

(a) [**“Place of business.”**] In this section, “place of business” means a place where a debtor conducts its affairs.

(b) [**Debtor's location: general rules.**] Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) **[Limitation of applicability of subsection (b).]** Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) **[Continuation of location: cessation of existence, etc.]** A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) **[Location of registered organization organized under State law.]** A registered organization that is organized under the law of a State is located in that State.

(f) **[Location of registered organization organized under federal law; bank branches and agencies.]** Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a State are located:

(1) in the State that the law of the United States designates, if the law designates a State of location;

(2) in the State that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to

designate its State of location, including by designating its main office, home office, or other comparable office; or

(3) in the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) [**Continuation of location: change in status of registered organization.**] A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) the dissolution, winding up, or cancellation of the existence of the registered organization.

(h) [**Location of United States.**] The United States is located in the District of Columbia.

(i) [**Location of foreign bank branch or agency if licensed in only one state.**] A branch or agency of a bank that is not organized under the law of the United States or a State is located in the State in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one State.

(j) [**Location of foreign air carrier.**] A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) [**Section applies only to this part.**] This section applies only for purposes of this part.

Comment

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2. **General Rules.** As a general matter, the location of the debtor determines the

jurisdiction whose law governs perfection of a security interest. See Sections 9-301(1), 9-305(c). It also governs priority of a security interest in certain types of intangible collateral, such as accounts, electronic chattel paper, and general intangibles. This section determines the location of the debtor for choice-of-law purposes, but not for other purposes. See subsection (k).

Subsection (b) states the general rules: An individual debtor is deemed to be located at the individual's principal residence with respect to both personal and business assets. Any other debtor is deemed to be located at its place of business if it has only one, or at its chief executive office if it has more than one place of business.

As used in this section, a "place of business" means a place where the debtor conducts its affairs. See subsection (a). Thus, every organization, even eleemosynary institutions and other organizations that do not conduct "for profit" business activities, has a "place of business." Under subsection (d), a person who ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction determined by subsection (b).

The term "chief executive office" is not defined in this Section or elsewhere in the Uniform Commercial Code. "Chief executive office" means the place from which the debtor manages the main part of its business operations or other affairs. This is the place where persons dealing with the debtor would normally look for credit information, and is the appropriate place for filing. With respect to most multi-state debtors, it will be simple to determine which of the debtor's offices is the "chief executive office." Even when a doubt arises, it would be rare that there could be more than two possibilities. A secured party in such a case may protect itself by perfecting under the law of each possible jurisdiction.

Similarly, the term "principal residence" is not defined. If the security interest in question is a purchase-money security interest in consumer goods which is perfected upon attachment, see Section 9-309(1), the choice of law may make no difference. In other cases, when a doubt arises, prudence may dictate perfecting under the law of each jurisdiction that might be the debtor's "principal residence."

Questions sometimes arise about the location of the debtor with respect to collateral held in a common-law trust. A typical common-law trust is not itself a juridical entity capable of owning property and so would not be a "debtor" as defined in Section 9-102. Rather, the debtor with respect to property held in a common-law trust typically is the trustee of the trust acting in the capacity of trustee. (The beneficiary would be a "debtor" with respect to its beneficial interest in the trust, but not with respect to the property held in the trust.) If a common-law trust has multiple trustees located in different jurisdictions, a secured party who perfects by filing would be well advised to file a financing statement in each jurisdiction in which a trustee is located, as determined under Section 9-307. Filing in all relevant jurisdictions would insure perfection and minimize any priority complications that otherwise might arise.

The general ~~rule is~~ rules are subject to several exceptions, each of which is discussed below.

3. **Non-U.S. Debtors.** Under the general rules of this section, a non-U.S. debtor often would be located in a foreign jurisdiction and, as a consequence, foreign law would govern

perfection. When foreign law affords no public notice of security interests, the general rule yields unacceptable results.

Accordingly, subsection (c) provides that the normal rules for determining the location of a debtor (i.e., the rules in subsection (b)) apply only if they yield a location that is “a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.” The phrase “generally requires” is meant to include legal regimes that generally require notice in a filing or recording system as a condition of perfecting nonpossessory security interests, but which permit perfection by another method (e.g., control, automatic perfection, temporary perfection) in limited circumstances. A jurisdiction that has adopted this Article or an earlier version of this Article is such a jurisdiction. If the rules in subsection (b) yield a jurisdiction whose law does not generally require notice in a filing or registration system and none of the special rules in subsections (e), (f), (i), and (j) applies, the debtor is located in the District of Columbia.

Example 1: Debtor is an English corporation with 7 offices in the United States and its chief executive office in London, England. Debtor creates a security interest in its accounts. Under subsection (b)(3), Debtor would be located in England. However, subsection (c) provides that subsection (b) applies only if English law generally conditions perfection on giving public notice in a filing, recording, or registration system. Otherwise, Debtor is located in the District of Columbia. Under Section 9-301(1), perfection, the effect of perfection, and priority are governed by the law of the jurisdiction of the debtor’s location—here, England or the District of Columbia (depending on the content of English law).

Example 2: Debtor is an English corporation with 7 offices in the United States and its chief executive office in London, England. Debtor creates a security interest in equipment located in London. Under subsection (b)(3) Debtor would be located in England. However, subsection (c) provides that subsection (b) applies only if English law generally conditions perfection on giving public notice in a filing, recording, or registration system. Otherwise, Debtor is located in the District of Columbia. Under Section 9-301(1), perfection is governed by the law of the jurisdiction of the debtor’s location, whereas, under Section 9-301(3), the law of the jurisdiction in which the collateral is located—here, England—governs priority.

The foregoing discussion assumes that each transaction bears an appropriate relation to the forum State. In the absence of an appropriate relation, the forum State’s entire UCC, including the choice-of-law provisions in Article 9 (Sections 9-301 through 9-307), will not apply. See Section 9-109, Comment 9.

4. Registered Organizations Organized Under Law of a State. Under subsection (e), a “registered organization” (c.g., a corporation or limited partnership) (defined in Section 9-102 so as to ordinarily include corporations, limited partnerships, limited liability companies, and statutory trusts) organized under the law of a “State” (defined in Section 9-102) is located in its

State of organization. The term “registered organization” includes a business trust described in the second sentence of the term’s definition. See Section 9-102. The trust’s public organic record, typically the trust agreement, usually will indicate the jurisdiction under whose law the trust is organized.

Subsection (g) makes clear that events affecting the status of a registered organization, such as the dissolution of a corporation or revocation of its charter, do not affect its location for purposes of subsection (e). However, certain of these events may result in, or be accompanied by, a transfer of collateral from the registered organization to another debtor. This section does not determine whether a transfer occurs, nor does it determine the legal consequences of any transfer.

Determining the registered organization-debtor’s location by reference to the jurisdiction of organization could provide some important side benefits for the filing systems. A jurisdiction could structure its filing system so that it would be impossible to make a mistake in a registered organization-debtor’s name on a financing statement. For example, a filer would be informed if a filed record designated an incorrect corporate name for the debtor. Linking filing to the jurisdiction of organization also could reduce pressure on the system imposed by transactions in which registered organizations cease to exist—as a consequence of merger or consolidation, for example. The jurisdiction of organization might prohibit such transactions unless steps were taken to ensure that existing filings were refiled against a successor or terminated by the secured party.

5. Registered Organizations Organized Under Law of United States; Branches and Agencies of Banks Not Organized Under Law of United States. Subsection (f) specifies the location of a debtor that is a registered organization organized under the law of the United States. It defers to the law of the United States, to the extent that that law determines, or authorizes the debtor to determine, the debtor’s location. Thus, if the law of the United States designates a particular State as the debtor’s location, that State is the debtor’s location for purposes of this Article’s choice-of-law rules. Similarly, if the law of the United States authorizes the registered organization to designate its State of location, the State that the registered organization designates is the State in which it is located for purposes of this Article’s choice-of-law rules. In other cases, the debtor is located in the District of Columbia.

In some cases, the law of the United States authorizes the registered organization to designate a main office, home office, or other comparable office. See, e.g., 12 U.S.C. Sections 22 and 1464(a); 12 C.F.R. Section 552.3. Designation of such an office constitutes the designation of the State of location for purposes of Section 9-307 (f)(2).

Subsection (f) also specifies the location of a branch or agency in the United States of a foreign bank that has one or more branches or agencies in the United States. The law of the United States ~~authorized~~ authorizes a foreign bank (or, on behalf of the bank, a federal agency) to designate a single home state for all of the foreign bank’s branches and agencies in the United States. See 12 U.S.C. Section 3103(c) and 12 C.F.R. Section 211.22. As authorized, the designation constitutes the State of location for the branch or agency for purposes of Section 9-307(f), unless all of a foreign bank’s branches or agencies that are in the United States are licensed in only one State, in which case the branches and agencies are located in that State. See

subsection (i).

In cases not governed by subsection (f) or (i), the location of a foreign bank is determined by subsections (b) and (c).

6. **United States.** To the extent that Article 9 governs (see Sections ~~1-105~~, 1-301, 9-109(c)), the United States is located in the District of Columbia for purposes of this Article's choice-of-law rules. See subsection (h).

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[SUBPART 2. PERFECTION]

**SECTION 9-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY
SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES.**

(a) **[Security interest subject to other law.]** Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9-310(a);

(2) [list any ~~certificate-of-title~~ statute covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on ~~the~~ a certificate of title as a condition or result of perfection, and any non-Uniform Commercial Code central filing statute]; or

(3) a ~~certificate-of-title~~ statute of another jurisdiction which provides for a security interest to be indicated on ~~the~~ a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) **[Compliance with other law.]** Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien

creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and Sections 9-313 and 9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) **[Duration and renewal of perfection.]** Except as otherwise provided in subsection (d) and Section 9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) **[Inapplicability to certain inventory.]** During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

***Legislative Note:** This Article contemplates that perfection of a security interest in goods covered by a certificate of title occurs upon receipt by appropriate State officials of a properly tendered application for a certificate of title on which the security interest is to be indicated, without a relation back to an earlier time. States whose certificate-of-title statutes provide for perfection at a different time or contain a relation-back provision should amend the statutes accordingly.*

Comment

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5. **Compliance with Perfection Requirements of Other Statute.** Subsection (b) makes clear that compliance with the perfection requirements (i.e., the requirements for obtaining priority over a lien creditor), but not other requirements, of a statute, regulation, or treaty described in subsection (a) is sufficient for perfection under this Article. Perfection of a security interest under such a statute, regulation, or treaty has all the consequences of perfection under this Article.

The interplay of this section with certain certificate-of-title statutes may create confusion and uncertainty. For example, statutes under which perfection does not occur until a certificate of title is issued will create a gap between the time that the goods are covered by the certificate under Section 9-303 and the time of perfection. If the gap is long enough, it may result in turning some unobjectionable transactions into avoidable preferences under Bankruptcy Code Section 547. (The preference risk arises if more than ~~10~~ 30 days ~~(or 20 days, in the case of a purchase-money security interest)~~ passes between the time a security interest attaches (or the debtor receives possession of the collateral, in the case of a purchase-money security interest) and the time it is perfected.) Accordingly, the Legislative Note to this section instructs the legislature to amend the applicable certificate-of-title statute to provide that perfection occurs upon receipt by the appropriate State official of a properly tendered application for a certificate of title on which the security interest is to be indicated.

Under some certificate-of-title statutes, including the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act, perfection generally occurs upon delivery of specified documents to a state official but may, under certain circumstances, relate back to the time of attachment. This relation-back feature can create great difficulties for the application of the rules in Sections 9-303 and 9-311(b). Accordingly, the Legislative Note also recommends to legislatures that they remove any relation-back provisions from certificate-of-title statutes affecting security interests.

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**SECTION 9-316. ~~CONTINUED PERFECTION OF SECURITY INTEREST~~
FOLLOWING EFFECT OF CHANGE IN GOVERNING LAW.**

(a) **[General rule: effect on perfection of change in governing law.]** A security interest perfected pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) remains perfected until the earliest of:

- (1) the time perfection would have ceased under the law of that jurisdiction;
- (2) the expiration of four months after a change of the debtor's location to another jurisdiction; or
- (3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) **[Security interest perfected or unperfected under law of new jurisdiction.]** If a

security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) **[Possessory security interest in collateral moved to new jurisdiction.]** A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

- (1) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
- (2) thereafter the collateral is brought into another jurisdiction; and
- (3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) **[Goods covered by certificate of title from this state.]** Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) **[When subsection (d) security interest becomes unperfected against purchasers.]** A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under Section 9-311(b) or 9-313 are not satisfied before the earlier of:

- (1) the time the security interest would have become unperfected under the law of

the other jurisdiction had the goods not become covered by a certificate of title from this State;
or

(2) the expiration of four months after the goods had become so covered.

(f) **[Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.]** A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) the time the security interest would have become unperfected under the law of that jurisdiction; or

(2) the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) **[Subsection (f) security interest perfected or unperfected under law of new jurisdiction.]** If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) [Effect on filed financing statement of change in governing law.] The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change pursuant to the law of the

jurisdiction designated in Section 9-301(1) or 9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(2) If a security interest perfected by a financing statement that is effective under paragraph (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) [Effect of change in governing law on financing statement filed against original debtor.] If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes

unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Comment

1. **Source.** Former Section 9-103(1)(d), (2)(b), (3)(e), as modified.

2. **Continued Perfection.** ~~This section deals~~ Subsections (a) through (g) deal with continued perfection of security interests that have been perfected under the law of another jurisdiction. The fact that the law of a particular jurisdiction ceases to govern perfection under Sections 9-301 through 9-307 does not necessarily mean that a security interest perfected under that law automatically becomes unperfected. To the contrary: This section generally provides that a security interest perfected under the law of one jurisdiction remains perfected for a fixed period of time (four months or one year, depending on the circumstances), even though the jurisdiction whose law governs perfection changes. However, cessation of perfection under the law of the original jurisdiction cuts short the fixed period. The four-month and one-year periods are long enough for a secured party to discover in most cases that the law of a different jurisdiction governs perfection and to reperfect (typically by filing) under the law of that jurisdiction. If a secured party properly reperfects a security interest before it becomes unperfected under subsection (a), then the security interest remains perfected continuously thereafter. See subsection (b).

Example 1: Debtor is a general partnership whose chief executive office is in Pennsylvania. Lender perfects a security interest in Debtor's equipment by filing in Pennsylvania on May 15, 2002. On April 1, 2005, without Lender's knowledge, Debtor moves its chief executive office to New Jersey. Lender's security interest remains perfected for four months after the move. See subsection (a)(2).

Example 2: Debtor is a general partnership whose chief executive office is in Pennsylvania. Lender perfects a security interest in Debtor's equipment by filing in Pennsylvania on May 15, 2002. On April 1, 2007, without Lender's knowledge, Debtor moves its chief executive office to New Jersey. Lender's security interest remains perfected only through May 14, 2007, when the effectiveness of the filed financing statement lapses. See subsection (a)(1). Although, under these facts, Lender would have only a short period of time to discover that Debtor had relocated and to reperfect under New Jersey law, Lender could have protected itself by filing a continuation statement in Pennsylvania before Debtor relocated. By doing so, Lender would have prevented lapse and allowed itself the full four months to discover Debtor's new location and refile there or, if Debtor is in default, to perfect by taking possession of the equipment.

Example 3: Under the facts of Example 2, Lender files a financing statement in New Jersey before the effectiveness of the Pennsylvania financing statement lapses. Under subsection (b), Lender's security interest is continuously perfected beyond May 14, 2007, for a period determined by New Jersey's Article 9.

Subsection (a)(3) allows a one-year period in which to reperfect. The longer period is

necessary, because, even with the exercise of due diligence, the secured party may be unable to discover that the collateral has been transferred to a person located in another jurisdiction. In any event, the period is cut short if the financing statement becomes ineffective under the law of the jurisdiction in which it is filed.

Example 4: Debtor is a Pennsylvania corporation. On January 1, Lender perfects a security interest in Debtor's equipment by filing in Pennsylvania. Debtor's shareholders decide to "reincorporate" in Delaware. ~~They~~ On March 1, they form a Delaware corporation (Newcorp) into which they merge Debtor. The merger effectuates a transfer of the collateral from Debtor to Newcorp, which thereby becomes a debtor and is located in another jurisdiction. Under subsection (a)(3), the security interest remains perfected for one year after the merger. If a financing statement is filed in Delaware against Newcorp within the year following the merger, then the security interest remains perfected thereafter for a period determined by Delaware's Article 9.

