

D R A F T

FOR DISCUSSION ONLY

AMENDMENTS TO
UNIFORM COMMERCIAL CODE ARTICLE 9

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For Drafting Committee Meeting, March 6-8, 2009

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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February 27, 2009

**DRAFTING COMMITTEE ON AMENDMENTS TO
UNIFORM COMMERCIAL CODE ARTICLE 9**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in amending this Act consists of the following individuals:

EDWIN SMITH, 1 Federal St., 30th Flr., Boston, MA 02110-1726, *Chair*
CARL S. BJERRE, University of Oregon School of Law, 1515 Agate St., Eugene, OR
97403-1221
THOMAS J. BUIREWEG, 121 W. Washington, Suite 300, Ann Arbor, MI 48104
JOHN T. McGARVEY, 601 W. Main St., Louisville, KY 40202
SANDRA S. STERN, 909 Third Ave., Fifth Flr., New York, NY 10022
JAMES J. WHITE, 625 S. State St., Room 1035, Ann Arbor, MI 48109-1215
STEVEN L. HARRIS, Chicago-Kent College of Law, 565 West Adams St., Chicago, IL
60661-3691, *Reporter*

EX OFFICIO

MARTHA LEE WALTERS, Oregon Supreme Court, 1163 State St., Salem, OR 97301-2563,
President
WILLIAM H. HENNING, University of Alabama School of law, Box 870382, Tuscaloosa, AL
35487-0382, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

STEPHEN L. SEPINUCK, 721 N. Cincinnati, P.O. Box 3528, Spokane, WA 99220-3582,
ABA Advisor
JOHN FRANCIS HILSON, 515 S. Flower St., Ste. 2400, F1 25, Los Angeles, CA 90071-2229
ABA Section Advisor

AMERICAN LAW INSTITUTE ADVISORS

E. CAROLAN BERKLEY, 2600 One Commerce Square, Philadelphia, PA 19103-7098
NEIL B. COHEN, Brooklyn Law School, 250 Joralemon St., Brooklyn, NY 11201, *PEB*
Director of Research
GAIL K. HILLEBRAND, 1535 Mission St., San Francisco, CA 94103
LANCE LIEBMAN, Columbia Law School, 435 W. 116th St., New York, NY 10027, *ALI*
Director
CHARLES W. MOONEY, JR., 3400 Chestnut St., Philadelphia, PA 19104
HARRY C. SIGMAN, P.O. Box 67608, Los Angeles, CA 90067-0608
STEVEN O. WEISE, 2049 Century Park East, Suite 3200, Los Angeles, CA 90067-3206

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.nccusl.org

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1 **AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9**

2
3 **Reporter’s Prefatory Note**

4
5 This draft is marked to show changes from the Official Text and Comments. Text and
6 Comments that are carried forward from the previous draft (January 13, 2009) without having
7 been changed are so indicated.

8
9 *[No change from previous draft]*

10
11 **SECTION 9-607. COLLECTION AND ENFORCEMENT BY SECURED PARTY.**

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

14 * * *

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

20 * * *

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

24 (1) a copy of the security agreement that creates or provides for a security interest
25 in the obligation secured by the mortgage; and

26 (2) the secured party’s sworn affidavit in recordable form stating that:

27 (A) a default has occurred with respect to the obligation secured by the
28 mortgage; and

1 (B) the secured party is entitled to enforce the mortgage nonjudicially.

2 **Reporter’s Note**

3
4 The amendment to paragraph (b)(2)(A) is for clarification only; it does not reflect a
5 change in meaning. Accordingly, the amendment should apply to all transactions governed by
6 Article 9, including those that were entered into before the effective date of the amendment.
7

8
9 *[Agenda Item III.A.]*
10 *[Changes to Official Comments revised]*
11

12 **SECTION 9-602. WAIVER AND VARIANCE OF RIGHTS AND DUTIES.** Except

13 as otherwise provided in Section 9-624, to the extent that they give rights to a debtor or obligor
14 and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated
15 in the following listed sections:

16 * * *

17 (7) Sections 9-610(b), 9-611, 9-613, and 9-614, which deal with disposition of collateral;

18 * * *

19 (10) Sections 9-620, 9-621, and 9-622, which deal with acceptance of collateral in
20 satisfaction of obligation;

21 * * *

22 **Official Comment**

23
24 1. **Source.** Former Section 9-501(3).
25

26 2. **Waiver: In General.** Section 1-102(3) addresses which provisions of the UCC are
27 mandatory and which may be varied by agreement. With exceptions relating to good faith,
28 diligence, reasonableness, and care, immediate parties, as between themselves, may vary its
29 provisions by agreement. However, in the context of rights and duties after default, our legal
30 system traditionally has looked with suspicion on agreements that limit the debtor’s rights and
31 free the secured party of its duties. As stated in former Section 9-501, Comment 4, “no mortgage
32 clause has ever been allowed to clog the equity of redemption.” The context of default offers
33 great opportunity for overreaching. The suspicious attitudes of the courts have been grounded in
34 common sense. This section, like former Section 9-501(3), codifies this long-standing and
35 deeply rooted attitude. The specified rights of the debtor and duties of the secured party may not

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

3
4 **3. Nonwaivable Rights and Duties.** This section revises former Section 9-501(3) by
5 restricting the ability to waive or modify additional specified rights and duties: (i) duties under
6 Section 9-207(b)(4)(C), which deals with the use and operation of consumer goods, (ii) the right
7 to a response to a request for an accounting, concerning a list of collateral, or concerning a
8 statement of account (Section 9-210), (iii) the duty to collect collateral in a commercially
9 reasonable manner (Section 9-607), (iv) the implicit duty to refrain from a breach of the peace in
10 taking possession of collateral under Section 9-609, (v) the duty to apply noncash proceeds of
11 collection or disposition in a commercially reasonable manner (Sections 9-608 and 9-615), (vi)
12 the right to a special method of calculating a surplus or deficiency in certain dispositions to a
13 secured party, a person related to secured party, or a secondary obligor (Section 9-615), (vii) the
14 duty to give an explanation of the calculation of a surplus or deficiency (Section 9-616), (viii) the
15 right to limitations on the effectiveness of certain waivers (Section 9-624), and (ix) the right to
16 hold a secured party liable for failure to comply with this Article (Sections 9-625 and 9-626).
17 For clarity and consistency, this Article uses the term “waive or vary” instead of “renounc[e] or
18 modify[,],” which appeared in former Section 9-504(3).
19

20 This section provides generally that the specified rights and duties “may not be waived or
21 varied.” However, it does not restrict the ability of parties to agree to settle, compromise, or
22 renounce claims for past conduct that may have constituted a violation or breach of those rights
23 and duties, even if the settlement involves an express “waiver.”
24

25 Section 9-610(c) limits the circumstances under which a secured party may purchase at its
26 own private disposition. Transactions of this kind are equivalent to “strict foreclosures” and are
27 governed by Sections 9-620, 9-621, and 9-622. The provisions of these sections can be waived
28 only as provided in Section 9-624(b).
29

30 **4. Waiver by Debtors and Obligors.** The restrictions on waiver contained in this
31 section apply to obligors as well as debtors. This resolves a question under former Article 9 as to
32 whether secondary obligors, assuming that they were “debtors” for purposes of former Part 5,
33 were permitted to waive, under the law of suretyship, rights and duties under that Part.
34

35 **5. Certain Post-Default Waivers.** Section 9-624 permits post-default waivers in limited
36 circumstances. These waivers must be made in agreements that are authenticated. Under
37 Section 1-201, an “‘agreement’ means the bargain of the parties in fact.” In considering waivers
38 under Section 9-624 and analogous agreements in other contexts, courts should carefully
39 scrutinize putative agreements that appear in records that also address many additional or
40 unrelated matters.
41
42

43 **SECTION 9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT.**

44 * * *

1 (c) **[Purchase by secured party.]** A secured party may purchase collateral:

2 (1) at a public disposition; or

3 (2) at a private disposition only if the collateral is of a kind that is customarily
4 sold on a recognized market or the subject of widely distributed standard price quotations.

5 **Official Comment**

6
7 * * *

8
9 **7. Public vs. Private Dispositions.** This Part maintains two distinctions between
10 “public” and other dispositions: (i) the secured party may buy at the former, but normally not at
11 the latter (Section 9-610(c)), and (ii) the debtor is entitled to notification of “the time and place of
12 a public disposition” and notification of “the time after which” a private disposition or other
13 intended disposition is to be made (Section 9-613(1)(E)). It does not retain the distinction under
14 former Section 9-504(4), under which transferees in a noncomplying public disposition could
15 lose protection more easily than transferees in other noncomplying dispositions. Instead, Section
16 9-617(b) adopts a unitary standard. Although the term is not defined, as used in this Article, a
17 “public disposition” is one at which the price is determined after the public has had a meaningful
18 opportunity for competitive bidding. “Meaningful opportunity” is meant to imply that some form
19 of advertisement or public notice must precede the sale (or other disposition) and that the public
20 must have access to the sale (disposition).

21
22 A secured party’s purchase of collateral at its own private disposition is equivalent to a
23 “strict foreclosure” and is governed by Sections 9-620, 9-621, and 9-622. The provisions of
24 these sections can be waived only as provided in Section 9-624(b).

25
26 * * *

27
28 **SECTION 9-624. WAIVER.**

29
30 (a) **[Waiver of disposition notification.]** A debtor or secondary obligor may waive the
31 right to notification of disposition of collateral under Section 9-611 only by an agreement to that
32 effect entered into and authenticated after default.

33 (b) **[Waiver of mandatory disposition.]** A debtor may waive the right to require
34 disposition of collateral under Section 9-620(e) only by an agreement to that effect entered into
35 and authenticated after default.

36 (c) **[Waiver of redemption right.]** Except in a consumer-goods transaction, a debtor or

1 secondary obligor may waive the right to redeem collateral under Section 9-623 only by an
2 agreement to that effect entered into and authenticated after default.

3 **Official Comment**

4
5 1. **Source.** Former Sections 9-504(3), 9-505, 9-506.

6
7 2. **Waiver.** This section is a limited exception to Section 9-602, which generally
8 prohibits waiver by debtors and obligors. It makes no provision for waiver of the rule prohibiting
9 a secured party from buying at its own private disposition. Transactions of this kind are
10 equivalent to “strict foreclosures” and are governed by Sections 9-620, 9-621, and 9-622.

11
12
13 *[Agenda Item III.B.]*
14 *[Reporter’s Note revised]*

15
16 **SECTION 9-625. REMEDIES FOR SECURED PARTY’S FAILURE TO**
17 **COMPLY WITH ARTICLE.**

18 * * *

19 (c) **[Persons entitled to recover damages; statutory damages ~~in consumer-goods~~**
20 **~~transaction if collateral is consumer goods.~~** Except as otherwise provided in Section 9-628:

21 (1) a person that, at the time of the failure, was a debtor, was an obligor, or held a
22 security interest in or other lien on the collateral may recover damages under subsection (b) for
23 its loss; and

24 (2) if the collateral is consumer goods, a person that was a debtor or a secondary
25 obligor at the time a secured party failed to comply with this part may recover for that failure in
26 any event an amount not less than the credit service charge plus 10 percent of the principal
27 amount of the obligation or the time-price differential plus 10 percent of the cash price.

28 * * *

29
30 **Reporter’s Note**

31 The heading for subsection (c) has been conformed to the text. Article 9 includes
32

1 headings for the subsections as an aid to readers. Unlike section captions, which are part of the
2 UCC, see Section 1-107, subsection headings are not a part of the Official Text itself.
3

4 *[Agenda Item III.C.]*
5 *[Changes to Official Comments revised]*
6

7 **SECTION 9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT.**

8 * * *

9 (b) **[Commercially reasonable disposition.]** Every aspect of a disposition of collateral,
10 including the method, manner, time, place, and other terms, must be commercially reasonable. If
11 commercially reasonable, a secured party may dispose of collateral by public or private
12 proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on
13 any terms.

14 * * *

15 **Official Comment**

16 * * *

17
18
19 2. **Commercially Reasonable Dispositions.** Subsection (a) follows former Section 9-
20 504 by permitting a secured party to dispose of collateral in a commercially reasonable manner
21 following a default. Although subsection (b) permits both public and private dispositions,
22 including public and private dispositions conducted over the Internet, “every aspect of a
23 disposition . . . must be commercially reasonable.” This section encourages private dispositions
24 on the assumption that they frequently will result in higher realization on collateral for the benefit
25 of all concerned. Subsection (a) does not restrict dispositions to sales; collateral may be sold,
26 leased, licensed, or otherwise disposed. Section 9-627 provides guidance for determining the
27 circumstances under which a disposition is “commercially reasonable.”
28

29 * * *

30
31
32 **SECTION 9-613. CONTENTS AND FORM OF NOTIFICATION BEFORE**

33 **DISPOSITION OF COLLATERAL: GENERAL.** Except in a consumer-goods transaction,
34 the following rules apply:

- 1 (1) The contents of a notification of disposition are sufficient if the notification:
- 2 (A) describes the debtor and the secured party;
- 3 (B) describes the collateral that is the subject of the intended disposition;
- 4 (C) states the method of intended disposition;
- 5 (D) states that the debtor is entitled to an accounting of the unpaid indebtedness
- 6 and states the charge, if any, for an accounting; and
- 7 (E) states the time and place of a public disposition or the time after which any
- 8 other disposition is to be made.