Note that although Newcorp is a "new debtor" as defined in Section 9-102, the application of subsection (a)(3) is not limited to transferees who are new debtors. Note also that, under Section 9-507, the financing statement naming Debtor remains effective even though Newcorp has become the debtor.

~~This section~~ Subsection (a) addresses security interests that are perfected (i.e., that have attached and as to which any required perfection step has been taken) before the debtor changes its location. ~~As the following example explains, this section does not apply~~ Subsection (h) applies to security interests that have not attached before the location changes. See Comment 7.

~~**Example 5:** Debtor is a Pennsylvania corporation. Debtor grants to Lender a security interest in Debtor's existing and after-acquired inventory. Lender perfects by filing in Pennsylvania. Debtor's shareholders decide to "reincorporate" in Delaware. They form a Delaware corporation (Newcorp) into which they merge Debtor. By virtue of the merger, Newcorp becomes bound by Debtor's security agreement. See Section 9-203. After the merger, Newcorp acquires inventory to which Lender's security interest attaches. Because Newcorp is located in Delaware, Delaware law governs perfection of a security interest in Newcorp's inventory. See Sections 9-301, 9-307. Having failed to perfect under Delaware law, Lender holds an unperfected security interest in the inventory acquired by Newcorp after the merger. The same result follows regardless of the name of the Delaware corporation (i.e., even if the Delaware corporation and Debtor have the same name). A different result would occur if Debtor and Newcorp were incorporated in the same state. See Section 9-508, Comment 4.~~

3. Retroactive Unperfection. Subsection (b) sets forth the consequences of the failure to reperfect before perfection ceases under subsection (a): the security interest becomes unperfected prospectively and, as against purchasers for value, including buyers and secured parties, but not as against donees or lien creditors, retroactively. The rule applies to agricultural liens, as well. See also Section 9-515 (taking the same approach with respect to lapse). Although this approach creates the potential for circular priorities, the alternative—retroactive unperfection against lien creditors—would create substantial and unjustifiable preference risks.

Example 6 5: Under the facts of Example 4, six months after the merger, Buyer bought from Newcorp some equipment formerly owned by Debtor. At the time of the purchase, Buyer took subject to Lender's perfected security interest, of which Buyer was unaware. See Section 9-315(a)(1). However, subsection (b) provides that if Lender fails to reperfect in Delaware within a year after the merger, its security interest becomes unperfected and is deemed never to have been perfected against Buyer. Having given value and received delivery of the equipment without knowledge of the security interest and before it was perfected, Buyer would take free of the security interest. See Section 9-317(b).

Example 7 6: Under the facts of Example 4, one month before the merger, Debtor created a security interest in certain equipment in favor of Financer, who perfected by filing in Pennsylvania. At that time, Financer's security interest is subordinate to Lender's. See Section 9-322(a)(1). Financer reperfects by filing in Delaware within a year after the merger, but Lender fails to do so. Under subsection (b), Lender's security interest is deemed never to have been perfected against Financer, a purchaser for value. Consequently, under Section 9-322(a)(2), Financer's security interest is now senior.

Of course, the expiration of the time period specified in subsection (a) does not of itself prevent the secured party from later reperfecting under the law of the new jurisdiction. If the secured party does so, however, there will be a gap in perfection, and the secured party may lose priority as a result. Thus, in Example 7 6, if Lender perfects by filing in Delaware more than one year under the merger, it will have a new date of filing and perfection for purposes of Section 9-322(a)(1). Financer's security interest, whose perfection dates back to the filing in Pennsylvania under subsection (b), will remain senior.

4. Possessory Security Interests. Subsection (c) deals with continued perfection of possessory security interests. It applies not only to security interests perfected solely by the secured party's having taken possession of the collateral. It also applies to security interests perfected by a method that includes as an element of perfection the secured party's having taken possession, such as perfection by taking delivery of a certificated security in registered form, see Section 9-313(a), and perfection by obtaining control over a certificated security. See Section 9-314(a).

5. Goods Covered by Certificate of Title. Subsections (d) and (e) address continued perfection of a security interest in goods covered by a certificate of title. The following examples explain the operation of those subsections.

Example 8 7: Debtor's automobile is covered by a certificate of title issued by Illinois. Lender perfects a security interest in the automobile by complying with Illinois' certificate-of-title statute. Thereafter, Debtor applies for a certificate of title in Indiana. Six months thereafter, Creditor acquires a judicial lien on the automobile. Under Section 9-303(b), Illinois law ceases to govern perfection; rather, once Debtor delivers the application and applicable fee to the appropriate Indiana authority, Indiana law governs. Nevertheless, under Indiana's Section 9-316(d), Lender's security interest remains perfected until it would become unperfected under Illinois law had no certificate of title been issued by Indiana. (For example, Illinois' certificate-of-title statute may provide

that the surrender of an Illinois certificate of title in connection with the issuance of a certificate of title by another jurisdiction causes a security interest noted thereon to become unperfected.) If Lender's security interest remains perfected, it is senior to Creditor's judicial lien.

Example 9 8: Under the facts in Example 8 7, five months after Debtor applies for an Indiana certificate of title, Debtor sells the automobile to Buyer. Under subsection (e)(2), because Lender did not reperfect within the four months after the goods became covered by the Indiana certificate of title, Lender's security interest is deemed never to have been perfected against Buyer. Under Section 9-317(b), Buyer is likely to take free of the security interest. Lender could have protected itself by perfecting its security interest either under Indiana's certificate-of-title statute, see Section 9-311, or, if it had a right to do so under an agreement or Section 9-609, by taking possession of the automobile. See Section 9-313(b).

The results in Examples 8 7 and 9 8 do not depend on the fact that the original perfection was achieved by notation on a certificate of title. Subsection (d) applies regardless of the method by which a security interest is perfected under the law of another jurisdiction when the goods became covered by a certificate of title from this State.

Section 9-337 affords protection to a limited class of persons buying or acquiring a security interest in the goods while a security interest is perfected under the law of another jurisdiction but after this State has issued a clean certificate of title.

6. Deposit Accounts, Letter-of-Credit Rights, and Investment Property. Subsections (f) and (g) address changes in the jurisdiction of a bank, issuer of an uncertificated security, issuer of or nominated person under a letter of credit, securities intermediary, and commodity intermediary. The provisions are analogous to those of subsections (a) and (b).

7. Security Interests that Attach after Debtor Changes Location. In contrast to subsections (a) and (b), which address security interests that are perfected (i.e., that have attached and as to which any required perfection step has been taken) before the debtor changes its location, subsection (h) addresses security interests that attach within four months after the debtor changes its location. Under subsection (h), a filed financing statement that would have been effective to perfect a security interest in the collateral if the debtor had not changed its location is effective to perfect a security interest in collateral acquired within four months after the relocation.

Example 9: Debtor, an individual whose principal residence is in Pennsylvania, grants to Lender a security interest in Debtor's existing and after-acquired inventory. Lender perfects the security interest by filing a proper financing statement in Pennsylvania on January 2, 2014. On March 31, 2014, Debtor's principal residence is relocated to New Jersey. Upon the relocation, New Jersey law governs perfection of a security interest in Debtor's inventory. See Sections 9-301, 9-307. Under New Jersey's Section 9-316(a), Lender's security interest in Debtor's inventory on hand at the time of the relocation remains perfected for four months thereafter. Had Debtor not relocated, the financing statement filed in Pennsylvania would have been effective to perfect Lender's security

interest in inventory acquired by Debtor after March 31, 2014. Accordingly, under subsection (h), the financing statement is effective to perfect Lender's security interest in inventory that Debtor acquires within the four months after Debtor's location changed.

In Example 9, Lender's security interest in the inventory acquired within the four months after Debtor's relocation will be perfected when it attaches. It will remain perfected if, before the expiration of the four-month period, the security interest is perfected under the law of New Jersey. Otherwise, the security interest will become unperfected at the end of the four-month period and will be deemed never to have been perfected as against a purchaser for value. See subsection (h)(2).

8. Collateral Acquired by New Debtor. Subsection (i) is similar to subsection (h). Whereas subsection (h) addresses security interests that attach within four months after a debtor changes its location, subsection (i) addresses security interests that attach within four months after a new debtor becomes bound as debtor by a security agreement entered into by another person. Subsection (i) also addresses collateral acquired by the new debtor before it becomes bound.

Example 10: Debtor, a Pennsylvania corporation, grants to Lender a security interest in Debtor's existing and after-acquired inventory. Lender perfects the security interest by filing a proper financing statement in Pennsylvania on January 2, 2014. On March 31, 2014, Debtor merges into Survivor, a Delaware corporation. Because Survivor is located in Delaware, Delaware law governs perfection of a security interest in Survivor's inventory. See Sections 9-301, 9-307. Under Delaware's Section 9-316(a), Lender's security interest in the inventory that Survivor acquired from Debtor remains perfected for one year after the transfer. See Comment 2. By virtue of the merger, Survivor becomes bound as debtor by Debtor's security agreement. See Section 9-203(d). As a consequence, Lender's security interest attaches to all of Survivor's inventory under Section 9-203, and Lender's collateral now includes inventory in which Debtor never had an interest. The financing statement filed in Pennsylvania against Debtor is effective under Delaware's Section 9-316(i) to perfect Lender's security interest in inventory that Survivor acquired before, and within the four months after, becoming bound as debtor by Debtor's security agreement. This is because the financing statement filed in Pennsylvania would have been effective to perfect Lender's security interest in this collateral had Debtor, rather than Survivor, acquired it.

If the financing statement is effective, Lender's security interest in the collateral that Survivor acquired before, and within four months after, Survivor became bound as debtor will be perfected upon attachment. It will remain perfected if, before the expiration of the four-month period, the security interest is perfected under Delaware law. Otherwise, the security interest will become unperfected at the end of the four-month period and will be deemed never to have been perfected as against a purchaser for value.

Section 9-325 contains special rules governing the priority of competing security interests in collateral that is transferred, by merger or otherwise, to a new debtor or other person who becomes a debtor with respect to the collateral. Section 9-326 contains special rules governing the priority of competing security interests in collateral acquired by a new debtor

other than by transfer from the original debtor.

7 9. **Agricultural Liens.** This section does not apply to agricultural liens.

Example 10 11: Supplier holds an agricultural lien on corn. The lien arises under an Iowa statute. Supplier perfects by filing a financing statement in Iowa, where the corn is located. See Section 9-302. Debtor stores the corn in Missouri. Assume the Iowa agricultural lien survives or an agricultural lien arises under Missouri law (matters that this Article does not govern). Once the corn is located in Missouri, Missouri becomes the jurisdiction whose law governs perfection. See Section 9-302. Thus, the agricultural lien will not be perfected unless Supplier files a financing statement in Missouri.

[SUBPART 3. PRIORITY]

SECTION 9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN.

(a) [**Conflicting security interests and rights of lien creditors.**] A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under Section 9-322; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one of the conditions specified in Section 9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) [**Buyers that receive delivery.**] Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a ~~security certificate~~ certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) [**Lessees that receive delivery.**] Except as otherwise provided in subsection (e), a

lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **[Licensees and buyers of certain collateral.]** A licensee of a general intangible or a buyer, other than a secured party, of ~~accounts, electronic chattel paper, electronic documents, general intangibles, or investment property~~ collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

* * *

Comment

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5. Security Interest of Consignor or Receivables Buyer vs. Lien Creditor. Section ~~1-201(37)~~ 1-201(b)(35) defines “security interest” to include the interest of most true consignors of goods and the interest of most buyers of certain receivables (accounts, chattel paper, payment intangibles, and promissory notes). A consignee of goods or a seller of accounts or chattel paper each is deemed to have rights in the collateral which a lien creditor may reach, as long as the competing security interest of the consignor or buyer is unperfected. This is so even though, as between the consignor and the debtor-consignee, the latter has only limited rights, and, as between the buyer and debtor-seller, the latter does not have any rights in the collateral. See Sections 9-318 (seller), 9-319 (consignee). Security interests arising from sales of payment intangibles and promissory notes are automatically perfected. See Section 9-309. Accordingly, a subsequent judicial lien always would be subordinate to the rights of a buyer of those types of receivables.

6. Purchasers Other Than Secured Parties.

* * *

Subsection (b) governs goods, as well as intangibles of the type whose transfer is effected by physical delivery of the representative piece of paper (tangible chattel paper, tangible documents, instruments, and security certificates). To obtain priority, a buyer must both give value and receive delivery of the collateral without knowledge of the existing security interest and before perfection. Even if the buyer gave value without knowledge and before perfection, the buyer would take subject to the security interest if perfection occurred before physical

delivery of the collateral to the buyer. Subsection (c) contains a similar rule with respect to lessees of goods. Note that a lessee of goods in ordinary course of business takes free of all security interests created by the lessor, even if perfected. See Section 9-321.

* * *

The rule of subsection (b) obviously is not appropriate where the collateral consists of intangibles and there is no representative piece of paper whose physical delivery is the only or the customary method of transfer. Therefore, with respect to such intangibles (including accounts, electronic chattel paper, electronic documents, general intangibles, and investment property other than certificated securities), subsection (d) gives priority to any buyer who gives value without knowledge, and before perfection, of the security interest. A licensee of a general intangible takes free of an unperfected security interest in the general intangible under the same circumstances. Note that a licensee of a general intangible in ordinary course of business takes rights under a nonexclusive license free of security interests created by the licensor, even if perfected. See Section 9-321.

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SECTION 9-318. NO INTEREST RETAINED IN RIGHT TO PAYMENT THAT IS SOLD; RIGHTS AND TITLE OF SELLER OF ACCOUNT OR CHATTEL PAPER WITH RESPECT TO CREDITORS AND PURCHASERS.

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Comment

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2. Sellers of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes. Section ~~1-201(37)~~ 1-201(b)(35) defines “security interest” to include the interest of a buyer of accounts, chattel paper, payment intangibles, or promissory notes. See also Section 9-109(a) and Comment 5. Subsection (a) makes explicit what was implicit, but perfectly obvious, under former Article 9: The fact that a sale of an account or chattel paper gives rise to a “security interest” does not imply that the seller retains an interest in the property that has been sold. To the contrary, a seller of an account or chattel paper retains no interest whatsoever in the property to the extent that it has been sold. Subsection (a) also applies to sales of payment intangibles and promissory notes, transactions that were not covered by former Article 9. Neither this Article nor the definition of “security interest” in Section 1-201 provides rules for distinguishing sales transactions from those that create a security interest securing an obligation.

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**SECTION 9-319. RIGHTS AND TITLE OF CONSIGNEE WITH RESPECT TO
CREDITORS AND PURCHASERS.**

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Comment

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2. **Consignments.** This section takes an approach to consignments similar to that taken by Section 9-318 with respect to buyers of accounts and chattel paper. Revised Section ~~201(37)~~ 1-201(b)(35) defines “security interest” to include the interest of a consignor of goods under many true consignments. Section 9-319(a) provides that, for purposes of determining the rights of certain third parties, the consignee is deemed to acquire all rights and title that the consignor had, if the consignor’s security interest is unperfected. The consignee acquires these rights even though, as between the parties, it purchases a limited interest in the goods (as would be the case in a true consignment, under which the consignee acquires only the interest of a bailee). As a consequence of this section, creditors of the consignee can acquire judicial liens and security interests in the goods.

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**SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY
INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.**

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Comment

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4. **Competing Perfected Security Interests.** When there is more than one perfected security interest, the security interests rank according to priority in time of filing or perfection. “Filing,” of course, refers to the filing of an effective financing statement. “Perfection” refers to the acquisition of a perfected security interest, i.e., one that has attached and as to which any required perfection step has been taken. See Sections 9-308 and 9-309.

Example 1: On February 1, A files a financing statement covering a certain item of Debtor’s equipment. On March 1, B files a financing statement covering the same equipment. On April 1, B makes a loan to Debtor and obtains a security interest in the equipment. On May 1, A makes a loan to Debtor and obtains a security interest in the same collateral. A has priority even though B’s loan was made earlier and was perfected

when made. It makes no difference whether A knew of B's security interest when A made its advance.

The problem stated in Example 1 is peculiar to a notice-filing system under which filing may occur before the security interest attaches (see Section 9-502). The justification for determining priority by order of filing lies in the necessity of protecting the filing system—that is, of allowing the first secured party who has filed to make subsequent advances without each time having to check for subsequent filings as a condition of protection. Note, however, that this first-to-file protection is not absolute. For example, Section 9-324 affords priority to certain purchase-money security interests, even if a competing secured party was the first to file or perfect.

Under a notice-filing system, a filed financing statement indicates to third parties that a person may have a security interest in the collateral indicated. With further inquiry, they may discover the complete state of affairs. When a financing statement that is ineffective when filed becomes effective thereafter, the policy underlying the notice-filing system determines the “time of filing” for purposes of subsection (a)(1). For example, the unauthorized filing of an otherwise sufficient initial financing statement becomes authorized, and the financing statement becomes effective, upon the debtor’s post-filing authorization or ratification of the filing. See Section 9-509, Comment 3. Because the notice value of the financing statement is independent of the timing of authorization or ratification, the time of the unauthorized filing is the “time of filing” for purposes of subsection (a)(1). The same policy applies to the other priority rules in this part.

Example 2: A and B make non-purchase-money advances secured by the same collateral. The collateral is in Debtor’s possession, and neither security interest is perfected when the second advance is made. Whichever secured party first perfects its security interest (by taking possession of the collateral or by filing) takes priority. It makes no difference whether that secured party knows of the other security interest at the time it perfects its own.

The rule of subsection (a)(1), affording priority to the first to file or perfect, applies to security interests that are perfected by any method, including temporarily (Section 9-312) or upon attachment (Section 9-309), even though there may be no notice to creditors or subsequent purchasers and notwithstanding any common-law rule to the contrary. The form of the claim to priority, i.e., filing or perfection, may shift from time to time, and the rank will be based on the first filing or perfection as long as there is no intervening period without filing or perfection. See Section 9-308(c).

Example 3: On October 1, A acquires a temporarily perfected (20-day) security interest, unfiled, in a negotiable document in the debtor’s possession under Section 9-312(e). On October 5, B files and thereby perfects a security interest that previously had attached to the same document. On October 10, A files. A has priority, even after the 20-day period expires, regardless of whether A knows of B’s security interest when A files. A was the first to perfect and maintained continuous perfection or filing since the start of the 20-day period. However, the perfection of A’s security interest extends only “to the extent it arises for new value given.” To the extent A’s security interest secures advances made by A beyond the 20-day period, its security interest would be subordinate to B’s,

inasmuch as B was the first to file.

In general, the rule in subsection (a)(1) does not distinguish among various advances made by a secured party. The priority of every advance dates from the earlier of filing or perfection. However, in rare instances, the priority of an advance dates from the time the advance is made. See Example 3 and Section 9-323.

* * *

8. Proceeds of Non-Filing Collateral: Non-Temporal Priority. Subsection (c)(2) provides a baseline priority rule for proceeds of non-filing collateral which applies if the secured party has taken the steps required for non-temporal priority over a conflicting security interest in non-filing collateral (e.g., control, in the case of deposit accounts, letter-of-credit rights, investment property, and in some cases, electronic negotiable documents, section 9-331). This rule determines priority in proceeds of non-filing collateral whether or not there exists an actual conflicting security interest in the original non-filing collateral. Under subsection (c)(2), the priority in the original collateral continues in proceeds if the security interest in proceeds is perfected and the proceeds are cash proceeds or non-filing proceeds “of the same type” as the original collateral. As used in subsection (c)(2), “type” means a type of collateral defined in the Uniform Commercial Code and should be read broadly. For example, a security is “of the same type” as a security entitlement (i.e., investment property), and a promissory note is “of the same type” as a draft (i.e., an instrument).

* * *

The proceeds of proceeds are themselves proceeds. See Section 9-102 (defining “proceeds” and “collateral”). Sometimes competing security interests arise in proceeds that are several generations removed from the original collateral. As the following example explains, the applicability of subsection (c) may turn on the nature of the intervening proceeds.

Example 11: SP-1 perfects its security interest in Debtor’s deposit account by obtaining control. Thereafter, SP-2 files against inventory, (presumably) searches, finds no indication of a conflicting security interest, and advances against Debtor’s existing and after-acquired inventory. Debtor uses funds from the deposit account to purchase inventory, which SP-1 can trace as identifiable proceeds of its security interest in Debtor’s deposit account, and which SP-2 claims as original collateral. The inventory is sold and the proceeds deposited into *another* deposit account, as to which SP-1 has not obtained control. Subsection (c) does not govern priority in this other deposit account. This deposit account is cash proceeds and is also the same type of collateral as SP-1’s original collateral, as required by subsections (c)(2)(A) and (B). However, SP-1’s security interest does not satisfy subsection (c)(2)(C) because the inventory proceeds, which intervened between the original deposit account and the deposit account constituting the proceeds at issue, are not cash proceeds, proceeds of the same type as the collateral (original deposit account), or an account relating to the collateral. Stated otherwise, once proceeds other than cash proceeds, proceeds of the same type as the original collateral, or an account relating to the original collateral intervene in the chain of proceeds, priority under subsection (c) is thereafter unavailable. The special priority

rule in subsection (d) also is inapplicable to this case. See Comment 9, Example 13, below. Instead, the general first-to-file-or-perfect rule of subsections (a) and (b) apply. Under that rule, SP-1 has priority unless its security interest in the inventory proceeds became unperfected under Section 9-315(d). Had SP-2 filed against inventory before SP-1 obtained control of the original deposit account, ~~the~~ then SP-2 would have had priority even if SP-1's security interest in the inventory proceeds remained perfected.

If two security interests in the same original collateral are entitled to priority in an item of proceeds under subsection (c)(2), the security interest having priority in the original collateral has priority in the proceeds.

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SECTION 9-324. PRIORITY OF PURCHASE-MONEY SECURITY INTERESTS.

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Comment

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6. Notification to Conflicting Inventory Secured Party: Address. Inasmuch as the address provided as that of the secured party on a filed financing statement is an "address that is reasonable under the circumstances," the holder of a purchase-money security interest may satisfy the requirement to "send" notification to the holder of a conflicting security interest in inventory by sending a notification to that address, even if the address is or becomes incorrect. See Section 9-102 (definition of "send"). Similarly, because the address is "held out by [the holder of the conflicting security interest] as the place for receipt of such communications [i.e., communications relating to security interests]," the holder is deemed to have "received" a notification delivered to that address. See Section ~~1-201(26)~~: 1-202(e).

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SECTION 9-326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW DEBTOR.

- (a) **[Subordination of security interest created by new debtor.]** Subject to subsection (b), a security interest that is created by a new debtor ~~which is~~ in collateral in which the new

debtor has or acquires rights and is perfected solely by a filed financing statement that is ~~effective solely under Section 9-508 in collateral in which a new debtor has or acquires rights would be ineffective to perfect the security interest but for the application of Section 9-316(i)(1) or 9-508~~ is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement ~~that is effective solely under Section 9-508~~.

(b) [**Priority under other provisions; multiple original debtors.**] The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements ~~that are effective solely under Section 9-508~~ described in subsection (a). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

Comment

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2. **Subordination of Security Interests Created by New Debtor.** This section addresses the priority contests that may arise when a new debtor becomes bound by the security agreement of an original debtor and each debtor has a secured creditor.

Subsection (a) subordinates the original debtor's secured party's security interest perfected against the new debtor ~~solely under Section 9-508: by a filed financing statement that would be ineffective to perfect the security interest but for Section 9-508 or, if the original debtor and new debtor are located in different jurisdictions, Section 9-316(i)(1)~~. The security interest is subordinated to security interests in the same collateral perfected by another method, e.g., by filing against the new debtor. ~~As used in this section, "a filed financing statement that is effective solely under Section 9-508" refers to a financing statement filed against the original debtor that continues to be effective under Section 9-508. It~~ This section does not encompass subordinate a security interest perfected by a new initial financing statement providing the name of the new debtor, even if the initial financing statement is filed to maintain the effectiveness of a financing statement under the circumstances described in Section 9-508(b). Nor does it ~~encompass~~ subordinate a security interest perfected by a financing statement filed against the original debtor which remains effective against collateral transferred by the original debtor to the new debtor. See Section 9-508(c). Concerning priority contests involving transferred collateral, see Sections 9-325 and 9-507.

Example 1: SP-X holds a perfected-by-filing security interest in X Corp's existing and

after-acquired inventory, and SP-Z holds a perfected-by-possession security interest in an item of Z Corp's inventory. Both X Corp and Z Corp are located in the same jurisdiction under Section 9-307. Z Corp becomes bound as debtor by X Corp's security agreement (e.g., Z Corp buys X Corp's assets and assumes its security agreement). See Section 9-203(d). ~~Under~~ But for Section 9-508, SP-X's financing statement ~~is effective~~ would be ineffective to perfect a security interest in the item of inventory in which Z Corp has rights. However, subsection (a) provides that SP-X's perfected security interest is subordinate to SP-Z's, regardless of whether SP-X's financing statement was filed before SP-Z perfected its security interest.

Example 2: SP-X holds a perfected-by-filing security interest in X Corp's existing and after-acquired inventory, and SP-Z holds a perfected-by-filing security interest in Z Corp's existing and after-acquired inventory. Both X Corp and Z Corp are located in the same jurisdiction under Section 9-307. Z Corp becomes bound as debtor by X Corp's security agreement. Subsequently, Immediately thereafter, and before the effectiveness of SP-X's financing statement lapses, Z Corp acquires a new item of inventory. Under ~~But for~~ Section 9-508, SP-X's financing statement ~~is effective~~ would be ineffective to perfect a security interest in the new item of inventory in which Z Corp has rights. However, because SP-Z's security interest was perfected by ~~another method,~~ a filing whose effectiveness does not depend on Section 9-316(i)(1) or 9-508, subsection (a) ~~provides that subordinates~~ subordinates SP-X's perfected security interest ~~is subordinate~~ to SP-Z's; ~~regardless of which financing statement was filed first.~~ This would be the case even if SP-Z filed after Z Corp became bound by X Corp's security ~~agreement.~~ agreement, and regardless of which financing statement was filed first.

The same result would obtain if X Corp and Z Corp were located in different jurisdictions. SP-X's security interest would be perfected by a financing statement that would be ineffective but for Section 9-316(i)(1), whereas the effectiveness of SP-Z's filing does not depend on Section 9-316(i)(1) or 9-508.

3. **Other Priority Rules.** Subsection (b) addresses the priority among security interests created by the original debtor (X Corp). By invoking the other priority rules of this subpart, as applicable, subsection (b) preserves the relative priority of security interests created by the original debtor.

Example 3: Under the facts of Example 2, SP-Y also holds a perfected-by-filing security interest in X Corp's existing and after-acquired inventory. SP-Y filed after SP-X. Inasmuch as both SP-X's and SP-Y's security interests in inventory acquired by Z Corp after it became bound ~~are perfected solely under~~ would be unperfected but for the application of Section 9-508, the normal priority rules determine their relative priorities. Under the "first-to-file-or-perfect" rule of Section 9-322(a)(1), SP-X has priority over SP-Y.

Example 4: Under the facts of Example 3, after Z Corp became bound by X Corp's security agreement, SP-Y promptly filed a new initial financing statement against Z Corp. ~~At that time,~~ SP-X's security interest ~~was~~ remains perfected only by virtue of its original filing against X Corp which ~~was "effective solely under Section 9-508."~~ "would

be ineffective to perfect the security interest but for the application of Section 9-508.” Because SP-Y’s security interest ~~no longer~~ is perfected by the filing of a financing statement that is “effective solely under Section 9-508,” ~~this section does not apply to the priority contest.~~ whose effectiveness does not depend on Section 9-508 or 9-316(i)(1), subsection (a) subordinates SP-X’s security interest to SP-Y’s. If both SP-X and SP-Y file a new initial financing statement against Z Corp, then the “first-to-file-or-perfect” rule of Section 9-322(a)(1) governs their priority inter se as well as their priority against SP-Z. Rather, the normal priority rules apply. Under Section 9-322, because SP-Y’s financing statement was filed *against Z Corp*, the new debtor, before SP-X’s, SP-Y’s security interest is senior to that of SP-X. Similarly, the normal priority rules would govern priority between SP-Y and SP-Z.

The second sentence of subsection (b) effectively limits the applicability of the first sentence to situations in which a new debtor has become bound by more than one security agreement entered into by the *same* original debtor. When the new debtor has become bound by security agreements entered into by *different* original debtors, the second sentence provides that priority is based on priority in time of the new debtor’s becoming bound.

Example 5: Under the facts of Example 2, SP-W holds a perfected-by-filing security interest in W Corp’s existing and after-acquired inventory. After Z Corp became bound by X Corp’s security agreement in favor of SP-X, Z Corp became bound by W Corp’s security agreement. Under subsection (b), SP-W’s security interest in inventory acquired by Z Corp is subordinate to that of SP-X, because Z Corp became bound under SP-X’s security agreement before it became bound under SP-W’s security agreement. This is the result regardless of which financing statement (SP-X’s or SP-W’s) was filed first.

The second sentence of subsection (b) reflects the generally accepted view that priority based on the first-to-file rule is inappropriate for resolving priority disputes when the filings were made against different debtors. Like subsection (a) and the first sentence of subsection (b), however, the second sentence of subsection (b) relates only to priority conflicts among security interests perfected by filed financing statements that are “effective solely under Section 9-508.” would be unperfected but for the application of Section 9-316(i)(1) or 9-508.

Example 6: Under the facts of Example 5, after Z Corp became bound by W Corp’s security agreement, SP-W promptly filed a new initial financing statement against Z Corp. At that time, SP-X’s security interest was perfected only pursuant to its original filing against X Corp which was “effective solely under Section 9-508.” “would be ineffective to perfect the security interest but for the application of Section 9-508.” Because SP-W’s security interest is ~~not~~ perfected by the filing of a financing statement that is “effective solely under Section 9-508,” ~~this section does not apply to the priority contest.~~ whose effectiveness does not depend on Section 9-316(i)(1) or 9-508, subsection (a) subordinates SP-X’s security interest to SP-W’s. If both SP-X and SP-W file a new initial financing statement against Z Corp, then the “first-to-file-or-perfect” rule of Section 9-322(a)(1) governs their priority inter se as well as their priority against SP-Z. Rather, the normal priority rules apply. Under Section 9-322, because SP-W’s financing statement was the first to be filed *against Z Corp*, the new debtor, SP-W’s security interest is senior to that of SP-X. Similarly, the normal priority rules would govern

~~priority between SP-W and SP-Z.~~

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SECTION 9-330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR INSTRUMENT.

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Comment

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2. **Non-Temporal Priority.** This Article permits a security interest in chattel paper or instruments to be perfected either by filing or by the secured party's taking possession. This section enables secured parties and other purchasers of chattel paper (both electronic and tangible) and instruments to obtain priority over earlier-perfected security interests, thereby promoting the negotiability of these types of receivables.

* * *

4. **Possession and Control.** ~~The priority afforded by this section turns in part on whether a purchaser "takes possession" of tangible chattel paper. Similarly, the governing law provisions in Section 9-301 address both "possessory" and "nonpossessory" security interests. To qualify for priority under subsection (a) or (b), a purchaser must "take[] possession of the chattel paper or obtain[] control of the chattel paper under Section 9-105." When chattel paper comprises one or more tangible records and one or more electronic records, a purchaser may satisfy the possession-or-control requirement by taking possession of the tangible records under Section 9-313 and having control of the electronic records under Section 9-105. In determining which of several related records constitutes chattel paper and thus is relevant to possession or control, the form of the records is irrelevant. Rather, the touchstone is whether possession or control of the record would afford the public notice contemplated by the possession and control requirements. For example, because possession or control of an amendment extending the term of a lease would not afford the contemplated public notice, the amendment would not constitute chattel paper regardless of whether the amendment is in tangible form and the lease is in electronic form, the amendment is electronic and the lease is tangible, the amendment and lease are both tangible, or the amendment and lease are both electronic.~~

Two common practices have raised particular concerns with respect to the possession requirement. First, in some cases the parties create more than one copy or counterpart of chattel paper evidencing a single secured obligation or lease. This practice raises questions as to which counterpart is the "original" and whether it is necessary for a purchaser to take possession of all counterparts in order to "take possession" of the chattel paper. Second, parties sometimes enter into a single "master" agreement. The master agreement contemplates that the parties will enter into separate "schedules" from time to time, each evidencing chattel paper. Must a purchaser of

an obligation or lease evidenced by a single schedule also take possession of the master agreement as well as the schedule in order to “take possession” of the chattel paper?