9 * * *

10 **Official Comment**

11 * * *

12

13

14 **2. Contents of Notification.** To comply with the “reasonable authenticated notification”

15 requirement of Section 9-611(b), the contents of a notification must be reasonable. Except in a

16 consumer-goods transaction, the contents of a notification that includes the information set forth

17 in paragraph (1) are sufficient as a matter of law, unless the parties agree otherwise. (The

18 reference to “time” of disposition means here, as it did in former Section 9-504(3), not only the

19 hour of the day but also the date.) Although a secured party may choose to include additional

20 information concerning the transaction or the debtor’s rights and obligations, no additional

21 information is required unless the parties agree otherwise. A notification that lacks some of the

22 information set forth in paragraph (1) nevertheless may be sufficient if found to be reasonable by

23 the trier of fact, under paragraph (2). A properly completed sample form of notification in

24 paragraph (5) or in Section 9-614(a)(3) is an example of a notification that would contain the

25 information set forth in paragraph (1). Under paragraph (4), however, no particular phrasing of

26 the notification is required.

27

28 This section applies to a notification of a public disposition conducted over the Internet.

29 An Internet disposition satisfies paragraph (1)(E) if it states the time when the disposition is

30 scheduled to begin and states a Uniform Resource Locator (URL) or other Internet address at or

31 through which a potential transferee may participate in the disposition.

32

33

34

35 *[No change from previous draft]*

36

37 **ARTICLE 11 – EFFECTIVE DATE AND TRANSITION PROVISIONS**

1 * * *

2 **Legislative Note:** Article 11 affects transactions that were entered into before the effective date
3 of the 1972 amendments to Article 9, which were supplanted by the version of Article 9 that has
4 been in effect in all States since at least January 1, 2002. Inasmuch as very few, if any, of these
5 transactions remain outstanding, States may wish to repeal Article 11.
6

7 [Agenda Item IV.]

8 [Section 9-102(a)(4)—Alternative A]

9 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

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

11 * * *

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

13 (A) authenticated by a secured party;

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

16 (C) identifying the components of the obligations in reasonable
17 detail; and

18 (D) if requested, in the case of an obligation that can be satisfied by
19 the payment of money, the accounting shall include a payoff statement as of a date specified in
20 the request. The specified date must be no later than 30 days from the date of the request. The
21 payoff statement must indicate the date on which it was prepared and the payoff amount as of
22 that date; information reasonably necessary to calculate the payoff amount as of the requested
23 payoff date, including the per diem interest amount; the payoff cutoff time, if any; the address or
24 place where payment must be made; and any limitation as to the authorized method of payment.
25 The payoff statement may include a statement that: “This payoff figure is based on the

1 assumption that you and any other debtor or obligor fulfill all of your obligations with respect to
2 this debt and the collateral between (the date as of which the payoff amount is calculated) and the
3 payoff date, and that no other conditions change.” As used in this paragraph, “payoff amount”
4 means an amount which, if received by a secured party, would entitle a debtor to the release of
5 the security interest in the collateral[, unless other non-monetary obligations remain].

6 *[Sections 9-102(a)(4) and 9-210—Alternative B]*

7 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

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

9 * * *

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

11 (A) in a consumer transaction, a record:

12 ~~(A)~~(i) authenticated by a secured party;

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

15 ~~(C)~~(iii) identifying the components of the obligations in reasonable
16 detail; and

17 (B) in a transaction other than consumer transactions, a record:

18 (i) authenticated by a secured party;

19 (ii) indicating as of a specified date not more than 5 days after such
20 record is requested, the payoff amount; and

21 (iii) identifying the components of the obligation in reasonable
22 detail, including:

23 (1) the date on which the record was prepared;

- 1 (2) the payoff amount as of the specified date;
2 (3) the payoff cutoff time, if any;
3 (4) the address or place where payment must be made; and
4 (5) any limitation as to the authorized method of payment.

5 As used in this paragraph, “payoff amount” means an amount which, if received by a secured
6 party, would entitle a debtor to the filing of a termination statement under Section 9-513(c).
7 Such amount may include an amount reasonably necessary to ensure compliance with any
8 non-monetary or contingent obligations of a debtor, which are part of a secured obligation.

9 * * *

10 * * *

11
12 **SECTION 9-210. REQUEST FOR ACCOUNTING; REQUEST REGARDING**
13 **LIST OF COLLATERAL OR STATEMENT OF ACCOUNT.**

14 (a) **[Definitions.]** In this section:

15 (1) “Request” means a record of a type described in paragraph (2), (3), or (4).

16 (2) “Request for an accounting” means a record authenticated by a debtor
17 requesting that the recipient provide an accounting of the unpaid obligations secured by collateral
18 and reasonably identifying the transaction or relationship that is the subject of the request.

19 * * *

20 (b) **[Duty to respond to requests.]**

21 (1) Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer
22 of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply
23 with a request within ~~14~~ three days after receipt:

1 (1A) in the case of a request for an accounting, by authenticating and
2 sending to the debtor an accounting; and

3 (2B) in the case of a request regarding a list of collateral or a request
4 regarding a statement of account, by authenticating and sending to the debtor an approval or
5 correction.

6 (2) If the payoff amount changes, for any reason, after a secured party has
7 complied with the request for an accounting, the secured party may amend the accounting at any
8 time up to the moment the secured party has received the payoff amount as set forth in the
9 accounting.

10 * * *

11 (e) **[Request for accounting or regarding statement of account; no interest in**
12 **obligation claimed.]** A person that receives a request for an accounting or a request regarding a
13 statement of account, claims no interest in the obligations when it receives the request, and
14 claimed an interest in the obligations at an earlier time shall comply with the request within 14
15 days after receipt by sending to the debtor an authenticated record:

16 (1) disclaiming any interest in the obligations; and

17 (2) if known to the recipient, providing the name and mailing address of any
18 assignee of or successor to the recipient's interest in the obligations.

19 (f) **[Charges for responses.]** A debtor is entitled without charge to one response to a
20 request under this section during any six-month period. The secured party may require payment
21 of a charge not exceeding \$25 for each additional response.

22 (g) **[Failure to respond to requests.]** If a secured party to which a request has been given
23 pursuant to subsection (a) does not send a timely response that substantially complies with

1 subsection (b), (c), (d), or (e), the secured party is liable to the debtor for any actual damages
2 caused by the failure plus \$500, but not punitive damages. [A secured party that does not pay the
3 damages provided in this subsection within 30 days after receipt of a written notice of the amount
4 of actual damages sustained by a debtor, may also be liable for reasonable attorney's fees and
5 costs.]

6 **Reporter's Note**

7
8 Alternative A is proposed by Gail Hillebrand. Gail notes that, "because this draft is
9 limited to obligations which can be satisfied by the payment of money, the optional language
10 might not be needed. However, it may add some clarity." Gail also notes that, "I have followed
11 Bob's format of putting the meat here into the definition, instead of into 9-210. I thought that
12 would make it a bit easier to look at the two proposals side by side. However, if this approach is
13 pursued, we will probably want to do some revising to put it into the substantive section instead
14 of into the definitions section. Most of the contents of the payoff statement are adapted from the
15 Uniform Residential Mortgage Satisfaction Act."

16
17 Alternative B is proposed by Robert Zadek.

18
19
20 *[Agenda Item V.]*

21 *[Text and Reporter's Note revised from previous draft]*

22 23 **SECTION 9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE** 24 **OF SECURITY INTEREST OR AGRICULTURAL LIEN.**

25 * * *

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

31 (c) **[Lessees that receive delivery.]** Except as otherwise provided in subsection (e), a
32 lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and

1 receives delivery of the collateral without knowledge of the security interest or agricultural lien
2 and before it is perfected.

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

8 * * *

9 **Official Comment**

10 * * *

11
12
13 **6. Purchasers Other Than Secured Parties.** Subsections (b), (c), and (d) afford
14 priority over an unperfected security interest to certain purchasers (other than secured parties) of
15 collateral. They derive from former Sections 9-301(1)(c), 2A-307(2), and 9-301(d). Former
16 Section 9-301(1)(c) and (1)(d) provided that unperfected security interests are “subordinate” to
17 the rights of certain purchasers. But, as former Comment 9 suggested, the practical effect of
18 subordination in this context is that the purchaser takes free of the security interest. To avoid any
19 possible misinterpretation, subsections (b) and (d) of this section use the phrase “takes free.”
20

21 Subsection (b) governs goods, as well as intangibles of the type whose transfer is effected
22 by physical delivery of the representative piece of paper (tangible chattel paper, tangible
23 documents, instruments, and security certificates). To obtain priority, a buyer must both give
24 value and receive delivery of the collateral without knowledge of the existing security interest
25 and before perfection. Even if the buyer gave value without knowledge and before perfection,
26 the buyer would take subject to the security interest if perfection occurred before physical
27 delivery of the collateral to the buyer. Subsection (c) contains a similar rule with respect to
28 lessees of goods. Note that a lessee of goods in ordinary course of business takes free of all
29 security interests created by the lessor, even if perfected. See Section 9-321.
30

31 Normally, there will be no question when a buyer of chattel paper, documents,
32 instruments, or security certificates “receives delivery” of the property. See Section 1-201
33 (defining “delivery”). However, sometimes a buyer or lessee of goods, such as complex
34 machinery, takes delivery of the goods in stages and completes assembly at its own location.
35 Under those circumstances, the buyer or lessee “receives delivery” within the meaning of
36 subsections (b) and (c) when, after an inspection of the portion of the goods remaining with the
37 seller or lessor, it would be apparent to a potential lender to the seller or lessor that another
38 person might have an interest in the goods.

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

10
11 Unless Section 9-109 excludes the transaction from this Article, a buyer of accounts,
12 chattel paper, payment intangibles, or promissory notes is a “secured party” (defined in Section
13 9-102), and subsections (b) and (d) do not determine priority of the security interest created by
14 the sale. Rather, the priority rules generally applicable to competing security interests apply. See
15 Section 9-322.

16
17 * * *

18 19 **Reporter’s Note**

20
21 1. The application of subsection (d) is expanded to cover buyers of all types of collateral
22 that are not susceptible to possession. In all likelihood the amendment reflects the original
23 intention of the Article 9 Drafting Committee.

24
25 2. This draft adds the word “tangible” before “documents” to conform to the
26 amendments to Article 9 that accompany Revised Article 7.

27
28
29 *[Agenda Item VI.A.]*

30 *[Text and Reporter’s Note revised from previous draft]*

31 32 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

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

34 * * *

35 (7) “Authenticate” means:

36 (A) to sign; or

37 (B) ~~to execute or otherwise adopt a symbol, or encrypt or similarly process~~

38 ~~a record in whole or in part, with the present intent of the authenticating person to identify the~~

39 ~~person and adopt or accept a record~~ with present intent to [adopt or accept] [authenticate or

1 adopt] a record, to attach to or logically associate with the record an electronic sound, symbol, or
2 process.

3 **Official Comment**

4
5 **9. Definitions Relating to Medium Neutrality.**

6 * * *

7
8
9 b. **“Authenticate”;** **“Communicate”;** **“Send.”** The terms “authenticate” and
10 “authenticated” generally replace “sign” and “signed.” “Authenticated” replaces and broadens
11 the definition of “signed,” in Section 1-201, to encompass authentication of all records, not just
12 writings. (References to authentication of, e.g., an agreement, demand, or notification mean, of
13 course, authentication of a record containing an agreement, demand, or notification.) The terms
14 “communicate” and “send” also contemplate the possibility of communication by nonwritten
15 media. These definitions include the act of transmitting both tangible and intangible records.
16 The definition of “send” replaces, for purposes of this Article, the corresponding term in Section
17 1-201. The reference to “usual means of communication” in that definition contemplates an
18 inquiry into the appropriateness of the method of transmission used in the particular
19 circumstances involved.

20
21 **Reporter’s Note**

22
23 The Joint Review Committee decided that the definition of “authenticate” should be
24 conformed to the definition of “sign” in Section 7-102(a)(11). In an attempt to do so, the
25 previous draft of the definition of the term “authenticate” (January 13, 2009) included the phrase
26 “authenticate or adopt.” The Committee expressed concern about the use of the word
27 “authenticate.” The Reporter sought advice from James C. McKay, the Style Committee’s
28 liaison to the Joint Review Committee, who responded as follows:

29
30 It is fine to use the word “authenticate” in this manner in the definition because you are
31 simply adding the requirement that the person performing the action has the present
32 intention to do so. You are not creating a circularity as to the substantive meaning of the
33 term. Given the fact that UCC 9 uses “authenticate” rather than “sign” as expansively
34 defined in the NCCUSL boilerplate definition, this is perhaps the best you can do.