The problem raised by the first practice is easily solved. The parties may in the terms of their agreement and by designation on the chattel paper identify only one counterpart as the original chattel paper for purposes of taking possession of the chattel paper. Concerns about the second practice also are easily solved by careful drafting. Each schedule should provide that it incorporates the terms of the master agreement, not the other way around. This will make it clear that each schedule is a “stand alone” document.

A secured party may wish to convert tangible chattel paper to electronic chattel paper and vice versa. The priority of a security interest in chattel paper under subsection (a) or (b) may be preserved, even if the form of the chattel paper changes. The principle implied in the preceding paragraph, i.e., that not every copy of chattel paper is relevant, applies to “control” as well as to “possession.” When there are multiple copies of chattel paper, a secured party may take “possession” or obtain “control” of the chattel paper if it acts with respect to the copy or copies that are reliably identified as the copy or copies that are relevant for purposes of possession or control. This principle applies as well to chattel paper that has been converted from one form to another, even if the relevant copies are not the “original” chattel paper.

* * *

6. Chattel Paper Claimed Other Than Merely as Proceeds. Subsection (b) eliminates the requirement that the purchaser take without knowledge that the “specific paper” is subject to the security interest and substitutes for it the requirement that the purchaser take “without knowledge that the purchase violates the rights of the secured party.” This standard derives from the definition of “buyer in ordinary course of business” in Section ~~1-201(9)~~; 1-201(b)(9). The source of the purchaser’s knowledge is irrelevant. Note, however, that “knowledge” means “actual knowledge.” Section ~~1-201(25)~~; 1-202(b).

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SECTION 9-332. TRANSFER OF MONEY; TRANSFER OF FUNDS FROM DEPOSIT ACCOUNT.

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Comment

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4. “Bad Actors.” To deal with the question of the “bad actor,” this section borrows “collusion” language from Article 8. See, e.g., Sections 8-115, 8-503(e). This is the most protective (i.e., least stringent) of the various standards now found in the UCC. Compare, e.g., Section ~~1-201(9)~~ (“without knowledge that the sale . . . is in violation of the . . . security

interest”); 1-201(b)(9) (“without knowledge that the sale violates the rights of another person”);
Section 1-201(19) (“honesty in fact in the conduct or transaction concerned”); 1-201(b)(20)
(“honesty in fact and the observance of reasonable commercial standards of fair dealing”);
Section 3-302(a)(2)(v) (“without notice of any claim”).

* * *

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**SECTION 9-338. PRIORITY OF SECURITY INTEREST OR AGRICULTURAL
LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN
INCORRECT INFORMATION.**

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Comment

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3. Relationship to Section 9-507. This section applies to financing statements that contain information that is incorrect at the time of filing and imposes a small risk of subordination on the filer. In contrast, Section 9-507 deals with financing statements containing information that is correct at the time of filing but which becomes incorrect later. Except as provided in Section 9-507 with respect to changes in the ~~debtor's~~ name that is sufficient as the name of the debtor under Section 9-503(a), an otherwise effective financing statement does not become ineffective if the information contained in it becomes inaccurate.

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PART 4

RIGHTS OF THIRD PARTIES

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SECTION 9-401. ALIENABILITY OF DEBTOR'S RIGHTS.

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Comment

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3. **Governing Law.** There was some uncertainty under former Article 9 as to which jurisdiction's law (usually, which jurisdiction's version of Article 9) applied to the matters that this Part addresses. Part 3, Subpart 1, does not determine the law governing these matters because they do not relate to perfection, the effect of perfection or nonperfection, or priority. However, it might be inappropriate for a designation of applicable law by a debtor and secured party under Section ~~1-105~~ 1-301 to control the law applicable to an independent transaction or relationship between the debtor and an account debtor.

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SECTION 9-406. DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, AND PROMISSORY NOTES INEFFECTIVE.

(a) **[Discharge of account debtor; effect of notification.]** Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **[When notification ineffective.]** Subject to subsection (h), notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) **[Proof of assignment.]** Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made.

Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) **[Term restricting assignment generally ineffective.]** Except as otherwise provided in subsection (e) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) **[Inapplicability of subsection (d) to certain sales.]** Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

(f) **[Legal restrictions on assignment generally ineffective.]** Except as otherwise provided in Sections 2A-303 and 9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) **[Subsection (b)(3) not waivable.]** Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) **[Rule for individual under other law.]** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **[Inapplicability to health-care-insurance receivable.]** This section does not apply to an assignment of a health-care-insurance receivable.

(j) **[Section prevails over specified inconsistent law.]** This section prevails over any

inconsistent provisions of the following statutes, rules, and regulations:

[List here any statutes, rules, and regulations containing provisions inconsistent with this section.]

Legislative Note: States that amend statutes, rules, and regulations to remove provisions inconsistent with this section need not enact subsection (j)

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SECTION 9-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY NOTES, HEALTH-CARE-INSURANCE RECEIVABLES, AND CERTAIN GENERAL INTANGIBLES INEFFECTIVE.

(a) **[Term restricting assignment generally ineffective.]** Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment, or perfection of a security interest; or
(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) **[Applicability of subsection (a) to sales of certain rights to payment.]** Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale

pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

(c) **[Legal restrictions on assignment generally ineffective.]** A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) **[Limitation on ineffectiveness under subsections (a) and (c).]** To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or

accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) **[Section prevails over specified inconsistent law.]** This section prevails over any inconsistent provisions of the following statutes, rules, and regulations:

[List here any statutes, rules, and regulations containing provisions inconsistent with this section.]

Legislative Note: *States that amend statutes, rules, and regulations to remove provisions inconsistent with this section need not enact subsection (e).*

Comment

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3. **Nature of Debtor's Interest.** Neither this section nor any other provision of this Article determines whether a debtor has a property interest. The definition of the term "security interest" provides that it is an "interest in personal property." See Section ~~1-201(37)~~ 1-201(b)(35). Ordinarily, a debtor can create a security interest in collateral only if it has "rights in the collateral." See Section 9-203(b). Other law determines whether a debtor has a property interest ("rights in the collateral") and the nature of that interest. For example, the nonexclusive license addressed in Example 1 may not create any property interest whatsoever in the intellectual property (e.g., copyright) that underlies the license and that effectively enables the licensor to grant the license. The debtor's property interest may be confined solely to its interest in the promises made by the licensor in the license agreement (e.g., a promise not to sue the debtor for its use of the software).

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PART 5

FILING

[SUBPART 1. FILING OFFICE; CONTENTS AND
EFFECTIVENESS OF FINANCING STATEMENT]

SECTION 9-501. FILING OFFICE.

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Comment

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5. **Transmitting Utilities.** The usual filing rules do not apply well for a transmitting utility (defined in Section 9-102). Many pre-UCC statutes provided special filing rules for railroads and in some cases for other public utilities, to avoid the requirements for filing with legal descriptions in every county in which such debtors had property. Former Section 9-401(5) recreated and broadened these provisions, and subsection (b) follows this approach. The nature of the debtor will inform persons searching the record as to where to make a search.

A given State's subsection (b) applies only if the local law of that State governs perfection. As to most collateral, perfection by filing is governed by the law of the jurisdiction in which the debtor is located. See Section 9-301(1). However, the law of the jurisdiction in which goods that are or become fixtures are located governs perfection by filing a fixture filing. See Section 9-301(3)(A). As a consequence, filing in the filing office of more than one State may be necessary to perfect a security interest in fixtures collateral of a transmitting utility by filing a fixture filing. See Section 9-301, Comment 5.b.

SECTION 9-502. CONTENTS OF FINANCING STATEMENT; RECORD OF MORTGAGE AS FINANCING STATEMENT; TIME OF FILING FINANCING STATEMENT.

(a) [Sufficiency of financing statement.] Subject to subsection (b), a financing statement is sufficient only if it:

(1) provides the name of the debtor;

(2) provides the name of the secured party or a representative of the secured party; and

(3) indicates the collateral covered by the financing statement.

(b) **[Real-property-related financing statements.]** Except as otherwise provided in Section 9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

(1) indicate that it covers this type of collateral;

(2) indicate that it is to be filed [for record] in the real property records;

(3) provide a description of the real property to which the collateral is related [sufficient to give constructive notice of a mortgage under the law of this State if the description were contained in a record of the mortgage of the real property]; and

(4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) **[Record of mortgage as financing statement.]** A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) the record indicates the goods or accounts that it covers;

(2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) the record satisfies the requirements for a financing statement in this section, but:

(A) the record need not indicate other than an indication that it is to be

filed in the real property records; and

(B) the record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom Section 9-503(a)(4) applies; and

(4) the record is [duly] recorded.

(d) **[Filing before security agreement or attachment.]** A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

Legislative Note: Language in brackets is optional. Where the State has any special recording system for real property other than the usual grantor-grantee index (as, for instance, a tract system or a title registration or Torrens system) local adaptations of subsection (b) and Section 9-519(d) and (e) may be necessary. See, e.g., Mass. Gen. Laws Chapter 106, Section 9-410.

A State should enact the 2010 amendments to Section 9-502 only if the State enacts Alternative A of the 2010 amendments to Section 9-503.

* * *

SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.

(a) **[Sufficiency of debtor's name.]** A financing statement sufficiently provides the name of the debtor:

(1) except as otherwise provided in paragraph (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name of the debtor indicated that is stated to be the registered organization's name on the public organic record of most recently filed with or issued or enacted by the debtor's registered organization's jurisdiction of organization which shows the debtor to have been organized purports to state, amend, or restate the registered organization's name;

(2) subject to subsection (f), if the debtor is a decedent's estate collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the

financing statement, indicates that the debtor is an estate collateral is being administered by a personal representative;

~~(3) if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:~~

~~(A) provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and~~

~~(B) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust, collateral is held in a trust that is not a registered organization, only if the financing statement:~~

(A) provides, as the name of the debtor:

(i) if the organic record of the trust specifies a name for the trust, the name specified; or

(ii) if the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) in a separate part of the financing statement:

(i) if the name is provided in accordance with subparagraph (A)(i), indicates that the collateral is held in a trust; or

(ii) if the name is provided in accordance with subparagraph (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

[Alternative A]

(4) subject to subsection (g), if the debtor is an individual to whom this State has

issued a [driver's license] that has not expired, only if the financing statement provides the name of the individual which is indicated on the [driver's license];

(5) if the debtor is an individual to whom paragraph (4) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

~~(4)~~ (6) in other cases:

(A) if the debtor has a name, only if it the financing statement provides the ~~individual or~~ organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) **[Additional debtor-related information.]** A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

(1) a trade name or other name of the debtor; or

(2) unless required under subsection ~~(a)(4)(B)~~ (a)(6)(B), names of partners, members, associates, or other persons comprising the debtor.

[Alternative B]

(4) if the debtor is an individual, only if the financing statement:

(A) provides the individual name of the debtor;

(B) provides the surname and first personal name of the debtor; or

(C) subject to subsection (g), provides the name of the individual which is indicated on a [driver's license] that this State has issued to the individual and which has not expired; and

~~(4)~~ (5) in other cases:

(A) if the debtor has a name, only if it the financing statement provides the ~~individual or~~ organizational name of the debtor; and

(B) if the debtor does not have a name, only if ~~it~~ the financing statement provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) **[Additional debtor-related information.]** A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

(1) a trade name or other name of the debtor; or

(2) unless required under subsection ~~(a)(4)(B)~~ (a)(5)(B), names of partners, members, associates, or other persons comprising the debtor.

[End of Alternatives]

(c) **[Debtor's trade name insufficient.]** A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) **[Representative capacity.]** Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) **[Multiple debtors and secured parties.]** A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(f) [Name of decedent.] The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (a)(2).

[Alternative A]

(g) [Multiple driver's licenses.] If this State has issued to an individual more than one [driver's license] of a kind described in subsection (a)(4), the one that was issued most recently is the one to which subsection (a)(4) refers.

[Alternative B]

(g) [Multiple driver's licenses.] If this State has issued to an individual more than one [driver's license] of a kind described in subsection (a)(4)(C), the one that was issued most recently is the one to which subsection (a)(4)(C) refers.

[End of Alternatives]

(h) [Definition.] In this section, the "name of the settlor or testator" means:

(1) if the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name;
or

(2) in other cases, the name of the settlor or testator indicated in the trust's organic record.

Legislative Note:

1. This Act contains two alternative sets of amendments relating to the names of individual debtors. A State should enact the same Alternative, A or B, for both subsections (a) and (i) of Section 9-503. A State that enacts Alternative A of the amendments to this section should also enact the amendments to Section 9-502.

2. Both Alternatives refer, in part, to the name as shown on a debtor's driver's license. The Legislature should be aware that, in some States, certain characters that may be used by the State's department of motor vehicles (or similar agency) in the name on a driver's license may not be accepted by the State's central or local UCC filing offices under current regulations or internal protocols. This may occur because of technological limitations of the filing offices or merely as a result of inconsistent procedures. Similar issues may exist for field sizes as well. In these situations, perfection of a security interest granted by a debtor with such a driver's license may be impossible under Alternative A of the amendments and the utility of Alternative B, under which the name on the driver's license is one of the names that is sufficient, may be reduced. Accordingly, the State may wish to determine if one or more of these issues exist and, if so, to

make certain that such issues have been resolved. A successful resolution might be accomplished by statute, agency regulation, or technological change effectuated before or as part of the enactment of this Act.

3. Regardless of which Alternative is enacted, in States in which a single agency issues driver's licenses and non-driver identification cards as an alternative to a driver's license, such that at any given time an individual may hold either a driver's license or an identification card but not both, the State should replace each use of the term "driver's license" with a phrase meaning "driver's license or identification card" but containing the analogous terms used in the enacting State. In other States, the State should replace the term "driver's license" with the analogous term used in the enacting State.

Comment

* * *

2. Debtor's Name. The requirement that a financing statement provide the debtor's name is particularly important. Financing statements are indexed under the name of the debtor, and those who wish to find financing statements search for them under the debtor's name. Subsection (a) explains what the debtor's name is for purposes of a financing statement.

a. Registered Organizations. As a general matter, if the debtor is a "registered organization" (defined in Section 9-102 so as to ordinarily include corporations, limited partnerships, and limited liability companies, and statutory trusts), then the debtor's name is the name shown on the ~~public records~~ public organic record of the debtor's "jurisdiction of organization" (both also defined in Section 9-102). ~~Subsections (a)(2) and (a)(3) contain special rules for decedent's estates and common-law trusts. (Subsection (a)(1) applies to business trusts that are registered organizations.)~~

Subsection (a)(4)(A) essentially follows the first sentence of former Section 9-402(7). Section 1-201(28) defines the term "organization," which appears in subsection (a)(4), very broadly, to include all legal and commercial entities as well as associations that lack the status of a legal entity. Thus, the term includes corporations, partnerships of all kinds, business trusts, limited liability companies, unincorporated associations, personal trusts, governments, and estates. If the organization has a name, that name is the correct name to put on a financing statement. If the organization does not have a name, then the financing statement should name the individuals or other entities who comprise the organization.

Together with subsections (b) and (c), subsection (a) reflects the view prevailing under former Article 9 that the actual individual or organizational name of the debtor on a financing statement is both necessary and sufficient, whether or not the financing statement provides trade or other names of the debtor and, if the debtor has a name, whether or not the financing statement provides the names of the partners, members, or associates who comprise the debtor.

b. Collateral Held in a Trust. When a financing statement covers collateral that is held in a trust that is a registered organization, subsection (a)(1) governs the name of the debtor. If, however, the collateral is held in a trust that is not a registered organization, subsection (a)(3)

applies. (As used in this Article, collateral “held in a trust” includes collateral as to which the trust is the debtor as well as collateral as to which the trustee is the debtor.) This subsection adopts a convention that generally results in the name of the trust or the name of the trust’s settlor being provided as the name of the debtor on the financing statement, even if, as typically is the case with common-law trusts, the “debtor” (defined in Section 9-102) is a trustee acting with respect to the collateral. This convention provides more accurate information and eases the burden for searchers, who otherwise would have difficulty with respect to debtor trustees that are large financial institutions.

More specifically, if a trust’s organic record specifies a name for the trust, subsection (a)(3) requires the financing statement to provide, as the name of the debtor, the name for the trust specified in the organic record. In addition, the financing statement must indicate, in a separate part of the financing statement, that the collateral is held in a trust.

If the organic record of the trust does not specify a name for the trust, the name required for the financing statement is the name of the settlor or, in the case of a testamentary trust, the testator, in each case as determined under subsection (h). In addition, the financing statement must provide sufficient additional information to distinguish the trust from other trusts having one or more of the same settlors or the same testator. In many cases an indication of the date on which the trust was settled will satisfy this requirement. If neither the name nor the additional information indicates that the collateral is held in a trust, the financing statement must indicate that fact, but not as part of the debtor’s name.

Neither the indication that the collateral is held in a trust nor the additional information that distinguishes the trust from other trusts having one or more of the same settlors or the same testator is part of the debtor’s name. Nevertheless, a financing statement that fails to provide, in a separate part of the financing statement, any required indication or additional information does not sufficiently provide the name of the debtor under Sections 9-502(a) and 9-503(a)(3), does not “substantially satisfy[] the requirements” of Part 5 within the meaning of Section 9-506(a), and so is ineffective.

c. Collateral Administered by a Personal Representative. Subsection (a)(2) deals with collateral that is being administered by an executor, administrator, or other personal representative of a decedent. Even if, as often is the case, the representative is the “debtor” (defined in Section 9-102), the financing statement must provide the name of the decedent as the name of the debtor. Subsection (f) provides a safe harbor, under which the name of the decedent indicated on the order appointing the personal representative issued by the court having jurisdiction over the collateral is sufficient as the name of the decedent. If the order indicates more than one name for the decedent, the first name in the list qualifies under subsection (f); however, other names in the list also may qualify as the “name of the decedent” within the meaning of subsection (a)(2). In addition to providing the name of the decedent, the financing statement must indicate, in a separate part of the financing statement, that the collateral is being administered by a personal representative. Although the indication is not part of the debtor’s name, a financing statement that fails to provide the indication does not sufficiently provide the name of the debtor under Sections 9-502(a) and 9-503(a)(2), does not “substantially satisfy[] the requirements” of Part 5 within the meaning of Section 9-506(a), and so is ineffective.

d. Individuals. This Article provides alternative approaches towards the requirement for providing the name of a debtor who is an individual.

Alternative A. Alternative A distinguishes between two groups of individual debtors. For debtors holding an unexpired driver's license issued by the State where the financing statement is filed (ordinarily the State where the debtor maintains the debtor's principal residence), Alternative A requires that a financing statement provide the name indicated on the license. When a debtor does not hold an unexpired driver's license issued by the relevant State, the requirement can be satisfied in either of two ways. A financing statement is sufficient if it provides the "individual name" of the debtor. Alternatively, a financing statement is sufficient if it provides the debtor's surname (i.e., family name) and first personal name (i.e., first name other than the surname).

Alternative B. Alternative B provides three ways in which a financing statement may sufficiently provide the name of an individual who is a debtor. The "individual name" of the debtor is sufficient, as is the debtor's surname and first personal name. If the individual holds an unexpired driver's license issued by the State where the financing statement is filed (ordinarily the State of the debtor's principal residence), the name indicated on the driver's license also is sufficient.

Name indicated on the driver's license. A financing statement does not "provide the name of the individual which is indicated" on the debtor's driver's license unless the name it provides is the same as the name indicated on the license. This is the case even if the name indicated on the debtor's driver's license contains an error.

Example 1: Debtor, an individual whose principal residence is in Illinois, grants a security interest to SP in certain business equipment. SP files a financing statement with the Illinois filing office. The financing statement provides the name appearing on Debtor's Illinois driver's license, "Joseph Allan Jones." Regardless of which Alternative is in effect in Illinois, this filing would be sufficient under Illinois' Section 9-503(a), even if Debtor's correct middle name is Alan, not Allan.

A filing against "Joseph A. Jones" or "Joseph Jones" would not "provide the name of the individual which is indicated" on the debtor's driver's license. However, these filings might be sufficient if Alternative A is in effect in Illinois and Jones has no current (i.e., unexpired) Illinois driver's license, or if Illinois has enacted Alternative B.

Determining the name that should be provided on the financing statement must not be done mechanically. The order in which the components of an individual's name appear on a driver's license differs among the States. Had the debtor in Example 1 obtained a driver's license from a different State, the license might have indicated the name as "Jones Joseph Allan." Regardless of the order on the driver's license, the debtor's surname must be provided in the part of the financing statement designated for the surname.

Alternatives A and B both refer to a license issued by "this State." Perfection of a security interest by filing ordinarily is determined by the law of the jurisdiction in which the debtor is located. See Section 9-301(1). (Exceptions to the general rule are found in Section 9-

301(3) and (4), concerning fixture filings, timber to be cut, and as-extracted collateral.) A debtor who is an individual ordinarily is located at the individual's principal residence. See Section 9-307(b). (An exception appears in Section 9-307(c).) Thus, a given State's Section 9-503 ordinarily will apply during any period when the debtor's principal residence is located in that State, even if during that time the debtor holds or acquires a driver's license from another State.

When a debtor's principal residence changes, the location of the debtor under Section 9-307 also changes and perfection by filing ordinarily will be governed by the law of the debtor's new location. As a consequence of the application of that jurisdiction's Section 9-316, a security interest that is perfected by filing under the law of the debtor's former location will remain perfected for four months after the relocation, and thereafter if the secured party perfects under the law of the debtor's new location. Likewise, a financing statement filed in the former location may be effective to perfect a security interest that attaches after the debtor relocates. See Section 9-316(h).

Individual name of the debtor. Article 9 does not determine the "individual name" of a debtor. Nor does it determine which element or elements in a debtor's name constitute the surname. In some cases, determining the "individual name" of a debtor may be difficult, as may determining the debtor's surname. This is because in the case of individuals, unlike registered organizations, there is no public organic record to which reference can be made and from which the name and its components can be definitively determined.

Names can take many forms in the United States. For example, whereas a surname is often colloquially referred to as a "last name," the sequence in which the elements of a name are presented is not determinative. In some cultures, the surname appears first, while in others it may appear in a location that is neither first nor last. In addition, some surnames are composed of multiple elements that, taken together, constitute a single surname. These elements may or may not be separated by a space or connected by a hyphen, "i," or "y." In other instances, some or all of the same elements may not be part of the surname. In some cases, a debtor's entire name might be composed of only a single element, which should be provided in the part of the financing statement designated for the surname.

In disputes as to whether a financing statement sufficiently provides the "individual name" of a debtor, a court should refer to any non-UCC law concerning names. However, case law about names may have developed in contexts that implicate policies different from those of Article 9. A court considering an individual's name for purposes of determining the sufficiency of a financing statement is not necessarily bound by cases that were decided in other contexts and for other purposes.

Individuals are asked to provide their names on official documents such as tax returns and bankruptcy petitions. An individual may provide a particular name on an official document in response to instructions relating to the document rather than because the name is actually the individual's name. Accordingly, a court should not assume that the name an individual provides on an official document necessarily constitutes the "individual name" for purposes of the sufficiency of the debtor's name on a financing statement. Likewise, a court should not assume that the name as presented on an individual's birth certificate is necessarily the individual's current name.

In applying non-UCC law for purposes of determining the sufficiency of a debtor's name on a financing statement, a court should give effect to the instruction in Section 1-103(a)(1) that the UCC "must be liberally construed and applied to promote its underlying purposes and policies," which include simplifying and clarifying the law governing commercial transactions. Thus, determination of a debtor's name in the context of the Article 9 filing system must take into account the needs of both filers and searchers. Filers need a simple and predictable system in which they can have a reasonable degree of confidence that, without undue burden, they can determine a name that will be sufficient so as to permit their financing statements to be effective. Likewise, searchers need a simple and predictable system in which they can have a reasonable degree of confidence that, without undue burden, they will discover all financing statements pertaining to the debtor in question. The court also should take into account the purpose of the UCC to make the law uniform among the various jurisdictions. See Section 1-103(a)(3).

Of course, once an individual debtor's name has been determined to be sufficient for purposes of Section 9-503, a financing statement that provides a variation of that name, such as a "nickname" that does not constitute the debtor's name, does not sufficiently provide the name of the debtor under this section. Cf. Section 9-503(c) (a financing statement providing only a debtor's trade name is not sufficient).

If there is any doubt about an individual debtor's name, a secured party may choose to file one or more financing statements that provide a number of possible names for the debtor and a searcher may similarly choose to search under a number of possible names.

Note that, even if the name provided in an initial financing statement is correct, the filing office nevertheless must reject the financing statement if it does not identify an individual debtor's last name surname (e.g., if it is not clear whether the debtor's name surname is Perry ~~Mason~~ or Mason-Perry). See Section 9-516(b)(3)(C).

3. Secured Party's Name. New subsection (d) makes clear that when the secured party is a representative, a financing statement is sufficient if it names the secured party, whether or not it indicates any representative capacity. Similarly, a financing statement that names a representative of the secured party is sufficient, even if it does not indicate the representative capacity.

Example 2: Debtor creates a security interest in favor of Bank X, Bank Y, and Bank Z, but not to their representative, the collateral agent (Bank A). The collateral agent is not itself a secured party. See Section 9-102. Under Sections 9-502(a) and 9-503(d), however, a financing statement is effective if it names as secured party Bank A and not the actual secured parties, even if it omits Bank A's representative capacity.

Each person whose name is provided in an initial financing statement as the name of the secured party or representative of the secured party is a secured party of record. See Section 9-511.

4. Multiple Names. Subsection (e) makes explicit what is implicit under former Article 9: a financing statement may provide the name of more than one debtor and secured party. See Section ~~1-102(5)(a)~~ 1-106 (words in the singular include the plural). With respect to records

relating to more than one debtor, see Section 9-520(d). With respect to financing statements providing the name of more than one secured party, see Sections 9-509(e) and 9-510(b).

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SECTION 9-505. FILING AND COMPLIANCE WITH OTHER STATUTES AND TREATIES FOR CONSIGNMENTS, LEASES, OTHER BAILMENTS, AND OTHER TRANSACTIONS.

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Comment

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3. **Changes from Former Section 9-408.** This section expands the rule of former Section 9-408 to embrace more generally other bailments and transactions, as well as sales transactions, primarily sales of payment intangibles and promissory notes. It provides the same benefits for compliance with a statute or treaty described in Section 9-311(a) that former Section 9-408 provided for filing, in connection with the use of terms such as “lessor,” consignor,” etc. The references to “owner” and “registered owner” are intended to address, for example, the situation where a putative lessor is the registered owner of an automobile covered by a certificate of title and the transaction is determined to create a security interest. Although this section provides that the security interest is perfected, the relevant certificate-of-title statute may expressly provide to the contrary or may be ambiguous. If so, it may be necessary or advisable to amend the certificate-of-title statute to ensure that perfection of the security interest will be achieved.

As ~~does~~ did former Section 1-201, former Article 9 referred to transactions, including leases and consignments, “intended as security.” This misleading phrase created the erroneous impression that the parties to a transaction can dictate how the law will classify it (e.g., as a bailment or as a security interest) and thus affect the rights of third parties. This Article deletes the phrase wherever it appears. Subsection (b) expresses the principle more precisely by referring to a security interest that “secures an obligation.”

4. **Consignments.** Although a “true” consignment is a bailment, the filing and priority provisions of former Article 9 applied to “true” consignments. See former Sections 2-326(3), 9-114. A consignment “intended as security” created a security interest that was in all respects subject to former Article 9. This Article subsumes most true consignments under the rubric of “security interest.” See Sections 9-102 (definition of “consignment”), 9-109(a)(4), ~~1-201(37)~~ 1-201(b)(35) (definition of “security interest”). Nevertheless, it maintains the distinction between a (true) “consignment,” as to which only certain aspects of Article 9 apply, and a so-called consignment that actually “secures an obligation,” to which Article 9 applies in full. The revisions to this section reflect the change in terminology.

SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.

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Comment

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2. **Errors and Omissions.** Like former Section 9-402(8), subsection (a) is in line with the policy of this Article to simplify formal requisites and filing requirements. It is designed to discourage the fanatical and impossibly refined reading of statutory requirements in which courts occasionally have indulged themselves. Subsection (a) provides the standard applicable to indications of collateral. Subsections (b) and (c), which are new, concern the effectiveness of financing statements in which the debtor's name is incorrect. Subsection (b) contains the general rule: a financing statement that fails sufficiently to provide the debtor's name in accordance with Section 9-503(a) is seriously misleading as a matter of law. Subsection (c) provides an exception: If the financing statement nevertheless would be discovered in a search under the debtor's correct name, using the filing office's standard search logic, if any, then as a matter of law the incorrect name does not make the financing statement seriously misleading. A financing statement that is seriously misleading under this section is ineffective even if it is disclosed by (i) using a search logic other than that of the filing office to search the official records, or (ii) using the filing office's standard search logic to search a data base other than that of the filing office. For purposes of subsection (c), any name that satisfies Section 9-503(a) at the time of the search is a "correct name."

This section and Section 9-503 balance the interests of filers and searchers. Searchers are not expected to ascertain nicknames, trade names, and the like by which the debtor may be known and then search under each of them. Rather, it is the secured party's responsibility to provide the name of the debtor sufficiently in a filed financing statement. Subsection (c) sets forth the only situation in which a financing statement that fails sufficiently to provide the name of the debtor is not seriously misleading. As stated in subsection (b), if the name of the debtor provided on a financing statement is insufficient and subsection (c) is not satisfied, the financing statement is seriously misleading. Such a financing statement is ineffective even if the debtor is known in some contexts by the name provided on the financing statement and even if searchers know or have reason to know that the name provided on the financing statement refers to the debtor. Any suggestion to the contrary in a judicial opinion is incorrect.

To satisfy the requirements of Section 9-503(a)(2), a financing statement must indicate that the collateral is being administered by a personal representative. To satisfy the requirements of Section 9-503(a)(3), a financing statement must indicate that the collateral is held in a trust and provide additional information that distinguishes the trust from certain other trusts. The indications and additional information are not part of the debtor's name. Nevertheless, a financing statement that fails to provide an indication or the additional information when required does not sufficiently provide the name of the debtor under Sections 9-502(a) and 9-503(a), does not "substantially satisfy" the requirements of Part 5 within the meaning of this section and so is ineffective.

In addition to requiring the debtor's name and an indication of the collateral, Section 9-502(a) requires a financing statement to provide the name of the secured party or a representative of the secured party. Inasmuch as searches are not conducted under the secured party's name, and no filing is needed to continue the perfected status of security interest after it is assigned, an error in the name of the secured party or its representative will not be seriously misleading. However, in an appropriate case, an error of this kind may give rise to an estoppel in favor of a particular holder of a conflicting claim to the collateral. See Section 1-103.

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SECTION 9-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF FINANCING STATEMENT.

(a) **[Disposition.]** A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) **[Information becoming seriously misleading.]** Except as otherwise provided in subsection (c) and Section 9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under Section 9-506.

(c) **[Change in debtor's name.]** If ~~a debtor so changes its~~ the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under Section 9-503(a) so that the financing statement becomes seriously misleading under Section 9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, ~~the change~~ filed financing statement becomes seriously misleading; and

(2) the financing statement is not effective to perfect a security interest in

collateral acquired by the debtor more than four months after the ~~change~~ filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after ~~the change~~ the financing statement became seriously misleading.

Comment

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4. **Other Post-Filing Changes.** Subsection (b) provides that, as a general matter, post-filing changes that render a financing statement ~~inaccurate and~~ seriously misleading have no effect on a financing statement. The financing statement remains effective. It is subject to two exceptions: Section 9-508 and Section 9-507(c). Section 9-508 addresses the effectiveness of a financing statement filed against an original debtor when a new debtor becomes bound by the original debtor's security agreement. It is discussed in the Comments to that section. Section 9-507(c) addresses a "pure" change of the debtor's name, i.e., a change that does not implicate a new debtor cases in which a filed financing statement provides a name that, at the time of filing, satisfies the requirements of Section 9-503(a) with respect to the named debtor but, at a later time, no longer does so. ~~It clarifies former Section 9-402(7).~~

Example 1: Debtor, an individual whose principal residence is in California, grants a security interest to SP in certain business equipment. SP files a financing statement with the California filing office. Alternative A is in effect in California. The financing statement provides the name appearing on Debtor's California driver's license, "James McGinty." Debtor obtains a court order changing his name to "Roger McGuinn" but does not change his driver's license. Even after the court order issues, the name provided for the debtor in the financing statement is sufficient under Section 9-503(a). Accordingly, Section 9-507(c) does not apply.