35
36 Accordingly, the bracketed alternatives of the present draft invite the Joint Review Committee to
37 reconsider the issue.

38
39
40 *[Agenda Item VI.B.]*

41 *[Text and Reporter’s Note revised from previous draft; new changes to Official Comments]*

42
43 **SECTION 9-105. CONTROL OF ELECTRONIC CHATTEL PAPER.**

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

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

7 (1) a single authoritative copy of the record or records exists which is unique,
8 identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

9 (2) the authoritative copy identifies the secured party as the assignee of the record
10 or records;

11 (3) the authoritative copy is communicated to and maintained by the secured party
12 or its designated custodian;

13 (4) copies or ~~revisions~~amendments that add or change an identified assignee of
14 the authoritative copy can be made only with the ~~participation~~consent of the secured party;

15 (5) each copy of the authoritative copy and any copy of a copy is readily
16 identifiable as a copy that is not the authoritative copy; and

17 (6) any ~~revision~~amendment of the authoritative copy is readily identifiable as an
18 authorized or unauthorized ~~revision~~.

19 Official Comment

20
21 1. **Source.** New.

22
23 2. **“Control” of Electronic Chattel Paper.** This Article covers security interests in
24 “electronic chattel paper,” a new term defined in Section 9-102. This section governs how
25 “control” of electronic chattel paper may be obtained. Subsection (a), which derives from
26 Section 16 of the Uniform Electronic Transactions Act, sets forth the general test for control.
27 Subsection (b) sets forth a safe harbor test that if satisfied, results in control under the general test
28 in subsection (a).

1 A secured party's control of electronic chattel paper (i) may substitute for an
2 authenticated security agreement for purposes of attachment under Section 9-203, (ii) is a method
3 of perfection under Section 9-314, and (iii) is a condition for obtaining special, non-temporal
4 priority under Section 9-330. Because electronic chattel paper cannot be transferred, assigned, or
5 possessed in the same manner as tangible chattel paper, a special definition of control is
6 necessary. In descriptive terms, this section provides that control of electronic chattel paper is
7 the functional equivalent of possession of "tangible chattel paper" (a term also defined in Section
8 9-102).

9
10 **3. "Authoritative Copy" of Electronic Chattel Paper.** One requirement for
11 establishing control under subsection (b) is that a particular copy be an "authoritative copy."
12 Although other copies may exist, they must be distinguished from the authoritative copy. This
13 may be achieved, for example, through the methods of authentication that are used or by business
14 practices involving the marking of any additional copies. When tangible chattel paper is
15 converted to electronic chattel paper, in order to establish that a copy of the electronic chattel
16 paper is the authoritative copy it may be necessary to show that the tangible chattel paper no
17 longer exists or has been permanently marked to indicate that it is not the authoritative copy.

18
19 **4. Development of Control Systems.** This Article leaves to the marketplace the
20 development of systems and procedures, through a combination of suitable technologies and
21 business practices, for dealing with control of electronic chattel paper in a commercial context.
22 However, achieving control under this section requires more than the agreement of interested
23 persons that the elements of control are satisfied. For example, paragraph (4) contemplates that
24 control requires that it be a physical impossibility (or sufficiently unlikely or implausible so as to
25 approach practical impossibility) to add or change an identified assignee without the participation
26 consent of the secured party (or its authorized representative). It would not be enough for the
27 assignor merely to agree that it will not change the identified assignee without the assignee-
28 secured party's consent. However, the standards applied to determine whether a party is in
29 control of electronic chattel paper should not be more stringent than the standards now applied to
30 determine whether a party is in possession of tangible chattel paper. Control of electronic chattel
31 paper contemplates systems or procedures such that the secured party must take some action
32 (either directly or through its designated custodian) to effect a change or addition to the
33 authoritative copy. But just as a secured party does not lose possession of tangible chattel paper
34 merely by virtue of the possibility that a person acting on its behalf *could* wrongfully redeliver
35 the chattel paper to the debtor, so control of electronic chattel paper would not be defeated by the
36 possibility that the secured party's interest *could* be subverted by the wrongful conduct of a
37 person (such as a custodian) acting on its behalf.

38
39 Systems that evolve for control of electronic chattel paper may or may not involve a third
40 party custodian of the relevant records. However, this section and the concept of control of
41 electronic chattel paper are not based on the same concepts as are control of deposit accounts
42 (Section 9-104), security entitlements, a type of investment property (Section 9-106), and letter-
43 of-credit rights (Section 9-107). The rules for control of that collateral are based on existing
44 market practices and legal and regulatory regimes for institutions such as banks and securities
45 intermediaries. Analogous practices for electronic chattel paper are developing nonetheless. The
46 flexible approach adopted by this section, moreover, should not impede the development of these

1 practices and, eventually, legal and regulatory regimes, which may become analogous to those
2 for, e.g., investment property.

3 4 **Reporter's Note**

5
6 1. Subsection (a) is new. With its addition, satisfaction of the requirements currently
7 enumerated in Section 9-105 would become sufficient, but not necessary, to establish control.
8 Control may arise under the general standard (new subsection (a)) even where the specific
9 requirements are not satisfied.

10
11 Subsection (a) largely conforms to Section 7-106, which defines control of an electronic
12 document of title. However, two changes were necessary. First, in keeping with the general
13 usage in Article 9, Section 9-105 uses the term “assign” rather than “transfer.” Second, Section
14 9-105 contemplates that a person (secured party) having control of electronic chattel paper is an
15 assignee of chattel paper, Section 7-106 (which is not limited to secured parties) expands the
16 control concept to include a person to which an electronic document of title is issued.

17
18 The amendments to paragraphs (b)(4), (b)(5), and (b)(6) are stylistic.

19
20 2. The change from current Section 9-105 to the revised Section *ipso facto* may result in
21 a secured party's achieving control of electronic chattel paper. In these circumstances, control
22 would date from the effective date of the revision and would not relate back.

23
24 *[Agenda Item VII.]*

25 *[Section 9-316(h) revised; new amendments to Section 9-322; revised Reporter's Note]*

26 **SECTION 9-316. CONTINUED PERFECTION OF SECURITY INTEREST**

27 **FOLLOWING EFFECT OF CHANGE IN GOVERNING LAW.**

28
29 * * *

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

33 (1) Subject to paragraph (4), a financing statement filed pursuant to the law of the
34 jurisdiction designated in Section 9-301(1) or 9-305(c) is effective to perfect a security interest in
35 the collateral if the financing statement would have been effective to perfect a security interest in
36 the collateral had the debtor not changed its location.

1 (2) Subject to paragraph (4), if a security interest that is perfected by a financing
2 statement that is effective under subsection (1) becomes perfected under the law of the other
3 jurisdiction before the earlier of the time the financing statement would have become ineffective
4 under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) or the expiration of
5 the four-month period, it remains perfected thereafter.

6 (3) If the security interest does not become perfected under the law of the other
7 jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have
8 been perfected as against a purchaser of the collateral for value.

9 (4) A security interest that is perfected solely by a financing statement that is
10 effective solely under paragraph (1) is deemed to be unperfected as against a buyer, lessee, or
11 licensee of the collateral until it is perfected under the law of the other jurisdiction.

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

14 (a) **[General priority rules.]** Except as otherwise provided in this section, priority
15 among conflicting security interests and agricultural liens in the same collateral is determined
16 according to the following rules:

17 (1) Conflicting perfected security interests and agricultural liens rank according
18 to priority in time of filing or perfection. Priority dates from the earlier of the time a filing
19 covering the collateral is first made or the security interest or agricultural lien is first perfected, if
20 there is no period thereafter when there is neither filing nor perfection.

21 * * *

22 (b) **[Time of perfection: proceeds and supporting obligations.]** For the purposes of
23 subsection (a)(1):

1 (1) the time of filing or perfection as to a security interest in collateral is also the
2 time of filing or perfection as to a security interest in proceeds; ~~and~~

3 (2) the time of filing or perfection as to a security interest in collateral supported
4 by a supporting obligation is also the time of filing or perfection as to a security interest in the
5 supporting obligation; and

6 (3) subject to subsection (h), the time of filing or perfection as to a security
7 interest in collateral which remains perfected under Section 9-316(h)(3) is the time the security
8 interest becomes perfected under the law of the other jurisdiction.

9 * * *

10 (h) [Limitation on subsection (b)(3).] Subsection (b)(3) does not affect the priority of
11 competing security interests, each of which remains perfected under Section 9-316(h)(3).

12 Reporter's Note

13
14 1. Where a debtor changes its location, the law governing perfection generally changes
15 also. See Section 9-301(1). Current Section 9-316 addresses security interests that are perfected
16 (i.e., that have attached and as to which any required perfection step has been taken) before the
17 debtor changes its location. It does not apply to security interests that have not attached before
18 the debtor's location changes. Suppose, for example, that Debtor is an individual who resides in
19 Pennsylvania. Lender perfects a security interest in Debtor's inventory by filing in Pennsylvania.
20 Then, without Lender's knowledge, Debtor's principal residence is relocated to New Jersey.
21 Under Section 9-316, Lender's security interest in inventory on hand as of the relocation date
22 remains perfected for four months thereafter (or, if earlier, until perfection would have ceased
23 under Pennsylvania law). However, although Lender's security interest attaches to inventory that
24 Debtor acquires after relocating to New Jersey, the security interest is unperfected because
25 Lender has not filed in New Jersey.

26
27 New Section 9-316(h) would change the result. In the example, Lender's filing in
28 Pennsylvania would be effective to perfect a security interest in inventory acquired by Debtor
29 within the four months after Debtor relocates (assuming that the financing statement would not
30 have become ineffective earlier). The security interest will remain continuously perfected if,
31 before the expiration of the four-month period (and before the financing statement would have
32 become ineffective), the security interest is perfected under the law of New Jersey. Otherwise,
33 the security interest will become unperfected at the end of the four-month period (or, if earlier,
34 when perfection would have ceased) and will be deemed never to have been perfected.

1 2. Under current law, a competing secured party generally can rely on the public record
2 in New Jersey to determine its priority as to collateral acquired by Debtor post-relocation. This is
3 because a filing against Debtor in another state would be ineffective to perfect a security interest
4 in that collateral. Proposed Section 9-316(h) would make Lender's pre-relocation filing in
5 Pennsylvania effective against collateral acquired after the Debtor relocates to New Jersey.
6 Under the normal rule in Section 9-322(a)(1), the priority of Lender's security interest in that
7 collateral would date from the time a filing covering the collateral was first made in
8 Pennsylvania. Application of this rule in cases covered by proposed Section 9-316(h) would
9 impose a new risk on a competing secured party. Accordingly, new Section 9-322(b)(3) would
10 date Lender's priority from the time it became perfected under the law of the other jurisdiction
11 (New Jersey).

12
13 Proposed Section 9-322(b)(3) carries with it its own difficulties. Suppose, for example,
14 that both Lender and Bank file financing statements under Pennsylvania law while Debtor is
15 located in Pennsylvania. Lender files first. Debtor then relocates to New Jersey. Both Lender
16 and Bank file against Debtor in New Jersey within four-months after relocation, but Bank files
17 first. If Section 9-322(b)(3) were to apply, Bank's security interest—previously junior—would
18 become senior. New Section 9-322(h) preserves Lender's priority under these circumstances.

19
20 3. Standing alone, new Section 9-316(h)(1) would impose on buyers, lessees, and
21 licensees a risk that is analogous to the risk that the section would impose on secured parties that
22 take an interest in collateral acquired after the debtor's relocation. Paragraph (h)(4) paragraph
23 would protect these purchasers.

24
25 4. Although new subsection (h) is likely to be most useful to creditors having a security
26 interest in inventory and receivables, it would apply to all kinds of collateral.

27
28 5. The addition of subsection (h) will require explanatory and other changes to the
29 Official Comments. The revised Comments will also explain the application of this subsection
30 to entities that convert from one organizational form to another.

31
32
33 *[No change from previous draft]*

34
35 **SECTION 9-326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW**
36 **DEBTOR.**

37 * * *

38 **Official Comment**

39 * * *

40
41
42 2. **Subordination of Security Interests Created by New Debtor.** This section
43 addresses the priority contests that may arise when a new debtor becomes bound by the security

1 agreement of an original debtor and each debtor has a secured creditor.

2
3 Subsection (a) subordinates the original debtor's secured party's security interest
4 perfected against the new debtor solely under Section 9-508. The security interest is
5 subordinated to security interests in the same collateral perfected by another method, e.g., by
6 filing against the new debtor. As used in this section, "a filed financing statement that is
7 effective solely under Section 9-508" refers to a financing statement filed against the *original*
8 *debtor* that ~~continues to be~~ is effective under Section 9-508 to perfect a security interest in the
9 collateral in question. It does not encompass a new initial financing statement providing the
10 name of the new debtor, even if the initial financing statement is filed to maintain the
11 effectiveness of a financing statement under the circumstances described in Section 9-508(b).
12 Nor does it encompass a financing statement filed against the original debtor which remains
13 effective against collateral transferred by the original debtor to the new debtor. See Section 9-
14 508(c). Concerning priority contests involving transferred collateral, see Sections 9-325 and 9-
15 507.

16
17
18
19 *[Agenda Item VIII.]*

20 *[Text and Reporter's Note revised from previous draft]*

21
22 **SECTION 9-316. ~~CONTINUED PERFECTION OF SECURITY INTEREST~~**

23 **FOLLOWING EFFECT OF CHANGE IN GOVERNING LAW.**

24 * * *

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

29 (1) Subject to paragraph (4), the financing statement is effective to perfect a
30 security interest in collateral in which the new debtor has or acquires rights before or within four
31 months after the new debtor becomes bound under Section 9-203(d), if the financing statement
32 would have been effective to perfect a security interest in the collateral had it been acquired by
33 the original debtor.

34 (2) Subject to paragraph (4), a security interest that is perfected by the financing

1 statement and which becomes perfected under the law of the other jurisdiction before the earlier
2 of the expiration of the four-month period or the time the financing statement would have
3 become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c)
4 remains perfected thereafter.

5 (3) A security interest that is perfected by the financing statement but which does
6 not become perfected under the law of the other jurisdiction before the earlier time or event
7 becomes unperfected and is deemed never to have been perfected as against a purchaser of the
8 collateral for value.

9 (4) A security interest that is perfected solely by a financing statement that is
10 effective solely under paragraph (1) is deemed to be unperfected as against a buyer, lessee, or
11 licensee of the collateral until it is perfected under the law of the other jurisdiction..

Reporter's Note

12
13
14 1. New subsection (i) is similar to new subsection (h). Whereas the latter addresses a
15 given debtor's change of location, the former addresses situations in which a successor to the
16 debtor becomes bound as debtor by the original debtor's security agreement. See Section 9-
17 203(d).
18

19 Consider the difficulty faced by Lender under the facts of Official Comment 5 to Section
20 9-316:
21

22 Debtor is a Pennsylvania corporation. Debtor grants to Lender a security interest in
23 Debtor's existing and after-acquired inventory. Lender perfects by filing in Pennsylvania.
24 Debtor's shareholders decide to "reincorporate" in Delaware. They form a Delaware
25 corporation (Newcorp) into which they merge Debtor. By virtue of the merger, Newcorp
26 becomes bound by Debtor's security agreement. See Section 9-203. After the merger,
27 Newcorp acquires inventory to which Lender's security interest attaches. Because
28 Newcorp is located in Delaware, Delaware law governs perfection of a security interest in
29 Newcorp's inventory. See Sections 9-301, 9-307.
30

31 Delaware's current Section 9-316(a) applies to the pre-merger collateral that was
32 transferred from Debtor to Newcorp, and in which Lender held a security interest perfected under
33 Pennsylvania law. Under this section, Lender's security interest in the transferred collateral
34 remains perfected for one year after the merger (assuming that perfection would not have ceased
35 earlier under Pennsylvania law). Because Lender's financing statement was filed in

1 Pennsylvania and not Delaware, current Section 9-316(a) would have no application to inventory
2 acquired by Newcorp, a Delaware corporation, after the merger. For the same reason, Lender's
3 security interest in Newcorp's post-merger inventory would be unperfected until Lender files
4 against Newcorp in Delaware.
5

6 Under new subsection (i), however, the financing statement filed in Pennsylvania would
7 be effective to perfect a security interest that attaches to the post-merger collateral. The new
8 subsection would eliminate the risk that a change in Debtor's location would result in security
9 interests in post-relocation collateral being unperfected until Lender discovers the relocation and
10 files in Delaware. The perfection afforded by the Pennsylvania financing statement would end
11 four months after the merger (reincorporation) unless Lender perfects under Delaware law within
12 the four-month period (or, if earlier, before the financing statement would have become
13 ineffective under Pennsylvania law).
14

15 2. In many cases, an original debtor (Debtor, a Pennsylvania corporation) will merge into
16 a corporation (Survivor, a Delaware corporation) that has been operating before the merger. In
17 these cases, subsection (i) would affect Lender's security interest not only in inventory acquired
18 by Survivor after the merger but also in inventory held by Survivor at the time of the merger.
19 Where Lender files against Debtor's inventory in Pennsylvania before the merger, amended
20 Section 9-316 would yield the following results (assuming that the financing statement would not
21 have become ineffective under Pennsylvania law):
22

23 a. *Transferred inventory.* Lender's perfected security interest in the inventory that
24 Survivor acquired from Debtor would remain perfected for one year after the merger. See
25 subsection (a). If Lender perfects under Delaware law within the year, then the security
26 interest would remain perfected thereafter. See subsection (b).
27

28 b. *Survivor's pre-merger inventory.* Lender's security interest in collateral that Survivor
29 had on hand at the time of the merger would attach and become perfected when Survivor
30 becomes a new debtor. It would remain perfected for four months after Survivor
31 becomes a new debtor. If Lender perfects under Delaware law within the four-month
32 period, then the security interest would remain perfected thereafter. See subsection (i).
33

34 c. *Inventory acquired post-merger.* Lender's security interest in collateral that Survivor
35 acquires within four months after Survivor becomes a new debtor would become
36 perfected when Survivor acquires the collateral. If Lender perfects under Delaware law
37 within the four-month period, then the security interest would remain perfected thereafter.
38 See subsection (i).
39

40 3. The cases described in Note 2 also may give rise to a "double-debtor" problem, in
41 which Lender and Survivor's secured parties hold competing security interests in the same
42 inventory. Section 9-326 contains the priority rules addressing this problem. They have been
43 amended to take account of new subsection (i).
44

45 4. Under current law, the security interest of a secured party in the position of Lender
46 would be unperfected, and a buyer, lessee, or licensee normally would take free of it under

1 Section 9-317. New subsection (i)(4) preserves this result.

2
3 5. Although new subsection (i) is likely to be most useful to creditors having a security
4 interest in inventory and receivables, it would apply to all kinds of collateral.

5
6 6. The addition of subsection (i) will require explanatory and other changes to the
7 Official Comments. The revised Comments will also explain the application of this subsection
8 to entities that convert from one organizational form to another.

9
10
11 **SECTION 9-326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW**
12 **DEBTOR.**

13 (a) **[Subordination of security interest created by new debtor.]** Subject to subsection
14 (b), a security interest created by a new debtor which is perfected by a filed financing statement
15 that is effective solely under Section 9-508 or Sections 9-508 and 9-316(i)(1) in collateral in
16 which a new debtor has or acquires rights is subordinate to a security interest in the same
17 collateral which is perfected other than by a filed financing statement that is effective solely
18 under Section 9-508 or Sections 9-508 and 9-316(i)(1).

19 (b) **[Priority under other provisions; multiple original debtors.]** The other provisions
20 of this part determine the priority among conflicting security interests in the same collateral
21 perfected by filed financing statements that are effective solely under Section 9-508 or Sections
22 9-508 and 9-316(i)(1). However, if the security agreements to which a new debtor became bound
23 as debtor were not entered into by the same original debtor, the conflicting security interests rank
24 according to priority in time of the new debtor's having become bound.

25 **Reporter's Note**

26
27 Section 9-326 resolves the priority of conflicting security interests in situations like the
28 following:

29
30 SP-D holds a security interest in the existing and after-acquired inventory of Debtor, a
31 Pennsylvania corporation. In 2007 SP-D perfected its security interest by filing a
32 financing statement against Debtor in Pennsylvania. SP-S holds a security interest in the

1 existing and after-acquired inventory of Survivor, which also is a Pennsylvania
2 corporation. In 2008 SP-S perfected its security interest by filing a financing statement
3 against Survivor in Pennsylvania. In 2009 Debtor merges into Survivor.
4

5 Under current law, SP-D's security interest would attach to inventory that Survivor had
6 on hand at the time of the merger or acquired after the merger. Section 9-508 makes SP-D's
7 financing statement effective to perfect its security interest in this inventory, even though the
8 financing statement was filed against Debtor. The first-to-file-or-perfect rule (Section 9-
9 322(a)(1)) would award priority to SP-D. However, it is subject to Section 9-326, which awards
10 priority to SP-S. Section 9-326 identifies the subordinated security interest as one that is
11 "perfected by a filed financing statement that is effective solely under Section 9-508."
12

13 Suppose instead that Survivor is a Delaware corporation and that SP-S perfected by filing
14 in Delaware. As in the previous example, SP-D's security interest would attach to inventory that
15 Survivor had on hand at the time of the merger or acquired after the merger. Here, SP-D faces
16 two problems: Not only does SP-D's financing statement name Debtor and not Survivor, but it
17 also is filed where Debtor is located (Pennsylvania) and not where Survivor is located
18 (Delaware). Section 9-508 solves the first problem for SP-D, but not the second. Thus, until SP-
19 D files in Delaware, SP-D's security interest in inventory that Survivor had on hand at the time of
20 the merger or acquired after the merger would be unperfected.
21

22 New subsection (i) would address this second problem by making SP-D's Pennsylvania
23 filing effective with respect to inventory that Survivor had at the time of the merger and
24 inventory that Survivor acquired within four months after the merger. To insure that the first-to-
25 file-or-perfect rule subordinates a security interest like SP-D's, Section 9-326 would be amended
26 to subordinate a security interest that is perfected by a financing statement that is "effective
27 solely under Section 9-508 or Sections 9-508 and 9-316(i)(1)."
28
29

30 **SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY**

31 **INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.**

32 (a) **[General priority rules.]** Except as otherwise provided in this section, priority
33 among conflicting security interests and agricultural liens in the same collateral is determined
34 according to the following rules:

35 (1) Conflicting perfected security interests and agricultural liens rank according
36 to priority in time of filing or perfection. Priority dates from the earlier of the time a filing
37 covering the collateral is first made or the security interest or agricultural lien is first perfected, if
38 there is no period thereafter when there is neither filing nor perfection.

1 * * *

2 (b) [**Time of perfection: proceeds and supporting obligations.**] For the purposes of
3 subsection (a)(1):

4 (1) the time of filing or perfection as to a security interest in collateral is also the
5 time of filing or perfection as to a security interest in proceeds; ~~and~~

6 (2) the time of filing or perfection as to a security interest in collateral supported
7 by a supporting obligation is also the time of filing or perfection as to a security interest in the
8 supporting obligation; and

9 (3) the time of filing or perfection as to a security interest in collateral which
10 remains perfected under Section 9-316(i)(2) is the time the security interest becomes perfected
11 under the law of the other jurisdiction.

12 * * *

13 **Reporter's Note**

14 Consider this example:

15
16
17 SP-D holds a security interest in the existing and after-acquired inventory of Debtor, a
18 Pennsylvania corporation. In 2007 SP-D perfected its security interest by filing a
19 financing statement against Debtor in Pennsylvania. SP-S holds a security interest in the
20 existing and after-acquired inventory of Survivor, a Delaware corporation. In 2008 SP-S
21 perfected its security interest by filing a financing statement against Survivor in
22 Delaware. In 2009 Debtor merges into Survivor. Shortly after the merger, Survivor
23 acquires additional inventory.

24
25 SP-S's security interest would attach to the post-merger inventory and would be perfected by SP-
26 S's filing in Delaware. SP-D's security interest also would attach to the post-merger inventory
27 and, under new Section 9-316(i)(1), would be a perfected security interest until four months after
28 the merger. Because SP-D's security interest would be perfected by a financing statement that is
29 "effective solely under . . . Sections 9-508 and 9-316(i)(1)," Section 9-326(a) would subordinate
30 SP-D's security interest to SP-S's.

31
32 Now suppose that SP-D files an initial financing statement against Survivor in Delaware
33 before the expiration of the four-month period. Under new Section 9-316(i)(2), SP-D's security
34 interest in the inventory that Survivor acquired post-merger would remain perfected after the

1 period expires. SP-D’s Delaware filing should not, however, elevate the priority of SP-D’s
2 subordinate security interest. SP-S was the first to file against Survivor; Debtor never had an
3 interest in the collateral in question, which Survivor acquired independently of the merger. But
4 once SP-D files against Survivor in Delaware, SP-D’s security interest in this collateral no longer
5 would be perfected by a financing statement that is “effective solely under . . . Sections 9-508
6 and 9-316(i)” and so no longer would be covered by the subordination rule in Section 9-326(a).

7
8 The amendments to Section 9-322(a) and (b) would preserve the subordination by dating
9 SP-D’s priority, for purposes of the first-to-file-or-perfect rule, from the time of its Delaware
10 filing. The amendments would relieve SP-S, which was the first secured party to file against
11 Survivor, from any need to check for subsequent filings by competing secured parties. (Note that
12 the amendments would not affect the rule in Section 9-325(a), which governs the priority of
13 security interests in inventory that Debtor transferred to Survivor in the merger.)