The same result would follow if Alternative B is in effect in California.

Under Section 9-503(a)(4) (Alternative A), if the debtor holds a current (i.e., unexpired) driver's license issued by the State where the financing statement is filed, the name required for the financing statement is the name indicated on the license that was issued most recently by that State. If the debtor does not have a current driver's license issued by that State, then the debtor's name is determined under subsection (a)(5). It follows that a debtor's name may change, and a financing statement providing the name on the debtor's then-current driver's license may become seriously misleading, if the license expires and the debtor's name under subsection (a)(5) is different. The same consequences may follow if a debtor's driver's license is renewed and the names on the licenses differ.

Example 2: The facts are as in Example 1. Debtor's driver's license expires one year after the entry of the court order changing Debtor's name. Debtor does not renew the license. Upon expiration of the license, the name required for sufficiency by Section 9-

503(a) is the individual name of the debtor or the debtor's surname and first personal name. The name "James McGinty" has become insufficient.

Example 3: The facts are as in Example 1. Before the license expires, Debtor renews the license. The name indicated on the new license is "Roger McGuinn." Upon issuance of the new license, "James McGinty" becomes insufficient as the debtor's name under Section 9-503(a).

The same results would follow if Alternative B is in effect in California (assuming that, following the issuance of the court order, "James McGinty" is neither the individual name of the debtor nor the debtor's surname and first personal name).

Even if the name provided as the name of the debtor becomes insufficient under Section 9-503(a), the filed financing statement does not become seriously misleading, and Section 9-507(c) does not apply, if the financing statement can be found by searching under the debtor's "correct" name, using the filing office's standard search logic. See Section 9-506. Any name that satisfies Section 9-503(a) at the time of the search is a "correct name" for these purposes. Thus, assuming that a search of the records of the California filing office under "Roger McGuinn," using the filing office's standard search logic, would not disclose a financing statement naming "James McGinty," the financing statement in Examples 2 and 3 has become seriously misleading and Section 9-507(c) applies.

If a name change renders a filed financing statement becomes seriously misleading because the name it provides for a debtor becomes insufficient, the financing statement, unless amended to provide the debtor's new correct a sufficient name for the debtor, is effective only to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change. If an amendment that provides the new correct a sufficient name is filed within four months after the change, the financing statement as amended would be effective also with respect to collateral acquired more than four months after the change. If an amendment that provides the new correct a sufficient name is filed more than four months after the change, the financing statement as amended would be effective also with respect to collateral acquired more than four months after the change, but only from the time of the filing of the amendment.

SECTION 9-508. EFFECTIVENESS OF FINANCING STATEMENT IF NEW DEBTOR BECOMES BOUND BY SECURITY AGREEMENT.

* * *

Comment

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4. When Financing Statement Effective Against New Debtor. Subsection (a) provides that a filing against the original debtor generally is effective to perfect a security interest in collateral that a new debtor has at the time it becomes bound by the original debtor's

security agreement and collateral that it acquires after the new debtor becomes bound. Under subsection (b), however, if the filing against the original debtor is seriously misleading as to the new debtor's name, the filing is effective as to collateral acquired by the new debtor more than four months after the new debtor becomes bound only if a person files during the four-month period an initial financing statement providing the name of the new debtor. Compare Section 9-507(c) (four-month period of effectiveness with respect to collateral acquired by a debtor after the debtor changes its name provided for the debtor becomes insufficient as the name of the debtor). As to the meaning of "initial financing statement" in this context, see Section 9-512, Comment 5. Moreover, if the original debtor and the new debtor are located in different jurisdictions, a filing against the original debtor would not be effective to perfect a security interest in collateral that the new debtor acquires or has acquired from a person other than the original debtor. See Example 5, Section 9-316, Comment 2.

* * *

SECTION 9-509. PERSONS ENTITLED TO FILE A RECORD.

* * *

Comment

* * *

3. **Unauthorized Filings.** Records filed in the filing office do not require signatures for their effectiveness. Subsection (a)(1) substitutes for the debtor's signature on a financing statement the requirement that the debtor authorize in an authenticated record the filing of an initial financing statement or an amendment that adds collateral. Also, under subsection (a)(1), if an amendment adds a debtor, the debtor who is added must authorize the amendment. A person who files an unauthorized record in violation of subsection (a)(1) is liable under Section 9-625(b) and (e) for actual and statutory damages. Of course, a filed financing statement is ineffective to perfect a security interest if the filing is not authorized. See Section 9-510(a). Law other than this Article, including the law with respect to ratification of past acts, generally determines whether a person has the requisite authority to file a record under this section. See Sections 1-103, 9-502, Comment 3. This Article applies to other issues, such as the priority of a security interest perfected by the filing of a financing statement. See Section 9-322, Comment 4.

* * *

6. **Amendments; Termination Statements Authorized by Debtor.** Most amendments may not be filed unless the secured party of record, as determined under Section 9-511, authorizes the filing. See subsection (d)(1). However, under subsection (d)(2), the authorization of the secured party of record is not required for the filing of a termination statement if the secured party of record failed to send or file a termination statement as required by Section 9-513, the debtor authorizes it to be filed, and the termination statement so indicates. An authorization to file a record under subsection (d) is effective even if the authorization is not in an authenticated record. Compare subsection (a)(1). However, both the person filing the record

and the person giving the authorization may wish to obtain and retain a record indicating that the filing was authorized.

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* * *

SECTION 9-512. AMENDMENT OF FINANCING STATEMENT.

Legislative Note: States whose real-estate filing offices require additional information in amendments and cannot search their records by both the name of the debtor and the file number should enact Alternative B to Sections 9-512(a), 9-518(b), 9-518(d), 9-519(f) and 9-522(a).

Comment

* * *

4. **Amendment Adding Debtor.** An amendment that adds a debtor is effective, provided that the added debtor authorizes the filing. See Section 9-509(a). However, filing an amendment adding a debtor to a previously filed financing statement affords no advantage over filing an initial financing statement against that debtor and may be disadvantageous. With respect to the added debtor, for purposes of determining the priority of the security interest, the time of filing is the time of the filing of the amendment, not the time of the filing of the initial financing statement. See subsection (d). However, the effectiveness of the financing statement lapses with respect to added debtor at the time it lapses with respect to the original debtor. See subsection (b).

5. **Amendment Adding Debtor Name.** Many states have enacted statutes governing the “conversion” of one organization organized under the law of that state, e.g., a corporation, into another such organization, e.g., a limited liability company. This Article defers to those statutes to determine whether the resulting organization is the same legal person as the initial, converting organization (albeit with a different name) or whether the resulting organization is a different legal person. When the governing statute does not clearly resolve the question, a secured party whose debtor is the converting organization may wish to proceed as if the statute provides for both results. In these circumstances, an amendment adding to the initial financing statement the name of the resulting organization may be preferable to an amendment substituting that name for the name of the debtor provided on the initial financing statement. In the event the governing statute is construed as providing that the resulting organization is the same legal person as the converting organization, but with a different name, the timely filing of such an amendment would satisfy the requirement of Section 9-507(c)(2). If, however, the governing statute is construed as providing that the resulting organization is a different legal person, the financing statement (which continues to provide the name of the original debtor) would be effective as to collateral acquired by the resulting organization (“new debtor”) before, and within four months after, the conversion. See Section 9-508(b)(1). Inasmuch as it is the first financing statement filed against the resulting organization by the secured party, the record adding the name of the resulting organization as a debtor would constitute “an initial financing statement

providing the name of the new debtor “ under Section 9-508(b)(2). The secured party also may wish to file another financing statement naming the resulting organization as debtor. See Comment 4.

5 6. Deletion of All Debtors or Secured Parties of Record. Subsection (e) assures that there will be a debtor and secured party of record for every financing statement.

* * *

SECTION 9-513. TERMINATION STATEMENT.

* * *

Comment

* * *

3. **“Bogus” Filings.** A secured party’s duty to send a termination statement arises when the secured party “receives” an authenticated demand from the debtor. In the case of an unauthorized financing statement, the person named as debtor in the financing statement may have no relationship with the named secured party and no reason to know the secured party’s address. Inasmuch as the address in the financing statement is “held out by [the person named as secured party in the financing statement] as the place for receipt of such communications [i.e., communications relating to security interests],” the putative secured party is deemed to have “received” a notification delivered to that address. See Section ~~1-201(26)~~; 1-202(e). If a termination statement is not forthcoming, the person named as debtor itself may authorize the filing of a termination statement, which will be effective if it indicates that the person authorized it to be filed. See Sections 9-509(d)(2), 9-510(c).

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SECTION 9-515. DURATION AND EFFECTIVENESS OF FINANCING STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT.

(a) **[Five-year effectiveness.]** Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five years after the date of filing.

(b) **[Public-finance or manufactured-home transaction.]** Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a

public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) **[Lapse and continuation of financing statement.]** The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) **[When continuation statement may be filed.]** A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) or the 30-year period specified in subsection (b), whichever is applicable.

(e) **[Effect of filing continuation statement.]** Except as otherwise provided in Section 9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) **[Transmitting utility financing statement.]** If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) **[Record of mortgage as financing statement.]** A record of a mortgage that is effective as a financing statement filed as a fixture filing under Section 9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF FILING.

(a) **[What constitutes filing.]** Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) **[Refusal to accept record; filing does not occur.]** Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the filing office;

(2) an amount equal to or greater than the applicable filing fee is not tendered;

(3) the filing office is unable to index the record because:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or ~~correction~~ information statement, the record:

(i) does not identify the initial financing statement as required by Section 9-512 or 9-518, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under Section 9-515;

(C) in the case of an initial financing statement that provides the name of a

debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's ~~last name~~ surname; or

(D) in the case of a record filed [or recorded] in the filing office described in Section 9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) provide a mailing address for the debtor; or

(B) indicate whether the name provided as the name of the debtor is the name of an individual or an organization; ~~or~~

~~(C) if the financing statement indicates that the debtor is an organization, provide:~~

~~(i) a type of organization for the debtor;~~

~~(ii) a jurisdiction of organization for the debtor; or~~

~~(iii) an organizational identification number for the debtor or~~

~~indicate that the debtor has none;~~

(6) in the case of an assignment reflected in an initial financing statement under Section 9-514(a) or an amendment filed under Section 9-514(b), the record does not provide a name and mailing address for the assignee; or

(7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by Section 9-515(d).

(c) **[Rules applicable to subsection (b).]** For purposes of subsection (b):

(1) a record does not provide information if the filing office is unable to read or decipher the information; and

(2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by Section 9-512, 9-514, or 9-518, is an initial financing statement.

(d) **[Refusal to accept record; record effective as filed record.]** A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

Comment

* * *

3. Effectiveness of Rejected Record. Subsection (b) provides an exclusive list of grounds upon which the filing office may reject a record. See Section 9-520(a). Although some of these grounds would also be grounds for rendering a filed record ineffective (e.g., an initial financing statement does not provide a name for the debtor), many others would not be (e.g., an initial financing statement does not provide a mailing address for the debtor or secured party of record). Neither this section nor Section 9-520 requires or authorizes the filing office to determine, or even consider, the accuracy of information provided in a record. ~~For example, the State A filing office may not reject under subsection (b)(5)(C) an initial financing statement indicating that the debtor is a State A corporation and providing a three-digit organizational identification number, even if all State A organizational identification numbers contain at least five digits and two letters. Some organizations that are not registered organizations (such as foreign corporations) have a readily determinable jurisdiction of organization. When that is not the case, for purposes of this section, the jurisdiction of organization for a debtor that is an organization but not a registered organization is any jurisdiction that bears a reasonable relation to the debtor. For example, the jurisdiction of organization may be the jurisdiction in which the debtor is located under the Section 9-307(b) (i.e., its place of business or chief executive office) or the jurisdiction stated in any organizational document or agreement for the debtor as the~~

jurisdiction under whose law the organization is formed or as the jurisdiction whose law is the governing law. Thus, for purposes of this section, more than one jurisdiction may qualify as the debtor's jurisdiction of organization. See Comment 9.

* * *

5. Address for Secured Party of Record. Under subsection (b)(4) and Section 9-520(a), the lack of a mailing address for the secured party of record requires the filing office to reject an initial financing statement. The failure to include an address for the secured party of record no longer renders a financing statement ineffective. See Section 9-502(a). The function of the address is not to identify the secured party of record but rather to provide an address to which others can send required notifications, e.g., of a purchase-money security interest in inventory or of the disposition of collateral. Inasmuch as the address shown on a filed financing statement is an "address that is reasonable under the circumstances," a person required to send a notification to the secured party may satisfy the requirement by sending a notification to that address, even if the address is or becomes incorrect. See Section 9-102 (definition of "send"). Similarly, because the address is "held out by [the secured party] as the place for receipt of such communications [i.e., communications relating to security interests]," the secured party is deemed to have received a notification delivered to that address. See Section ~~1-201(26)~~ 1-202(e).

6. Uncertainty Concerning Individual Debtor's ~~Last Name~~ Surname. Subsection (b)(3)(C) requires the filing office to reject an initial financing statement or amendment adding an individual debtor if the office cannot index the record because it does not identify the debtor's ~~last name~~ surname (e.g., it is unclear whether the debtor's name surname is Elton ~~John~~ or John Elton).

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SECTION 9-518. CLAIM CONCERNING INACCURATE OR WRONGFULLY FILED RECORD.

(a) [~~Who may file~~ Statement with respect to record indexed under person's name.]

A person may file in the filing office ~~a correction~~ an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

[Alternative A]

(b) [Sufficiency Contents of correction statement under subsection (a).] ~~A~~

~~correction~~ An information statement under subsection (a) must:

(1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) indicate that it is a ~~correction~~ an information statement; and

(3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

[Alternative B]

(b) **[Sufficiency Contents of correction statement under subsection (a).]** ~~☆~~

~~correction~~ An information statement under subsection (a) must:

(1) identify the record to which it relates by:

(A) the file number assigned to the initial financing statement to which the record relates; and

(B) if the ~~correction~~ information statement relates to a record filed [or recorded] in a filing office described in Section 9-501(a)(1), the date [and time] that the initial financing statement was filed [or recorded] and the information specified in Section 9-502(b);

(2) indicate that it is a ~~correction~~ an information statement; and

(3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

[End of Alternatives]

(c) **[Statement by secured party of record.]** A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the

person that filed the record was not entitled to do so under Section 9-509(d).

[Alternative A]

(d) [Contents of statement under subsection (c).] An information statement under subsection (c) must:

(1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) indicate that it is an information statement; and

(3) provide the basis for the person's belief that the person that filed the record was not entitled to do so under Section 9-509(d).

[Alternative B]

(d) [Contents of statement under subsection (c).] An information statement under subsection (c) must:

(1) identify the record to which it relates by:

(A) the file number assigned to the initial financing statement to which the record relates; and

(B) if the information statement relates to a record filed [or recorded] in a filing office described in Section 9-501(a)(1), the date [and time] that the initial financing statement was filed [or recorded] and the information specified in Section 9-502(b);

(2) indicate that it is an information statement; and

(3) provide the basis for the person's belief that the person that filed the record was not entitled to do so under Section 9-509(d).

[End of Alternatives]

~~(c)~~ (e) [Record not affected by correction information statement.] The filing of a ~~correction~~ an information statement does not affect the effectiveness of an initial financing

statement or other filed record.

Legislative Note: States whose real-estate filing offices require additional information in amendments and cannot search their records by both the name of the debtor and the file number should enact Alternative B to Sections 9-512(a), 9-518(b), 9-518(d), 9-519(f) and 9-522(a).