14
15
16 *[Agenda Item IX.]*
17 *[Text and Official Comment revised from previous draft]*
18

19 **SECTION 8-106. CONTROL.**

20 (d) A purchaser has “control” of a security entitlement if:

21 (1) the purchaser becomes the entitlement holder;

22 (2) the securities intermediary has agreed that it will comply with entitlement
23 orders originated by the purchaser without further consent by the entitlement holder; or

24 (3) another person has control of the security entitlement on behalf of the
25 purchaser or, having previously acquired control of the security entitlement, acknowledges that it
26 has control on behalf of the purchaser.

27 **Official Comment**

28
29 * * *

30
31 4. Subsection (d) specifies the means by which a purchaser can obtain control of a
32 security entitlement. Three mechanisms are possible, analogous to those provided in subsection
33 (c) for uncertificated securities. Under subsection (d)(1), a purchaser has control if it is the
34 entitlement holder. This subsection would apply whether the purchaser holds through the same
35 intermediary that the debtor used, or has the securities position transferred to its own
36 intermediary. Subsection (d)(2) provides that a purchaser has control if the securities
37 intermediary has agreed to act on entitlement orders originated by the purchaser if no further
38 consent by the entitlement holder is required. Under subsection (d)(2), control may be achieved

1 even though the original entitlement holder remains as the entitlement holder. Finally, a
2 purchaser may obtain control under subsection (d)(3) if another person has control and the person
3 acknowledges that it has control on the purchaser's behalf. Control under subsection (d)(3)
4 parallels the delivery of certificated securities and uncertificated securities under Section 8-301.
5 Of course, the acknowledging person cannot be the debtor.
6
7
8

9 **SECTION 9-104. CONTROL OF DEPOSIT ACCOUNT.**

10 (a) **[Requirements for control.]** A secured party has control of a deposit account if:

11 (1) the secured party is the bank with which the deposit account is maintained;

12 (2) the debtor, secured party, and bank have agreed in an authenticated record that
13 the bank will comply with instructions originated by the secured party directing disposition of the
14 funds in the deposit account without further consent by the debtor;~~or~~

15 (3) the secured party becomes the bank's customer with respect to the deposit
16 account; or

17 (4) another person has control of the deposit account on behalf of the secured
18 party, or, having previously acquired control of the deposit account, acknowledges that it has
19 control on behalf of the secured party.

20 * * *

21 **Official Comment**

22 * * *

23
24
25 3. **Requirements for "Control."** This section derives from Section 8-106 of Revised
26 Article 8, which defines "control" of securities and certain other investment property. Under
27 subsection (a)(1), the bank with which the deposit account is maintained has control. The effect
28 of this provision is to afford the bank automatic perfection. No other form of public notice is
29 necessary; all actual and potential creditors of the debtor are always on notice that the bank with
30 which the debtor's deposit account is maintained may assert a claim against the deposit account.
31

32 Under subsection (a)(2), a secured party may obtain control by obtaining the bank's
33 authenticated agreement that it will comply with the secured party's instructions without further
34 consent by the debtor. The analogous provision in Section 8-106 does not require that the

1 agreement be authenticated. An agreement to comply with the secured party's instructions
2 suffices for "control" of a deposit account under this section even if the bank's agreement is
3 subject to specified conditions, e.g., that the secured party's instructions are accompanied by a
4 certification that the debtor is in default. (Of course, if the condition is the *debtor's* further
5 consent, the statute explicitly provides that the agreement would *not* confer control.) See revised
6 Section 8-106, Comment 7.

7
8 Under subsection (a)(3), a secured party may obtain control by becoming the bank's
9 "customer," as defined in Section 4-104. As the customer, the secured party would enjoy the
10 right (but not necessarily the exclusive right) to withdraw funds from, or close, the deposit
11 account. See Sections 4-401(a), 4-403(a).

12
13 Under subsection (a)(4), a secured party may obtain control if another person has control
14 and the person acknowledges that it has control on the secured party's behalf.

15 * * *

16
17
18
19 *[Agenda Item X.A.]*

20 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

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

22 * * *

23 (10) "Certificate of title" means a certificate of title with respect to which a
24 statute provides for the security interest in question to be indicated on the certificate as a
25 condition or result of the security interest's obtaining priority over the rights of a lien creditor
26 with respect to the collateral.

27 * * *

28 * * *

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

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

1 property subject to:

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

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

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

12 (b) **[Compliance with other law.]** Compliance with the requirements of a statute,
13 regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien
14 creditor is equivalent to the filing of a financing statement under this article. Except as otherwise
15 provided in subsection (d) and Sections 9-313 and 9-316(d) and (e) for goods covered by a
16 certificate of title, a security interest in property subject to a statute, regulation, or treaty
17 described in subsection (a) may be perfected only by compliance with those requirements, and a
18 security interest so perfected remains perfected notwithstanding a change in the use or transfer of
19 possession of the collateral.

20 * * *

21 * * *

22 **Reporter's Note**

23
24 These provisions are included here for reference. The issues are discussed in memoranda
25 from Stephen Sepinuck (February 13, 2009) and Alvin Harrell (February 25, 2009).

1
2 *[Agenda Item XII.B.]*
3 *[No change from previous draft]*
4

5 **SECTION 9-316. CONTINUED PERFECTION OF SECURITY INTEREST**

6 **FOLLOWING CHANGE IN GOVERNING LAW.**

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

10 (1) the time perfection would have ceased under the law of that jurisdiction;

11 (2) the expiration of four months after a change of the debtor's location to another
12 jurisdiction; or

13 (3) the expiration of one year after a transfer of collateral to a person that thereby
14 becomes a debtor and is located in another jurisdiction.

15 * * *

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

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

1 (1) the time the security interest would have become unperfected under the law of
2 the other jurisdiction had the goods not become covered by a certificate of title from this State; or

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

4 * * *

5 **Official Comment**

6 * * *

7
8
9 **5. Goods Covered by Certificate of Title.** Subsections (d) and (e) address continued
10 perfection of a security interest in goods covered by a certificate of title. The following examples
11 explain the operation of those subsections.

12
13 **Example 8:** Debtor's automobile is covered by a certificate of title issued by Illinois.
14 Lender perfects a security interest in the automobile by complying with Illinois'
15 certificate-of-title statute. Thereafter, Debtor applies for a certificate of title in Indiana.
16 Six months thereafter, Creditor acquires a judicial lien on the automobile. Under Section
17 9-303(b), Illinois law ceases to govern perfection; rather, once Debtor delivers the
18 application and applicable fee to the appropriate Indiana authority, Indiana law governs.
19 Nevertheless, under Indiana's Section 9-316(d), Lender's security interest remains
20 perfected until it would become unperfected under Illinois law had no certificate of title
21 been issued by Indiana. (For example, Illinois' certificate-of-title statute may provide that
22 the surrender of an Illinois certificate of title in connection with the issuance of a
23 certificate of title by another jurisdiction causes a security interest noted thereon to
24 become unperfected.) If Lender's security interest remains perfected, it is senior to
25 Creditor's judicial lien.

26
27 **Example 9:** Under the facts in Example 8, five months after Debtor applies for an
28 Indiana certificate of title, Debtor sells the automobile to Buyer. Under subsection (e)(2),
29 because Lender did not reperfect within the four months after the goods became covered
30 by the Indiana certificate of title, Lender's security interest is deemed never to have been
31 perfected against Buyer. Under Section 9-317(b), Buyer is likely to take free of the
32 security interest. Lender could have protected itself by perfecting its security interest
33 either under Indiana's certificate-of-title statute, see Section 9-311, or, if it had a right to
34 do so under an agreement or Section 9-609, by taking possession of the automobile. See
35 Section 9-313(b).

36
37 The results in Examples 8 and 9 do not depend on the fact that the original perfection was
38 achieved by notation on a certificate of title. Subsection (d) applies regardless of the method by
39 which a security interest is perfected under the law of another jurisdiction when the goods
40 became covered by a certificate of title from this State.

41
42 **Example 9A.** Debtor, who lives in Mississippi, owns a recreational boat that is subject to

1 Lender’s security interest. Mississippi’s certificate-of-title laws do not cover watercraft,
2 and so Lender perfects by filing a financing statement in Mississippi. Debtor wishes to
3 use the boat exclusively on a lake in Alabama, but Alabama law prohibits Debtor from
4 doing so without first applying for an Alabama certificate of title. When Debtor delivers
5 an application for an Alabama certificate to the appropriate authority and pays the
6 applicable fee, the boat becomes covered by an Alabama certificate of title and Alabama
7 law governs perfection, the effect of perfection or nonperfection, and priority of the
8 security interest. See Section 9-303. Under Alabama’s Section 9-316(d), Lender’s
9 security interest remains perfected until it would have become unperfected under
10 Mississippi law had the boat not become covered by the Alabama certificate of title (e.g.,
11 because the effectiveness of the filed financing statement lapses). However, as against a
12 purchaser of the boat for value, Lender’s security interest would become unperfected and
13 would be deemed never to have been perfected if Lender fails to reperfect under
14 Alabama’s Section 9-311(b) or 9-313 in a timely manner. See subsection (e).

15
16 Section 9-337 affords protection to a limited class of persons buying or acquiring a
17 security interest in the goods while a security interest is perfected under the law of another
18 jurisdiction but after this State has issued a clean certificate of title.

19
20 * * *

21
22 **Reporter’s Note**

23
24 New Example 9A clarifies the operation of Section 9-316(d). Consider the following
25 variation:

26
27 Debtor, who lives in Mississippi, owns a recreational boat that is subject to Lender’s
28 security interest. Mississippi’s certificate-of-title laws do not cover watercraft, and so
29 Lender perfects by filing a financing statement in Mississippi. After the filing, Debtor
30 moves to Alabama and applies for an Alabama certificate of title for the boat.

31
32 One might argue that the analysis of Example 9A would apply equally to the variation, i.e., that
33 Alabama’s Section 9-316(d) would determine the outcome. On the other hand, one might argue
34 that Alabama’s Section 9-316(d) would not apply because, “when the goods [became] covered by
35 a certificate of title from this State,” (i.e., Alabama), Lender’s security interest in the boat was
36 not perfected “under the law of another jurisdiction.” Rather, once Debtor moved to Alabama
37 and Alabama law began to govern perfection of the security interest, the security interest was
38 perfected under the law of Alabama, i.e., under Alabama’s Section 9-316(a). The Joint Review
39 Committee may wish to consider whether the existing statute clearly supports only one of the
40 suggested results and, if the statute does not, whether and how the issue should be expressly
41 resolved.

42
43
44 *[Agenda Item X.C.]*
45 *[No draft]*
46

1 *[Agenda Item XI.]*
2 *[Text and Reporter's Note revised from previous draft]*
3

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

8 * * *

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

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

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

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

24 * * *

25 **SECTION 9-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY**

1 **NOTES, HEALTH-CARE-INSURANCE RECEIVABLES, AND CERTAIN GENERAL**
2 **INTANGIBLES INEFFECTIVE.**

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

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

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

15 (b) **[Applicability of subsection (a) to sales of certain rights to payment.]** Subsection
16 (a) applies to a security interest in a payment intangible or promissory note only if the security
17 interest arises out of a sale, other than a sale pursuant to a disposition under Section 9-610, of the
18 payment intangible or promissory note.

19 **Reporter's Note**

20
21 Section 9-406(a) contains a broad override of contractual restrictions on assignability of
22 receivables. Section 9-408(a) contains a similar, but narrower, override. The most significant
23 difference between the two concerns whether an assignee may enforce the assigned receivable
24 against the account debtor or other obligor, notwithstanding a provision in the underlying
25 contract that purports to prevent an assignee from doing so.

26
27 The draft addresses the allocation of transactions between the broader override in Section
28 9-406(a) and the narrower override in Section 9-408(a). The distinction is most likely to matter

1 where the collateral is the right to payment of a loan.
2

3 Under current law, if the right to payment of the loan is evidenced by chattel paper, then a
4 contractual restriction would not be effective to restrict the assignee's right to enforce against the
5 account debtor. If, however, the right to payment of the loan is evidenced by an instrument, or is
6 a payment intangible, then a contractual restriction would not be effective to restrict the
7 assignee's right to enforce against the account debtor if the assignment is made for collateral
8 purposes. If, however, the assignment is a sale of the payment intangible or promissory note,
9 then Section 9-408(a) applies and the assignee's right to enforce is limited by any contractual
10 restriction. Whether current Section 9-406 or 9-408 applies to a foreclosure sale of the
11 receivable by an assignee for collateral purposes is unclear. The proposed amendment would
12 clarify that Section 9-406 applies and that, therefore, a buyer at a foreclosure sale would be free
13 to enforce the account debtor's obligation.
14

15 Consider this example:
16

17 Lender makes a loan to Borrower. The loan is not evidenced by chattel paper. The loan
18 agreement (or note) provides that Lender's rights may not be assigned and, if Lender
19 wrongfully assigns the rights, an assignee may not enforce Borrower's obligation to pay.
20 Lender assigns the right to payment (i.e., the payment intangible or instrument) to
21 Assignee.
22

23 If the assignment to Assignee is a sale, then Section 9-408(a) applies and the contractual
24 restrictions are ineffective with respect to the creation, attachment, and perfection of
25 Assignee's security interest.
26

27 If the assignment to Assignee is for security, the restriction would not be effective if
28 Assignee itself sought to collect or if Assignee sold to a buyer at foreclosure (and,
29 presumably, if the foreclosure buyer resold). However, the restriction would be effective
30 against nonforeclosure buyers who did not take through a foreclosure buyer.
31
32
33

34 *[Agenda Item XII.]*

35 *[Changes to Official Comment revised]*
36

37 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

38 **Official Comment**

39 **5. Receivables-related Definitions.**

40
41
42 * * *

43
44
45 d. **“General Intangible”**; **“Payment Intangible.”** “General intangible” is the
46 residual category of personal property, including things in action, that is not included in the other

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

14
15 “Payment intangible” is a subset of the definition of “general intangible.” The sale of a
16 payment intangible is subject to this Article. See Section 9-109(a)(3). Virtually any intangible
17 right could give rise to a right to payment of money once one hypothesizes, for example, that the
18 account debtor is in breach of its obligation. The term “payment intangible,” however, embraces
19 only those general intangibles “under which the account debtor’s *principal* obligation is a
20 monetary obligation.” (Emphasis added.)

21
22 In classifying intangible collateral, a court should begin by identifying the particular
23 rights that have been assigned. The account debtor (promisor) under a particular contract may
24 owe several types of monetary obligations as well as other, nonmonetary obligations. If the
25 promisee’s right to payment of money is assigned separately, the right is an account or payment
26 intangible, depending on how the account debtor’s obligation arose. When all the promisee’s
27 rights are assigned together, an account, a payment intangible, and a general intangible all may be
28 involved, depending on the nature of the rights.

29
30 A right to the payment of money is frequently buttressed by ancillary covenants, such as
31 covenants in a purchase agreement, note, or mortgage requiring insurance on the collateral or
32 forbidding removal of the collateral, or covenants to preserve the creditworthiness of the
33 promisor, such as covenants restricting dividends and the like. This Article does not treat these
34 ancillary rights separately from the rights to payment to which they relate. For example,
35 attachment and perfection of an assignment of a right to payment of a monetary obligation,
36 whether it be an account or payment intangible, also carries these ancillary rights. Among these
37 ancillary rights are the lessor’s rights with respect to leased goods that arise upon the lessee’s
38 default. See Section 2A-523. Accordingly, and contrary to the opinion in *In re Commercial*
39 *Money Center, Inc.*, 350 B.R. 465 (B.A.P. 9th Cir. 2006), if the lessor’s rights under a lease
40 constitute chattel paper, an assignment of the lessor’s right to payment under the lease also would
41 be chattel paper, even if the assignment excludes those ancillary rights.

42
43 Every “payment intangible” is also a “general intangible.” Likewise, “software” is a
44 “general intangible” for purposes of this Article. See Comment 25. Accordingly, except as
45 otherwise provided, statutory provisions applicable to general intangibles apply to payment
46 intangibles and software.

1 * * *

2
3
4 **SECTION 9-109. SCOPE.**

5
6 **Official Comment**

7
8 * * *

9
10 **5. Transfer of Ownership in Sales of Receivables.** A “sale” of an account, chattel
11 paper, a promissory note, or a payment intangible includes a sale of a right in the receivable, such
12 as a sale of a participation interest. The term also includes the sale of an enforcement right. For
13 example, a “[p]erson entitled to enforce” a negotiable promissory note (Section 3-301) may sell
14 its ownership rights in the instrument. See Section 3-203, Comment 1 (“Ownership rights in
15 instruments may be determined by principles of the law of property, independent of Article 3,
16 which do not depend upon whether the instrument was transferred under Section 3-203.”). Also,
17 the right under Section 3-309 to enforce a lost, destroyed, or stolen negotiable promissory note
18 may be sold to a purchaser who could enforce that right by causing the seller to provide the proof
19 required under that section. This Article rejects decisions reaching a contrary result, e.g., *Dennis*
20 *Joslin Co. v. Robinson Broadcasting*, 977 F. Supp. 491 (D.D.C. 1997).

21
22 Nothing in this section or any other provision of Article 9 prevents the transfer of full and
23 complete ownership of an account, chattel paper, an instrument, or a payment intangible in a
24 transaction of sale. However, as mentioned in Comment 4, neither this Article nor the definition
25 of “security interest” in Section 1-201 provides rules for distinguishing sales transactions from
26 those that create a security interest securing an obligation. This Article applies to both types of
27 transactions. The principal effect of this coverage is to apply this Article’s perfection and
28 priority rules to these sales transactions. Use of terminology such as “security interest,” “debtor,”
29 and “collateral” is merely a drafting convention adopted to reach this end, and its use has no
30 relevance to distinguishing sales from other transactions. See PEB Commentary No. 14.

31
32 Following a debtor’s outright sale and transfer of ownership of a receivable, the debtor-
33 seller retains no legal or equitable rights in the receivable that has been sold. See Section 9-
34 318(a). This is so whether or not the buyer’s security interest is perfected. (A security interest
35 arising from the sale of a promissory note or payment intangible is perfected upon attachment
36 without further action. See Section 9-309.) However, if the buyer’s interest in accounts or
37 chattel paper is unperfected, a subsequent lien creditor, perfected secured party, or qualified
38 buyer can reach the sold receivable and achieve priority over (or take free of) the buyer’s
39 unperfected security interest under Section 9-317. This is so not because the seller of a
40 receivable retains rights in the property sold; it does not. Nor is this so because the seller of a
41 receivable is a “debtor” and the buyer of a receivable is a “secured party” under this Article (they
42 are). It is so for the simple reason that Sections 9-318(b), 9-317, and 9-322 make it so, as did
43 former Sections 9-301 and 9-312. Because the buyer’s security interest is unperfected, for
44 purposes of determining the rights of creditors of and purchasers for value from the debtor-seller,
45 under Section 9-318(b) the debtor-seller is deemed to have the rights and title it sold. Section 9-

1 317 subjects the buyer’s unperfected interest in accounts and chattel paper to that of the debtor-
2 seller’s lien creditor and other persons who qualify under that section.

3
4 * * *

5
6
7 *[Agenda Item XIII.]*
8 *[Changes to Official Comment revised]*
9

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

12 (a) **[General priority rules.]** Except as otherwise provided in this section, priority
13 among conflicting security interests and agricultural liens in the same collateral is determined
14 according to the following rules:

15 (1) Conflicting perfected security interests and agricultural liens rank according
16 to priority in time of filing or perfection. Priority dates from the earlier of the time a filing
17 covering the collateral is first made or the security interest or agricultural lien is first perfected, if
18 there is no period thereafter when there is neither filing nor perfection.

19 * * *

20 **Official Comment**

21 * * *

22
23
24 **4. Competing Perfected Security Interests.** When there is more than one perfected
25 security interest, the security interests rank according to priority in time of filing or perfection.
26 “Filing,” of course, refers to the filing of an effective financing statement. “Perfection” refers to
27 the acquisition of a perfected security interest, i.e., one that has attached and as to which any
28 required perfection step has been taken. See Sections 9-308 and 9-309.

29
30 **Example 1:** On February 1, A files a financing statement covering a certain item of
31 Debtor’s equipment. On March 1, B files a financing statement covering the same
32 equipment. On April 1, B makes a loan to Debtor and obtains a security interest in the
33 equipment. On May 1, A makes a loan to Debtor and obtains a security interest in the
34 same collateral. A has priority even though B’s loan was made earlier and was perfected
35 when made. It makes no difference whether A knew of B’s security interest when A
36 made its advance.

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

9
10 Under a notice-filing system, a filed financing statement indicates to third parties that a
11 person may have a security interest in the collateral indicated. With further inquiry, they may
12 discover the complete state of affairs. When a financing statement that is ineffective when filed
13 becomes effective thereafter, the policy underlying the notice-filing system determines the “time
14 of filing” for purposes of subsection (a)(1). For example, upon the debtor’s ratification of the
15 unauthorized filing of an otherwise sufficient initial financing statement, the filing becomes
16 authorized and the financing statement becomes effective. See Section 9-509, Comment 3.
17 Because the authorization does not increase the notice value of the financing statement, the time
18 of the unauthorized filing is the “time of filing” for purposes of this subsection (a)(1). A
19 different result would obtain where an initial financing statement is ineffective because the name
20 of the debtor is incorrect and seriously misleading and the filing office changes its standard
21 search logic so that the name on the financing statement no longer is seriously misleading. See
22 Section 9-506(c). Because the financing statement did not afford notice to third parties until the
23 search logic changed and the financing statement became effective, the time of the change is the
24 “time of filing” for purposes of subsection (a)(1).

25
26 **Example 2:** A and B make non-purchase-money advances secured by the same
27 collateral. The collateral is in Debtor’s possession, and neither security interest is
28 perfected when the second advance is made. Whichever secured party first perfects its
29 security interest (by taking possession of the collateral or by filing) takes priority. It
30 makes no difference whether that secured party knows of the other security interest at the
31 time it perfects its own.

32
33 The rule of subsection (a)(1), affording priority to the first to file or perfect, applies to
34 security interests that are perfected by any method, including temporarily (Section 9-312) or upon
35 attachment (Section 9-309), even though there may be no notice to creditors or subsequent
36 purchasers and notwithstanding any common-law rule to the contrary. The form of the claim to
37 priority, i.e., filing or perfection, may shift from time to time, and the rank will be based on the
38 first filing or perfection as long as there is no intervening period without filing or perfection. See
39 Section 9-308(c).

40
41 **Example 3:** On October 1, A acquires a temporarily perfected (20-day) security interest,
42 unfiled, in a negotiable document in the debtor’s possession under Section 9-312(e). On
43 October 5, B files and thereby perfects a security interest that previously had attached to
44 the same document. On October 10, A files. A has priority, even after the 20-day period
45 expires, regardless of whether A knows of B’s security interest when A files. A was the
46 first to perfect and maintained continuous perfection or filing since the start of the 20-day

1 period. However, the perfection of A's security interest extends only "to the extent it
2 arises for new value given." To the extent A's security interest secures advances made by
3 A beyond the 20-day period, its security interest would be subordinate to B's, inasmuch
4 as B was the first to file.

5
6 In general, the rule in subsection (a)(1) does not distinguish among various advances
7 made by a secured party. The priority of every advance dates from the earlier of filing or
8 perfection. However, in rare instances, the priority of an advance dates from the time the
9 advance is made. See Example 3 and Section 9-323.

10
11
12 **SECTION 9-509. PERSONS ENTITLED TO FILE A RECORD.**

13 * * *

14
15 **Official Comment**

16
17 * * *

18
19 3. **Unauthorized Filings.** Records filed in the filing office do not require signatures for
20 their effectiveness. Subsection (a)(1) substitutes for the debtor's signature on a financing
21 statement the requirement that the debtor authorize in an authenticated record the filing of an
22 initial financing statement or an amendment that adds collateral. Also, under subsection (a)(1), if
23 an amendment adds a debtor, the debtor who is added must authorize the amendment. A person
24 who files an unauthorized record in violation of subsection (a)(1) is liable under Section 9-625(b)
25 and (e) for actual and statutory damages. Of course, a filed financing statement is ineffective to
26 perfect a security interest if the filing is not authorized. See Section 9-510(a). Law other than
27 this Article, including the law with respect to ratification of past acts, generally determines
28 whether a person has the requisite authority to file a record under this section. See Sections 1-
29 103, 9-502, Comment 3. This Article applies to other issues, such as the priority of a security
30 interest perfected by the filing of a financing statement. See Section 9-322, Comment 4.

31
32
33
34 *[Agenda Item XIV.]*
35 *[No change from previous draft]*

36
37 **SECTION 9-109. SCOPE.**

38 (a) **[General scope of article.]** Except as otherwise provided in subsections (c) and (d),
39 this article applies to:

40 (1) a transaction, regardless of its form, that creates a security interest in personal
41 property or fixtures by contract;

1 * * *

2 * * *

3 **Official Comment**

4 * * *

5
6
7 **2. Basic Scope Provision.** Subsection (a)(1) derives from former Section 9-102(1) and
8 (2). These subsections have been combined and shortened. No change in meaning is intended.
9 Under subsection (a)(1), all consensual security interests in personal property and fixtures are
10 covered by this Article, except for transactions excluded by subsections (c) and (d). As to which
11 transactions give rise to a “security interest,” the definition of that term in Section 1-201 must be
12 consulted. When a security interest is created, this Article applies regardless of the form of the
13 transaction or the name that parties have given to it. Likewise, the subjective intention of the
14 parties with respect to the legal characterization of their transaction is irrelevant to the
15 application of this Article, as it was to the application of former Article 9 under the proper
16 interpretation of former Section 9-102.