Comment

* * *

2. **Correction-Information Statements.** Former Article 9 did not afford a nonjudicial means for a debtor to ~~correct~~ indicate that a financing statement or other record ~~that~~ was inaccurate or wrongfully filed. Subsection (a) affords the debtor the right to file a ~~correction~~ an information statement. Among other requirements, the ~~correction-information~~ statement must provide the basis for the debtor's belief that the public record should be corrected. See subsection (b). These provisions, which resemble the analogous remedy in the Fair Credit Reporting Act, 15 U.S.C. § 1681i, afford an aggrieved person the opportunity to state its position on the public record. They do not permit an aggrieved person to change the legal effect of the public record. Thus, although a filed ~~correction-information~~ statement becomes part of the "financing statement," as defined in Section 9-102, the filing does not affect the effectiveness of the initial financing statement or any other filed record. See subsection ~~(c)~~ (e).

Sometimes a person files a termination statement or other record relating to a filed financing statement without being entitled to do so. A secured party of record with respect to the financing statement who believes that such a record has been filed may, but need not, file an information statement indicating that the person that filed the record was not entitled to do so. See subsection (c). An information statement has no legal effect. Its sole purpose is to provide some limited public notice that the efficacy of a filed record is disputed. If the person that filed the record was not entitled to do so, the filed record is ineffective, regardless of whether the secured party of record files an information statement. Likewise, if the person that filed the record was entitled to do so, the filed record is effective, even if the secured party of record files an information statement. See Section 9-510(a), 9-518(e). Because an information statement filed under subsection (c) has no legal effect, a secured party of record—even one who is aware of the unauthorized filing of a record—has no duty to file one. Just as searchers bear the burden of determining whether the filing of initial financing statement was authorized, searchers bear the burden of determining whether the filing of every subsequent record was authorized.

Inasmuch as the filing of an information statement has no legal effect, this section does not provide a mechanism by which a secured party can correct an error that it discovers in its own financing statement.

This section does not displace other provisions of this Article that impose liability for making unauthorized filings or failing to file or send a termination statement (see Section 9-625(e)), nor does it displace any available judicial remedies.

3. **Resort to Other Law.** This Article cannot provide a satisfactory or complete solution to problems caused by misuse of the public records. The problem of "bogus" filings is not

limited to the UCC filing system but extends to the real-property records, as well. A summary judicial procedure for correcting the public record and criminal penalties for those who misuse the filing and recording systems are likely to be more effective and put less strain on the filing system than provisions authorizing or requiring action by filing and recording offices.

* * *

[SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE]

**SECTION 9-519. NUMBERING, MAINTAINING, AND INDEXING RECORDS;
COMMUNICATING INFORMATION PROVIDED IN RECORDS.**

* * *

Legislative Notes:

* * *

3. *States whose real-estate filing offices require additional information in amendments and cannot search their records by both the name of the debtor and the file number should enact Alternative B to Sections 9-512(a), 9-518(b), 9-518(d), 9-519(f) and 9-522(a).*

* * *

SECTION 9-520. ACCEPTANCE AND REFUSAL TO ACCEPT RECORD.

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Comment

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3. **Consequences of Accepting Rejectable Record.** Section 9-516(b) includes among the reasons for rejecting an initial financing statement the failure to give certain information that is not required as a condition of effectiveness. In conjunction with Section 9-516(b)(5), this section requires the filing office to refuse to accept a financing statement that is legally sufficient to perfect a security interest under Section 9-502 but does not contain a mailing address for the ~~debtor, does not debtor or disclose whether the debtor is an individual or an organization, (e.g., a partnership or corporation) or, if the debtor is an organization, does not give certain specified information concerning the organization.~~ The information required by Section 9-516(b)(5) assists searchers in weeding out “false positives,” i.e., records that a search reveals but which do not pertain to the debtor in question. It assists filers by helping to ensure that the debtor’s name is correct and that the financing statement is filed in the proper jurisdiction.

If the filing office accepts a financing statement that does not give this information at all, the filing is fully effective. Section 9-520(c). The financing statement also generally is effective if the information is given but is incorrect; however, Section 9-338 affords protection to buyers and holders of perfected security interests who give value in reasonable reliance upon the incorrect information.

* * *

**SECTION 9-521. UNIFORM FORM OF WRITTEN FINANCING STATEMENT
AND AMENDMENT.**

(a) **[Initial financing statement form.]** A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in Section 9-516(b):

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here [] and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

1c. MAILING ADDRESS

CITY STATE POSTAL CODE COUNTRY

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here [] and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR _____ SUFFIX _____

2c. MAILING ADDRESS

CITY STATE POSTAL CODE COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) _____ SUFFIX _____

3c. MAILING ADDRESS

CITY STATE POSTAL CODE COUNTRY

4. COLLATERAL: This financing statement covers the following collateral:

5. Check only if applicable and check only one box:

Collateral is held in a Trust (see UCC1Ad, Item 17 and Instructions)
 being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

Public-Finance Transaction Manufactured-Home Transaction
 A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

Agricultural Lien Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor

Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

[UCC FINANCING STATEMENT (Form UCC1)]

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as item 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here []

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1)(use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR

SUFFIX

10c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

11. [] ADDITIONAL SECURED PARTY'S NAME or [] ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

11c. MAILING ADDRESS

CITY STATE POSTAL CODE COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral)

13. This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:
 covers timber to be cut covers as-extracted collateral is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

17. MISCELLANEOUS:

[UCC FINANCING STATEMENT ADDENDUM (Form UCC1Ad)]

(b) [Amendment form.] A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in Section 9-516(b):

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER

1b. This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS
Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13.

2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9 For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. PARTY INFORMATION CHANGE:

Check one of these two boxes:

This Change affects Debtor or Secured Party of record.

AND

Check one of these three boxes to:

CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c

ADD name: Complete item 7a or 7b, and item 7c

DELETE name: Give record name to be deleted in item 6a or 6b

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact full name; do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR

SUFFIX

7c. MAILING ADDRESS

CITY STATE POSTAL CODE COUNTRY

8. [] COLLATERAL CHANGE:

Also check one of these four boxes:

[] ADD collateral [] DELETE collateral [] RESTATE covered collateral

[] ASSIGN collateral

Indicate collateral:

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)

If this is an Amendment authorized by a DEBTOR, check here [] and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

10. OPTIONAL FILER REFERENCE DATA:

[UCC FINANCING STATEMENT AMENDMENT (Form UCC3)]

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

THE ABOVE SPACE IS FOR

FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see Instructions if name does not fit

13a. ORGANIZATION'S NAME

OR

13b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral):

15. This FINANCING STATEMENT AMENDMENT: [] covers timber to be cut

[] covers as-extracted collateral [] is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):

17. Description of real estate:

18. MISCELLANEOUS:

[UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad)]

* * *

SECTION 9-522. MAINTENANCE AND DESTRUCTION OF RECORDS.

* * *

Legislative Note: States whose real-estate filing offices require additional information in amendments and cannot search their records by both the name of the debtor and the file number should enact Alternative B to Sections 9-512(a), 9-518(b), 9-518(d), 9-519(f) and 9-522(a).

* * *

PART 6

DEFAULT

[SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST]

* * *

SECTION 9-602. WAIVER AND VARIANCE OF RIGHTS AND DUTIES.

* * *

Comment

* * *

1. **Source.** Former Section 9-501(3).

2. **Waiver: In General.** Section 1-102(3) addresses which provisions of the UCC are mandatory and which may be varied by agreement. With exceptions relating to good faith, diligence, reasonableness, and care, immediate parties, as between themselves, may vary its provisions by agreement. However, in the context of rights and duties after default, our legal system traditionally has looked with suspicion on agreements that limit the debtor's rights and free the secured party of its duties. As stated in former Section 9-501, Comment 4, "no mortgage clause has ever been allowed to clog the equity of redemption." The context of default offers great opportunity for overreaching. The suspicious attitudes of the courts have been grounded in common sense. This section, like former Section 9-501(3), codifies this long-standing and deeply rooted attitude. The specified rights of the debtor and duties of the

secured party may not be waived or varied except as stated. Provisions that are not specified in this section are subject to the general rules in Section 1-102(3).

3. Nonwaivable Rights and Duties. This section revises former Section 9-501(3) by restricting the ability to waive or modify additional specified rights and duties: (i) duties under Section 9-207(b)(4)(C), which deals with the use and operation of consumer goods, (ii) the right to a response to a request for an accounting, concerning a list of collateral, or concerning a statement of account (Section 9-210), (iii) the duty to collect collateral in a commercially reasonable manner (Section 9-607), (iv) the implicit duty to refrain from a breach of the peace in taking possession of collateral under Section 9-609, (v) the duty to apply noncash proceeds of collection or disposition in a commercially reasonable manner (Sections 9-608 and 9-615), (vi) the right to a special method of calculating a surplus or deficiency in certain dispositions to a secured party, a person related to secured party, or a secondary obligor (Section 9-615), (vii) the duty to give an explanation of the calculation of a surplus or deficiency (Section 9-616), (viii) the right to limitations on the effectiveness of certain waivers (Section 9-624), and (ix) the right to hold a secured party liable for failure to comply with this Article (Sections 9-625 and 9-626). For clarity and consistency, this Article uses the term “waive or vary” instead of “renounc[e] or modify[,]” which appeared in former Section 9-504(3).

This section provides generally that the specified rights and duties “may not be waived or varied.” However, it does not restrict the ability of parties to agree to settle, compromise, or renounce claims for past conduct that may have constituted a violation or breach of those rights and duties, even if the settlement involves an express “waiver.”

Section 9-610(c) limits the circumstances under which a secured party may purchase at its own private disposition. Transactions of this kind are equivalent to “strict foreclosures” and are governed by Sections 9-620, 9-621, and 9-622. The provisions of these sections can be waived only to the extent provided in Section 9-624(b). See Section 9-602.

4. Waiver by Debtors and Obligors. The restrictions on waiver contained in this section apply to obligors as well as debtors. This resolves a question under former Article 9 as to whether secondary obligors, assuming that they were “debtors” for purposes of former Part 5, were permitted to waive, under the law of suretyship, rights and duties under that Part.

5. Certain Post-Default Waivers. Section 9-624 permits post-default waivers in limited circumstances. These waivers must be made in agreements that are authenticated. Under Section 1-201, an “‘agreement’ means the bargain of the parties in fact.” In considering waivers under Section 9-624 and analogous agreements in other contexts, courts should carefully scrutinize putative agreements that appear in records that also address many additional or unrelated matters.

* * *

SECTION 9-607. COLLECTION AND ENFORCEMENT BY SECURED PARTY.

(a) **[Collection and enforcement generally.]** If so agreed, and in any event after default, a secured party:

(1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) may take any proceeds to which the secured party is entitled under Section 9-315;

(3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) if it holds a security interest in a deposit account perfected by control under Section 9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) if it holds a security interest in a deposit account perfected by control under Section 9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) **[Nonjudicial enforcement of mortgage.]** If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) the secured party's sworn affidavit in recordable form stating that:

(A) a default has occurred with respect to the obligation secured by the mortgage; and

(B) the secured party is entitled to enforce the mortgage nonjudicially.

(c) **[Commercially reasonable collection and enforcement.]** A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) **[Expenses of collection and enforcement.]** A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) **[Duties to secured party not affected.]** This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

* * *

SECTION 9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT.

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Comment

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2. **Commercially Reasonable Dispositions.** Subsection (a) follows former Section 9-504 by permitting a secured party to dispose of collateral in a commercially reasonable manner following a default. Although subsection (b) permits both public and private dispositions, including public and private dispositions conducted over the Internet, “every aspect of a disposition . . . must be commercially reasonable.” This section encourages private dispositions on the assumption that they frequently will result in higher realization on collateral for the benefit of all concerned. Subsection (a) does not restrict dispositions to sales; collateral may be

sold, leased, licensed, or otherwise disposed. Section 9-627 provides guidance for determining the circumstances under which a disposition is “commercially reasonable.”

* * *

7. Public vs. Private Dispositions. This Part maintains two distinctions between “public” and other dispositions: (i) the secured party may buy at the former, but normally not at the latter (Section 9-610(c)), and (ii) the debtor is entitled to notification of “the time and place of a public disposition” and notification of “the time after which” a private disposition or other intended disposition is to be made (Section 9-613(1)(E)). It does not retain the distinction under former Section 9-504(4), under which transferees in a noncomplying public disposition could lose protection more easily than transferees in other noncomplying dispositions. Instead, Section 9-617(b) adopts a unitary standard. Although the term is not defined, as used in this Article, a “public disposition” is one at which the price is determined after the public has had a meaningful opportunity for competitive bidding. “Meaningful opportunity” is meant to imply that some form of advertisement or public notice must precede the sale (or other disposition) and that the public must have access to the sale (disposition).

A secured party’s purchase of collateral at its own private disposition is equivalent to a “strict foreclosure” and is governed by Sections 9-620, 9-621, and 9-622. The provisions of these sections can be waived only to the extent provided in Section 9-624(b). See Section 9-602.

* * *

SECTION 9-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL.

* * *

Comment

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4. Notification to Other Secured Parties. Prior to the 1972 amendments to Article 9, former Section 9-504(3) required the enforcing secured party to send reasonable notification of the disposition:

except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this State or who is known by the secured party to have a security interest in the collateral.

The 1972 amendments eliminated the duty to give notice to secured parties other than those from whom the foreclosing secured party had received written notice of a claim of an interest in the collateral.

Many of the problems arising from dispositions of collateral encumbered by multiple security interests can be ameliorated or solved by informing all secured parties of an intended disposition and affording them the opportunity to work with one another. To this end, subsection (c)(3)(B) expands the duties of the foreclosing secured party to include the duty to notify (and the corresponding burden of searching the files to discover) certain competing secured parties. The subsection imposes a search burden that in some cases may be greater than the pre-1972 burden on foreclosing secured parties but certainly is more modest than that faced by a new secured lender.

To determine who is entitled to notification, the foreclosing secured party must determine the proper office for filing a financing statement as of a particular date, measured by reference to the “notification date,” as defined in subsection (a). This determination requires reference to the choice-of-law provisions of Part 3. The secured party must ascertain whether any financing statements covering the collateral and indexed under the debtor’s name, as the name existed as of that date, in fact were filed in that office. The foreclosing secured party generally need not notify secured parties whose effective financing statements have become more difficult to locate because of changes in the location of the debtor, proceeds rules, or changes in the ~~debtor’s~~ name that is sufficient as the name of the debtor under Section 9-503(a).

* * *

10. Other Law. Other State or federal law may contain requirements concerning notification of a disposition of property by a secured party. For example, federal law imposes notification requirements with respect to the enforcement of mortgages on federally documented vessels. Principles of statutory interpretation and, in the context of federal law, supremacy and preemption determine whether and to what extent law other than this Article supplements, displaces, or is displaced by this Article. See Sections 1-103, 1-104, 9-109(c)(1).

* * *

SECTION 9-613. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL: GENERAL.

* * *

Comment

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2. Contents of Notification. To comply with the “reasonable authenticated notification” requirement of Section 9-611(b), the contents of a notification must be reasonable. Except in a consumer-goods transaction, the contents of a notification that includes the information set forth in paragraph (1) are sufficient as a matter of law, unless the parties agree otherwise. (The reference to “time” of disposition means here, as it did in former Section 9-504(3), not only the hour of the day but also the date.) Although a secured party may choose to include additional

information concerning the transaction or the debtor's rights and obligations, no additional information is required unless the parties agree otherwise. A notification that lacks some of the information set forth in paragraph (1) nevertheless may be sufficient if found to be reasonable by the trier of fact, under paragraph (2). A properly completed sample form of notification in paragraph (5) or in Section 9-614(a)(3) is an example of a notification that would contain the information set forth in paragraph (1). Under paragraph (4), however, no particular phrasing of the notification is required.

This section applies to a notification of a public disposition conducted electronically. A notification of an electronic disposition satisfies paragraph (1)(E) if it states the time when the disposition is scheduled to begin and states the electronic location. For example, under the technology current in 2010, the Uniform Resource Locator (URL) or other Internet address where the site of the public disposition can be accessed suffices as an electronic location.

* * *

SECTION 9-616. EXPLANATION OF CALCULATION OF SURPLUS OR DEFICIENCY.

* * *

Comment

* * *

2. Duty to Send Information Concerning Surplus or Deficiency. * * *

A debtor or secondary obligor need not wait until the secured party commences written collection efforts in order to receive an explanation of how a deficiency or surplus was calculated. Subsection ~~(b)(2)~~(b)(1)(B) obliges the secured party to send an explanation within 14 days after it receives a "request" (defined in subsection (a)(2)).

* * *

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SECTION 9-620. ACCEPTANCE OF COLLATERAL IN FULL OR PARTIAL SATISFACTION OF OBLIGATION; COMPULSORY DISPOSITION OF COLLATERAL.

* * *

Comment

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11. **Role of Good Faith.** Section ~~1-203~~ 1-304 imposes an obligation of good faith on a secured party's enforcement under this Article. This obligation may not be disclaimed by agreement. See Section ~~1-102~~: 1-302. Thus, a proposal and acceptance made under this section in bad faith would not be effective. For example, a secured party's proposal to accept marketable securities worth \$1,000 in full satisfaction of indebtedness in the amount of \$100, made in the hopes that the debtor might inadvertently fail to object, would be made in bad faith. On the other hand, in the normal case proposals and acceptances should be not second-guessed on the basis of the "value" of the collateral involved. Disputes about valuation or even a clear excess of collateral value over the amount of obligations satisfied do not necessarily demonstrate the absence of good faith.

12. **Special Rules in Consumer Cases.** Subsection (e) imposes an obligation on the secured party to dispose of consumer goods under certain circumstances. Subsection (f) explains when a disposition that is required under subsection (e) is timely. An effective acceptance of collateral cannot occur if subsection (e) requires a disposition unless the debtor waives this requirement pursuant to Section 9-624(b). Moreover, a secured party who takes possession of collateral and unreasonably delays disposition violates subsection (e), if applicable, and may also violate Section 9-610 or other provisions of this Part. Subsection (e) eliminates as superfluous the express statutory reference to "conversion" found in former Section 9-505. Remedies available under other law, including conversion, remain available under this Article in appropriate cases. See Sections 1-103, ~~1-106~~: 1-305.

* * *

SECTION 9-621. NOTIFICATION OF PROPOSAL TO ACCEPT

COLLATERAL.

* * *

Comment

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2. **Notification Requirement.** Subsection (a) specifies three classes of competing claimants to whom the secured party must send notification of its proposal: (i) those who notify the secured party that they claim an interest in the collateral, (ii) holders of certain security interests and liens who have filed against the debtor, and (iii) holders of certain security interests who have perfected by compliance with a statute (including a certificate-of-title statute), regulation, or treaty described in Section 9-311(a). With regard to (ii), see Section 9-611, Comment 4. Subsection (b) also requires notification to any secondary obligor if the proposal is for acceptance in partial satisfaction.

Unlike Section 9-611, this section contains no “safe harbor,” which excuses an enforcing secured party from notifying certain secured parties and other lienholders. This is because, unlike Section 9-610, which requires that a disposition of collateral be commercially reasonable, Section 9-620 permits the debtor and secured party to set the amount of credit the debtor will receive for the collateral subject only to the requirement of good faith. An effective acceptance discharges subordinate security interests and other subordinate liens. See Section 9-622. If collateral is subject to several liens securing debts much larger than the value of the collateral, the debtor may be disinclined to refrain from consenting to an acceptance by the holder of the senior security interest, even though, had the debtor objected and the senior disposed of the collateral under Section 9-610, the collateral may have yielded more than enough to satisfy the senior security interest (but not enough to satisfy all the liens). Accordingly, this section imposes upon the enforcing secured party the risk of the filing office’s errors and delay. The holder of a security interest who is entitled to notification under this section but ~~does not receive it to whom the enforcing secured party does not send notification~~ has the right to recover under Section 9-625(b) any loss resulting from the enforcing secured party’s noncompliance with this section.

* * *

SECTION 9-624. WAIVER.

* * *

Comment

* * *

1. **Source.** Former Sections 9-504(3), 9-505, 9-506.

2. **Waiver.** This section is a limited exception to Section 9-602, which generally prohibits waiver by debtors and obligors. It makes no provision for waiver of the rule prohibiting a secured party from buying at its own private disposition. Transactions of this kind are equivalent to “strict foreclosures” and are governed by Sections 9-620, 9-621, and 9-622.

* * *

SECTION 9-625. REMEDIES FOR SECURED PARTY’S FAILURE TO COMPLY WITH ARTICLE.

* * *

(c) **[Persons entitled to recover damages; statutory damages in consumer-goods transaction if collateral is consumer goods.] Except as otherwise provided in Section 9-628:**

(1) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

* * *

* * *

SECTION 9-706. WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.

* * *

Comment

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2. Requirements of Initial Financing Statement Filed in Lieu of Continuation Statement. Subsection (c) sets forth the requirements for the initial financing statement under subsection (a). These requirements are needed to inform searchers that the initial financing statement operates to continue a financing statement filed elsewhere and to enable searchers to locate and discover the attributes of the other financing statement. The notice-filing policy of this Article applies to the initial financing statements described in this section. Accordingly, an initial financing statement that substantially satisfies the requirements of subsection (c) is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading. See Section 9-506.

A single initial financing statement may continue the effectiveness of more than one financing statement filed before this Article's effective date. See Section ~~1-102(5)(a)~~ 1-106 (words in the singular include the plural). If a financing statement has been filed in more than one office in a given jurisdiction, as may be the case if the jurisdiction had adopted former Section 9-401(1), third alternative, then an identification of the filing in the central filing office suffices for purposes of subsection (c)(2). If under this Article the collateral is of a type different from its type under former Article 9—as would be the case, e.g., with a right to payment of lottery winnings (a “general intangible” under former Article 9 and an “account” under this Article),

then subsection (c) requires that the initial financing statement indicate the type under this Article.

* * *

PART 8

TRANSITION PROVISIONS FOR 2010 AMENDMENTS

SECTION 9-801. EFFECTIVE DATE. This [Act] takes effect on July 1, 2013.

Legislative Note: Because these amendments change the proper place in which to file to perfect certain security interests, it is particularly important that States adopt a uniform effective date. Otherwise, the status of a particular security interest as perfected or unperfected would depend on whether the matter was litigated in a State in which the amendments were in effect or a State in which the amendments were not in effect. Any one State's failure to adopt the uniform effective date will significantly increase the cost and uncertainty surrounding the affected transactions.

Official Comment

These transition provisions largely track the provisions of Part 7, which govern the transition to the 1998 revision of this Article. The Comments to the sections of Part 7 generally are relevant to the corresponding sections of Part 8. The 2010 amendments are less far-reaching than the 1998 revision. Although Part 8 does not carry forward those Part 7 provisions that clearly would have no application to the transition to the amendments, as a matter of prudence Part 8 does carry forward all Part 7 provisions that are even arguably relevant to the transition.

The most significant transition problem raised by the 2010 amendments arises from changes to Section 9-503(a), concerning the name of the debtor that must be provided for a financing statement to be sufficient. Sections 9-805 and 9-806 address this problem.

Example: On November 8, 2012, Debtor, an individual whose "individual name" is "Lon Debtor" and whose principal residence is located in State A, creates a security interest in certain manufacturing equipment. On November 15, 2012, SP perfects a security interest in the equipment under Article 9 (as in effect prior to the 2010 amendments) by filing a financing statement against "Lon Debtor" in the State A filing office. On July 1, 2013, the 2010 amendments, including Alternative A to Section 9-503(a), take effect in State A. Debtor's unexpired State A driver's indicates that Debtor's name is "Polonius Debtor." Assuming that a search under "Polonius Debtor" using the filing office's standard search logic would not disclose the filed financing statement, the financing statement would be insufficient under amended Section 9-503(a)(4) (Alt. A). However, Section 9-805(b) provides that the 2010 amendments do not render the financing statement ineffective. Rather, the financing statement remains effective—even if it has become seriously misleading—until it would have ceased to be effective had the amendments not taken effect. See Section 9-805(b)(1). SP can continue the effectiveness of the financing statement by filing a continuation statement

with the State A filing office. To do so, however, SP must amend Debtor's name on the financing statement to provide the name that is sufficient under Section 9-503(a)(4) (Alt. A) at the time the continuation statement is filed. See Section 9-805(c), (e).

The most significant transition problem addressed by the 1998 revision arose from the change in the choice-of-law rules governing where to file a financing statement. The 2010 amendments do not change the choice-of-law rules. Even so, the amendments will change the place to file in a few cases, because certain entities that were not previously classified as "registered organizations" would fall within that category under the amendments.

SECTION 9-802. SAVINGS CLAUSE.

(a) [Pre-effective-date transactions or liens.] Except as otherwise provided in this part, this [Act] applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this [Act] takes effect.

(b) [Pre-effective-date proceedings.] This [Act] does not affect an action, case, or proceeding commenced before this [Act] takes effect.

SECTION 9-803. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE.

(a) [Continuing perfection: perfection requirements satisfied.] A security interest that is a perfected security interest immediately before this [Act] takes effect is a perfected security interest under [Article 9 as amended by this [Act]] if, when this [Act] takes effect, the applicable requirements for attachment and perfection under [Article 9 as amended by this [Act]] are satisfied without further action.

(b) [Continuing perfection: perfection requirements not satisfied.] Except as otherwise provided in Section 9-805, if, immediately before this [Act] takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under [Article 9 as amended by this [Act]] are not satisfied when this [Act] takes effect, the security

interest remains perfected thereafter only if the applicable requirements for perfection under [Article 9 as amended by this [Act]] are satisfied within one year after this [Act] takes effect.]

SECTION 9-804. SECURITY INTEREST UNPERFECTED BEFORE

EFFECTIVE DATE. A security interest that is an unperfected security interest immediately before this [Act] takes effect becomes a perfected security interest:

(1) without further action, when this [Act] takes effect if the applicable requirements for perfection under [Article 9 as amended by this [Act]] are satisfied before or at that time; or

(2) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

SECTION 9-805. EFFECTIVENESS OF ACTION TAKEN BEFORE

EFFECTIVE DATE.

(a) [Pre-effective-date filing effective.] The filing of a financing statement before this [Act] takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under [Article 9 as amended by this [Act]].

(b) [When pre-effective-date filing becomes ineffective.] This [Act] does not render ineffective an effective financing statement that, before this [Act] takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in [Article 9 as it existed before amendment]. However, except as otherwise provided in subsections (c) and (d) and Section 9-806, the financing statement ceases to be effective:

(1) if the financing statement is filed in this State, at the time the financing statement would have ceased to be effective had this [Act] not taken effect; or

(2) if the financing statement is filed in another jurisdiction, at the earlier of:

(A) the time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) [Continuation statement.] The filing of a continuation statement after this [Act] takes effect does not continue the effectiveness of a financing statement filed before this [Act] takes effect. However, upon the timely filing of a continuation statement after this [Act] takes effect and in accordance with the law of the jurisdiction governing perfection as provided in [Article 9 as amended by this [Act]], the effectiveness of a financing statement filed in the same office in that jurisdiction before this [Act] takes effect continues for the period provided by the law of that jurisdiction.

(d) [Application of subsection (b)(2)(B) to transmitting utility financing statement.] Subsection (b)(2)(B) applies to a financing statement that, before this [Act] takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in [Article 9 as it existed before amendment], only to the extent that [Article 9 as amended by this [Act]] provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) [Application of Part 5.] A financing statement that includes a financing statement filed before this [Act] takes effect and a continuation statement filed after this [Act] takes effect is effective only to the extent that it satisfies the requirements of [Part 5 as amended by this [Act]] for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of Section 9-503(a)(2) as amended by this [Act]. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust

indicates that the collateral is held in a trust within the meaning of Section 9-503(a)(3) as amended by this [Act].

SECTION 9-806. WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.

(a) [Initial financing statement in lieu of continuation statement.] The filing of an initial financing statement in the office specified in Section 9-501 continues the effectiveness of a financing statement filed before this [Act] takes effect if:

(1) the filing of an initial financing statement in that office would be effective to perfect a security interest under [Article 9 as amended by this [Act]];

(2) the pre-effective-date financing statement was filed in an office in another State; and

(3) the initial financing statement satisfies subsection (c).

(b) [Period of continued effectiveness.] The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

(1) if the initial financing statement is filed before this [Act] takes effect, for the period provided in [unamended Section 9-515] with respect to an initial financing statement; and

(2) if the initial financing statement is filed after this [Act] takes effect, for the period provided in Section 9-515 as amended by this [Act] with respect to an initial financing statement.

(c) [Requirements for initial financing statement under subsection (a).] To be effective for purposes of subsection (a), an initial financing statement must:

(1) satisfy the requirements of [Part 5 as amended by this [Act]] for an initial financing statement;

(2) identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) indicate that the pre-effective-date financing statement remains effective.

SECTION 9-807. AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING STATEMENT.

(a) [“Pre-effective-date financing statement”.] In this section, “pre-effective-date financing statement” means a financing statement filed before this [Act] takes effect.

(b) [Applicable law.] After this [Act] takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in [Article 9 as amended by this [Act]]. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) [Method of amending: general rule.] Except as otherwise provided in subsection (d), if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this [Act] takes effect only if:

(1) the pre-effective-date financing statement and an amendment are filed in the office specified in Section 9-501;

(2) an amendment is filed in the office specified in Section 9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Section 9-806(c); or

(3) an initial financing statement that provides the information as amended and satisfies Section 9-806(c) is filed in the office specified in Section 9-501.

(d) [Method of amending: continuation.] If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Section 9-805(c) and (e) or 9-806.

(e) [Method of amending: additional termination rule.] Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after this [Act] takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies Section 9-806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in [Article 9 as amended by this [Act]] as the office in which to file a financing statement.

SECTION 9-808. PERSON ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT. A person may file an initial financing statement or a continuation statement under this part if:

(1) the secured party of record authorizes the filing; and

(2) the filing is necessary under this part:

(A) to continue the effectiveness of a financing statement filed before this [Act] takes effect; or

(B) to perfect or continue the perfection of a security interest.

SECTION 9-809. PRIORITY. This [Act] determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this [Act] takes effect, [Article 9 as it existed before amendment] determines priority.

Legislative Note: The term "this [Act]" as used in this part refers to the legislation enacting these amendments to Article 9, not to the legislation that enacted Article 9. States should substitute appropriate references.

APPENDIX

AMENDMENTS TO OTHER ARTICLES

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SECTION 2A-103. DEFINITIONS AND INDEX OF DEFINITIONS.

* * *

(3) The following definitions in other Articles apply to this Article:

“Account”.	Section 9-102(a)(2).
“Between merchants”.	Section 2-104(3).
“Buyer”.	Section 2-103(1)(a).
“Chattel paper”.	Section 9-102(a)(11).
“Consumer goods”.	Section 9-102(a)(23).
“Document”.	Section 9-102(a)(30).
“Entrusting”.	Section 2-403(3).
“General intangible”.	Section 9-102(a)(42).
“Instrument”.	Section 9-102(a)(47).
“Merchant”.	Section 2-104(1).
“Mortgage”.	Section 9-102(a)(55).
“Pursuant to commitment”.	Section 9-102(a)(68) <u>9-102(a)(69)</u> .
“Receipt”.	Section 2-103(1)(c).
“Sale”.	Section 2-106(1).
“Sale on approval”.	Section 2-326.
“Sale or return”.	Section 2-326.
“Seller”.	Section 2-103(1)(d).

SECTION 8-102. DEFINITIONS.

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Official Comment

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13. "Registered form." The definition of "registered form" is substantially the same as in the prior version of Article 8. Like the definition of bearer form, it serves primarily to distinguish Article 8 securities from instruments governed by other law, such as Article 3.

Contrary to the holding in *Highland Capital Management LP v. Schneider*, 8 N.Y.3d 406 (2007), the registrability requirement in the definition of "registered form," and its parallel in the definition of "security," are satisfied only if books are maintained by or on behalf of the issuer for the purpose of registration of transfer, including the determination of rights under Section 8-207(a) (or if, in the case of a certificated security, the security certificate so states). It is not sufficient that the issuer records ownership, or records transfers thereof, for other purposes. Nor is it sufficient that the issuer, while not in fact maintaining books for the purpose of registration of transfer, could do so, for such is always the case.

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ARTICLE 11

EFFECTIVE DATE AND TRANSITION PROVISIONS

* * *

Legislative Note: Article 11 affects transactions that were entered into before the effective date of the 1972 amendments to Article 9, which were supplanted by the version of Article 9 that has been in effect in all States since at least January 1, 2002. Inasmuch as very few, if any, of these transactions remain outstanding, States may wish to repeal Article 11.

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