17 * * *

18
19
20 *[Agenda Item XV.A.]*
21 *[New]*

22
23 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

24 **Official Comment**

25
26
27 **5. Receivables-related Definitions.**

28 * * *

29
30
31 **b. “Chattel Paper”; “Electronic Chattel Paper”; “Tangible Chattel Paper.”**
32 “Chattel paper” consists of a monetary obligation together with a security interest in or a lease of
33 specific goods if the obligation and security interest or lease are evidenced by “a record or
34 records.” The definition has been expanded from that found in former Article 9 to include
35 records that evidence a monetary obligation and a security interest in specific goods and software
36 used in the goods, a security interest in specific goods and license of software used in the goods,
37 or a lease of specific goods and license of software used in the goods. The expanded definition
38 covers transactions in which the debtor’s or lessee’s monetary obligation includes amounts owed
39 with respect to software used in the goods. The monetary obligation with respect to the software
40 need not be owed under a license from the secured party or lessor, and the secured party or lessor
41 need not be a party to the license transaction itself. Among the types of monetary obligations
42 that are included in “chattel paper” are amounts that have been advanced by the secured party or
43 lessor to enable the debtor or lessee to acquire or obtain financing for a license of the software
44 used in the goods. The definition also makes clear that rights to payment arising out of credit-

1 card transactions are not chattel paper.

2
3 Charters of vessels are expressly excluded from the definition of chattel paper; they are
4 accounts. The term “charter” as used in this section includes bareboat charters, time charters,
5 successive voyage charters, contracts of affreightment, contracts of carriage, and all other
6 arrangements for the use of vessels.

7
8 Under former Section 9-105, only if the evidence of an obligation consisted of “a writing
9 or writings” could an obligation qualify as chattel paper. In this Article, traditional, written
10 chattel paper is included in the definition of “tangible chattel paper.” “Electronic chattel paper”
11 is chattel paper that is stored in an electronic medium instead of in tangible form. The concept of
12 an electronic medium should be construed liberally to include electrical, digital, magnetic,
13 optical, electromagnetic, or any other current or similar emerging technologies.

14
15 The definition of electronic chattel paper does not dictate that it be created in any
16 particular fashion. For example, a record consisting of a tangible writing may be converted to
17 electronic form (e.g., by creating electronic images of a signed writing). Or, records may be
18 initially created and executed in electronic form (e.g., a lessee might authenticate an electronic
19 record of a lease that is then stored in electronic form). In either case the resulting records are
20 electronic chattel paper. Likewise, tangible chattel paper results when chattel paper in electronic
21 form is converted to tangible form.

22
23
24 *[Agenda Item XV.B.]*
25 *[New]*

26
27 **SECTION 9-330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR**
28 **INSTRUMENT.**

29 (a) **[Purchaser’s priority: security interest claimed merely as proceeds.]** A
30 purchaser of chattel paper has priority over a security interest in the chattel paper which is
31 claimed merely as proceeds of inventory subject to a security interest if:

32 (1) in good faith and in the ordinary course of the purchaser’s business, the
33 purchaser gives new value and takes possession of the chattel paper or obtains control of the
34 chattel paper under Section 9-105; and

35 (2) the chattel paper does not indicate that it has been assigned to an identified
36 assignee other than the purchaser.

1 (b) **[Purchaser’s priority: other security interests.]** A purchaser of chattel paper has
2 priority over a security interest in the chattel paper which is claimed other than merely as
3 proceeds of inventory subject to a security interest if the purchaser gives new value and takes
4 possession of the chattel paper or obtains control of the chattel paper under Section 9-105 in
5 good faith, in the ordinary course of the purchaser’s business, and without knowledge that the
6 purchase violates the rights of the secured party.

7 * * *

8 **Official Comment**

9 * * *

10
11
12 3. **Chattel Paper.** Subsections (a) and (b) follow former Section 9-308 in distinguishing
13 between earlier-perfected security interests in chattel paper that is claimed merely as proceeds of
14 inventory subject to a security interest and chattel paper that is claimed other than merely as
15 proceeds. Like former Section 9-308, this section does not elaborate upon the phrase “merely as
16 proceeds.” For an elaboration, see PEB Commentary No. 8.

17
18 For a security interest qualify for priority under subsection (a) or (b), the secured party
19 must “take[] possession of the chattel paper or obtain[] control of the chattel paper under Section
20 9-105.” When chattel paper comprises one or more tangible records and one or more electronic
21 records, a secured party satisfies this requirement if it has possession of all the tangible records
22 and control of all the electronic records.

23
24 This section makes explicit the “good faith” requirement and retains the requirements of
25 “the ordinary course of the purchaser’s business” and the giving of “new value” as conditions for
26 priority. Concerning the last, this Article deletes former Section 9-108 and adds to Section 9-102
27 a completely different definition of the term “new value.” Under subsection (e), the holder of a
28 purchase-money security interest in inventory is deemed to give “new value” for chattel paper
29 constituting the proceeds of the inventory. Accordingly, the purchase-money secured party may
30 qualify for priority in the chattel paper under subsection (a) or (b), whichever is applicable, even
31 if it does not make an additional advance against the chattel paper.

32
33 If a possessory security interest in tangible chattel paper or a perfected-by-control security
34 interest in electronic chattel paper does not qualify for priority under this section, it may be
35 subordinate to a perfected-by-filing security interest under Section 9-322(a)(1).

36
37
38 *[Agenda Item XVI]*
39 *[New]*

1 the filing, and, under Section 9-322, is senior to Buyer-1's interest.

2
3 **4. Effect of Perfection.** If the security interest of a buyer of accounts or chattel paper is
4 perfected the usual result would take effect: transferees from and creditors of the seller could not
5 acquire an interest in the sold accounts or chattel paper. The same result generally would occur if
6 payment intangibles or promissory notes were sold, inasmuch as the buyer's security interest is
7 automatically perfected under Section 9-309. However, in certain circumstances a purchaser
8 who takes possession of a promissory note will achieve priority, under Sections 9-330 or 9-331,
9 over the security interest of an earlier buyer of the promissory note. For this reason, the seller in
10 those circumstances retains the power to transfer the promissory note, as if it had not been sold,
11 to a purchaser who obtains priority under either of those sections. See Section 9-203(b)(3),
12 Comment 6.

13
14 **5. Not a Priority Rule.** If a debtor sells an account, chattel paper, payment intangible or
15 promissory note to a buyer, and the debtor later transfers an interest in the same receivable to
16 another purchaser, a priority contest arises. If the interests are such that the priority contest is
17 governed by Article 9, it is resolved by application of the priority rules of Article 9. Subsection
18 (a) does not import the common-law principle of *nemo dat quod non habet* to displace those
19 rules. In many circumstances the priority rules of Article 9 will give the interest of the second
20 purchaser priority over the buyer's previously-acquired ownership interest. To the extent that the
21 priority rules entail such priority, the debtor necessarily has "power to transfer rights in the
22 collateral" within the meaning of Section 9-203(b)(3). See Section 9-203(b)(3), Comment 6.
23 Subsection (b) is essentially a codification of the foregoing principles as applied to a particular
24 contest of the foregoing type, and various comments note that these principles apply to other
25 particular contests. See Section 9-318, Comment 4; Section 9-317, Comment 6. These
26 principles apply generally to all priority contests of the foregoing type. However, when a buyer's
27 ownership interest is awarded priority under the applicable Article 9 priority rule, the
28 identification of the applicable rule as one of "priority" does not imply that the seller has retained
29 any interest.

30
31 **Example 2:** SP-1, having authority to do so, files a financing statement against Debtor
32 covering accounts. Debtor then sells to SP-2 a particular account, with requisites for
33 attachment satisfied, and SP-2 files a financing statement against Debtor covering the
34 account. Debtor later grants to SP-1 a security interest (either by sale or by security
35 transfer) in the account, authenticating an appropriate security agreement and with value
36 being given. SP-2 cannot invoke *nemo dat* to claim priority over SP-1 in the account.
37 Rather, the priority dispute is resolved under the relevant priority rule of Article 9. In this
38 case, SP-1 has priority over SP-2 as first to file, under Section 9-322(a)(1). SP-1's
39 security interest in the account attached because Debtor had "power to transfer rights in
40 the collateral" within the meaning of 9-203(b)(3). If the grant to SP-1 was a sale, SP-2
41 has no interest in the account; if the grant to SP-1 was a security transfer, SP-2 owns the
42 account subject to SP-1's security interest.

43 **Reporter's Note**

44
45
46 New Comment 5 appears as it was submitted by Ken Kettering and Chuck Mooney, with

1 slight emendations.

2
3
4 *[Agenda Item XVII]*
5 *[New]*
6

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

9 * * *

10 (c) **[Special priority rules: proceeds and supporting obligations.]** Except as
11 otherwise provided in subsection (f), a security interest in collateral which qualifies for priority
12 over a conflicting security interest under Section 9-327, 9-328, 9-329, 9-330, or 9-331 also has
13 priority over a conflicting security interest in:

14 (1) any supporting obligation for the collateral; and

15 (2) proceeds of the collateral if:

16 (A) the security interest in proceeds is perfected;

17 (B) the proceeds are cash proceeds or of the same type as the collateral;

18 and

19 (C) in the case of proceeds that are proceeds of proceeds, all intervening
20 proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to
21 the collateral.

22 * * *

23 **Official Comment**

24 * * *

25
26
27 **8. Proceeds of Non-Filing Collateral: Non-Temporal Priority.** Subsection (c)(2)
28 provides a baseline priority rule for proceeds of non-filing collateral which applies if the secured
29 party has taken the steps required for non-temporal priority over a conflicting security interest in
30 non-filing collateral (e.g., control, in the case of deposit accounts, letter-of-credit rights, and

1 investment property). This rule determines priority in proceeds of non-filing collateral whether
2 or not there exists an actual conflicting security interest in the original non-filing collateral.
3 Under subsection (c)(2), the priority in the original collateral continues in proceeds if the security
4 interest in proceeds is perfected and the proceeds are cash proceeds or non-filing proceeds “of the
5 same type” as the original collateral. As used in subsection (c)(2), “type” means a type of
6 collateral defined in the Uniform Commercial Code and should be read broadly. For example, a
7 security is “of the same type” as a security entitlement (i.e., investment property), and a
8 promissory note is “of the same type” as a draft (i.e., an instrument).

9
10 * * *

11
12 The proceeds of proceeds are themselves proceeds. See Section 9-102 (defining
13 “proceeds” and “collateral”). Sometimes competing security interests arise in proceeds that are
14 several generations removed from the original collateral. As the following example explains, the
15 applicability of subsection (c) may turn on the nature of the intervening proceeds.

16
17 **Example 11:** SP-1 perfects its security interest in Debtor’s deposit account by obtaining
18 control. Thereafter, SP-2 files against inventory, (presumably) searches, finds no
19 indication of a conflicting security interest, and advances against Debtor’s existing and
20 after-acquired inventory. Debtor uses funds from the deposit account to purchase
21 inventory, which SP-1 can trace as identifiable proceeds of its security interest in
22 Debtor’s deposit account, and which SP-2 claims as original collateral. The inventory is
23 sold and the proceeds deposited into *another* deposit account, as to which SP-1 has not
24 obtained control. Subsection (c) does not govern priority in this other deposit account.
25 This deposit account is cash proceeds and is also the same type of collateral as SP-1's
26 original collateral, as required by subsections (c)(2)(A) and (B). However, SP-1's security
27 interest does not satisfy subsection (c)(2)(C) because the inventory proceeds, which
28 intervened between the original deposit account and the deposit account constituting the
29 proceeds at issue, are not cash proceeds, proceeds of the same type as the collateral
30 (original deposit account), or an account relating to the collateral. Stated otherwise, once
31 proceeds other than cash proceeds, proceeds of the same type as the original collateral, or
32 an account relating to the original collateral intervene in the chain of proceeds, priority
33 under subsection (c) is thereafter unavailable. The special priority rule in subsection (d)
34 also is inapplicable to this case. See Comment 9, Example 13, below. Instead, the
35 general first-to-file-or-perfect rule of subsections (a) and (b) apply. Under that rule, SP-1
36 has priority unless its security interest in the inventory proceeds became unperfected
37 under Section 9-315(d). Had SP-2 filed against inventory before SP-1 obtained control of
38 the original deposit account, the SP-2 would have had priority even if SP-1's security
39 interest in the inventory proceeds remained perfected.

40
41 If two security interests in the same original collateral are entitled to priority in an item of
42 proceeds under subsection (c)(2), the security interest having priority in the original collateral has
43 priority in the proceeds.

44
45 **Reporter’s Note**

1 The additional language appears as it was submitted by Ken Kettering.

2
3
4 *[Agenda Item XVIII]*
5 *[New]*
6

7 **SECTION 9-621. NOTIFICATION OF PROPOSAL TO ACCEPT**

8 **COLLATERAL.**

9 (a) **[Persons to which proposal to be sent.]** A secured party that desires to accept
10 collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

11 * * *

12 * * *

13 **Official Comment**

14 * * *

15
16
17 **2. Notification Requirement.** Subsection (a) specifies three classes of competing
18 claimants to whom the secured party must send notification of its proposal: (i) those who notify
19 the secured party that they claim an interest in the collateral, (ii) holders of certain security
20 interests and liens who have filed against the debtor, and (iii) holders of certain security interests
21 who have perfected by compliance with a statute (including a certificate-of-title statute),
22 regulation, or treaty described in Section 9-311(a). With regard to (ii), see Section 9-611,
23 Comment 4. Subsection (b) also requires notification to any secondary obligor if the proposal is
24 for acceptance in partial satisfaction.

25
26 Unlike Section 9-611, this section contains no “safe harbor,” which excuses an enforcing
27 secured party from notifying certain secured parties and other lienholders. This is because,
28 unlike Section 9-610, which requires that a disposition of collateral be commercially reasonable,
29 Section 9-620 permits the debtor and secured party to set the amount of credit the debtor will
30 receive for the collateral subject only to the requirement of good faith. An effective acceptance
31 discharges subordinate security interests and other subordinate liens. See Section 9-622. If
32 collateral is subject to several liens securing debts much larger than the value of the collateral,
33 the debtor may be disinclined to refrain from consenting to an acceptance by the holder of the
34 senior security interest, even though, had the debtor objected and the senior disposed of the
35 collateral under Section 9-610, the collateral may have yielded more than enough to satisfy the
36 senior security interest (but not enough to satisfy all the liens). Accordingly, this section imposes
37 upon the enforcing secured party the risk of the filing office’s errors and delay. The holder of a
38 security interest who is entitled to notification under this section but does not receive it to whom
39 the enforcing secured party does not send notification has the right to recover under Section 9-
40 625(b) any loss resulting from the ~~enforcing~~ secured party’s noncompliance with this section.

1 **Reporter's Note**

2
3 The change corrects an error in the Official Comment.

4
5
6 *[Agenda Item XX.A.1.]*
7 *[Reporter's Note revised]*
8

9 **SECTION 9-515. DURATION AND EFFECTIVENESS OF FINANCING**

10 **STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT.**

11 * * *

12 (b) **[Public-finance or manufactured-home transaction.]** Except as otherwise
13 provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a
14 public-finance transaction or manufactured-home transaction is effective for a period of 30 years
15 after the date of filing if it indicates that it is filed in connection with a public-finance transaction
16 or manufactured-home transaction.

17 * * *

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

21 * * *

22 **Reporter's Note**

23 The amendment conforms subsection (f) to subsection (b).

24
25 *[Agenda Item XX.A.2.]*
26 *[changes to Official Comments revised from previous draft]*

27 **SECTION 9-301. LAW GOVERNING PERFECTION AND PRIORITY OF**
28 **SECURITY INTERESTS.** Except as otherwise provided in Sections 9-303 through 9-306, the

1 following rules determine the law governing perfection, the effect of perfection or nonperfection,
2 and the priority of a security interest in collateral:

3 * * *

4 (3) Except as otherwise provided in paragraph (4), while negotiable documents, goods,
5 instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that
6 jurisdiction governs:

7 (A) perfection of a security interest in the goods by filing a fixture filing;

8 (B) perfection of a security interest in timber to be cut; and

9 (C) the effect of perfection or nonperfection and the priority of a nonpossessory
10 security interest in the collateral.

11 * * *

12 Official Comment

13 * * *

14 * * *

15

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

24 * * *

25

26

27 b. **Fixtures.** Application of the general rule in paragraph (1) to perfection of a
28 security interest in fixtures would yield strange results. For example, perfection of a security
29 interest in fixtures located in Arizona and owned by a Delaware corporation would be governed
30 by the law of Delaware. Although Delaware law would send one to a filing office in Arizona for
31 the place to file a financing statement as a fixture filing, see Section 9-501, Delaware law would
32 not take account of local, nonuniform, real-property filing and recording requirements that
33 Arizona law might impose. For this reason, paragraph (3)(A) contains a special rule for security
34 interests perfected by a fixture filing; the law of the jurisdiction in which the fixtures are located
35 governs perfection, including the formal requisites of a fixture filing. Under paragraph (3)(C),

1 the same law governs priority. Fixtures are “goods” as defined in Section 9-102.

2
3 The filing of a financing statement to perfect a security interest in collateral of a
4 transmitting utility constitutes a fixture filing with respect to goods that are or become fixtures.
5 See Section 9-501(b). Accordingly, to perfect a security interest in goods of this kind by a fixture
6 filing, a financing statement must be filed in the office specified by Section 9-501(b) as enacted
7 in the jurisdiction in which the goods are located. If the fixtures collateral is located in more than
8 one State, filing in all of those States will be necessary to perfect a security interest in all the
9 fixtures collateral by a fixture filing. Of course, a security interest in nearly all types of collateral
10 (including fixtures) of a transmitting utility may be perfected by filing in the office specified by
11 Section 9-501(a) as enacted in the jurisdiction in which the transmitting utility is located.
12 However, such a filing will not be effective as a fixture filing except with respect to goods that
13 are located in that jurisdiction.

14
15 * * *

16
17
18
19 **SECTION 9-501. FILING OFFICE.**

20 * * *

21 (b) **[Filing office for transmitting utilities.]** The office in which to file a financing
22 statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is
23 the office of []. The financing statement also constitutes a fixture filing as to the collateral
24 indicated in the financing statement which is or is to become fixtures.

25 * * *

26 **Official Comment**

27 * * *

28
29 **5. Transmitting Utilities.** The usual filing rules do not apply well for a transmitting
30 utility (defined in Section 9-102). Many pre-UCC statutes provided special filing rules for
31 railroads and in some cases for other public utilities, to avoid the requirements for filing with
32 legal descriptions in every county in which such debtors had property. Former Section 9-401(5)
33 recreated and broadened these provisions, and subsection (b) follows this approach. The nature
34 of the debtor will inform persons searching the record as to where to make a search.
35

36
37 A given State’s subsection (b) applies only if the local law of that State governs
38 perfection. As to most collateral, perfection by filing is governed by the law of the jurisdiction in
39 which the debtor is located. See Section 9-301(1). However, the law of the jurisdiction in which

1 goods that are or become fixtures are located governs perfection by fixture filing. See Section 9-
2 301(3)(A). As a consequence, filing in the filing office of more than one State may be necessary
3 to perfect by fixture filing a security interest in fixtures collateral of a transmitting utility. See
4 Section 9-301, Comment 5.b.

5
6
7 *[Agenda Item XX.B.]*
8 *[Text revised from previous draft]*
9

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

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

13 (1) subject to subsection (f), if the debtor is a registered organization, only if the
14 financing statement provides the name of the debtor indicated on the public organic record of
15 filed with or issued by the debtor's jurisdiction of organization ~~which shows the debtor to have~~
16 been organized;

17 * * *

18 (f) **[Name of registered organization.]** If the public organic record indicates more than
19 one name of the debtor, then, for purposes of subsection (a)(1), "the name of the debtor indicated
20 on the public organic record" means:

21 (1) if the public organic record is composed of a single record, the name that is
22 stated as the name of the debtor;

23 (2) if the public organic record is composed of more than one record, the name of
24 the debtor which is indicated on the most recently filed or issued record that is intended to amend
25 or restate the debtor's name; and

26 (3) if the record specified in paragraph (2) indicates more than one name of the
27 debtor, the name of the debtor which that record states to be the debtor's name.

28 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

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

2 * * *

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

5 * * *

6 *[paragraph (67A)—Alternative A]*

7 (67A) “Public organic record” means:

8 (A) a record or records composed of the record initially filed with a State
9 or the United States to form or organize an organization and any record filed with the State or the
10 United States which effects an amendment or restatement of the initial record, if the record or
11 records are available to the public for inspection;

12 (B) [a] [an organic] record or records of a business trust that is initially
13 filed with a State and any record filed with the State which effects an amendment or restatement
14 of the initial record, if a statute of the State governing business trusts requires that the record or
15 records be filed with the State and the record or records are available to the public for inspection;
16 and

17 (C) a charter issued by a State or the United States which authorizes the
18 organization to [commence business] [commence the business of banking or another regulated
19 business].

20 *[paragraph (67A)—Alternative B]*

21 (67A) “Public organic record” means:

22 (A) a record or records composed of the record initially filed with a State
23 or the United States to form or organize an organization, or to constitute an organization as a

1 statutory business trust, and any record filed with the State or the United States which effects an
2 amendment or restatement of the initial record, if the record or records are available to the public
3 for inspection; and

4 (B) a charter issued by a State or the United States which authorizes the
5 organization to [commence business] [commence the business of banking or another regulated
6 business].

7 * * *

8 (70) “Registered organization” means an organization formed or organized solely
9 under the law of a single State or the United States and as to which the State or the United States
10 must maintain a public record showing the organization to have been organized by the filing of a
11 public organic record with the State or United States or with respect to which the State or United
12 States has issued a charter that authorizes the organization to [commence business] [commence
13 the business of banking or another regulated business]. [The term includes a business trust that is
14 formed or organized under the law of a single State if a statute of the State governing business
15 trusts requires that the business trust’s organic record be filed with the State.]

16 * * *

17 * * *

18 **Reporter’s Note**

19
20 1. The amendments to Section 9-503 and the related amendments to Sections 9-102 are
21 meant to designate more clearly the public record that is relevant to determining the name of a
22 debtor that is a registered organization. The relevant public record is always a “public organic
23 record.” In most cases, this will be a record that is “filed with a State or the United States.”
24 However, the term also includes a charter that is “issued by a State or the United States.” Any
25 other public record that the State creates, such as a certificate of good standing or an index of
26 domestic corporations, would not be a “public organic record” and so would be irrelevant to the
27 determination of the debtor’s name under Section 9-503(a)(1).
28

29 Section 9-503(f) covers two cases where the public organic record may indicate more

1 than one name for the debtor. Under paragraph (1), the name that must be provided in the
2 financing statement is the name that is indicated on the most recently filed public record that is
3 intended to state, amend, or restate the debtor's name. If that record indicates more than one
4 name of the debtor, the name that must be provided is the name that the record states to be the
5 debtor's name.
6

7 The references to the "public organic record" in Section 9-503(a) and "the most recently
8 filed or issued record" in Section 9-503(f) are not meant to refer to any randomly filed or issued
9 record. Rather, they are meant to refer to the public organic record filed or issued with respect to
10 the debtor and most recently filed or issued record that constitutes part of that public organic
11 record. The Joint Review Committee may wish to consider whether these phrases should be
12 amplified in the text.
13

14 2. The amendments to the definition of "registered organization" also are meant to clarify
15 that the term includes an organization that is created without the need for a public record but that
16 is "formed" only when a public filing has been made. For example, under Delaware law, a
17 statutory trust is "created by a governing instrument," Del. Code Ann. tit. 12, § 3801(g)(1), but is
18 "formed at the time of the filing of the initial certificate of trust in the office of the Secretary of
19 State or at any later date or time specified in the certificate of trust." Del. Code Ann. §
20 3810(a)(2). The definition presents alternative approaches to clarifying that a Massachusetts
21 business trust is a registered organization. The Joint Review Committee may wish to consider
22 whether the approach taken should be extended to all organizations, not just statutory trusts.
23

24
25 *[Agenda Item XX.C.]*
26 *[Text changed from previous draft]*
27

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

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

31 (1) if the debtor is a registered organization and is not a trustee acting with respect
32 to property held in trust, only if the financing statement provides the name of the debtor indicated
33 on the public record of the debtor's jurisdiction of organization which shows the debtor to have
34 been organized;

35 (2) if the debtor is a decedent's estate, only if the financing statement provides the
36 name of the decedent and indicates that the debtor is an estate;

37 (3) if the debtor is a trust that is not a registered organization or a trustee acting

1 with respect to property held in trust, only if the financing statement:

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

5 (B) indicates, in the debtor’s name or otherwise, that the debtor is a trust or
6 is a trustee acting with respect to property held in trust; and

7 (4) in other cases:

8 (A) if the debtor has a name, only if it provides the individual or
9 organizational name of the debtor; and

10 (B) if the debtor does not have a name, only if it provides the names of the
11 partners, members, associates, or other persons comprising the debtor.

12 * * *

13 **Official Comment**

14 * * *

15
16
17 **2. Debtor’s Name.** The requirement that a financing statement provide the debtor’s
18 name is particularly important. Financing statements are indexed under the name of the debtor,
19 and those who wish to find financing statements search for them under the debtor’s name.
20 Subsection (a) explains what the debtor’s name is for purposes of a financing statement. If the
21 debtor is a “registered organization” (defined in Section 9-102 so as to ordinarily include
22 corporations, limited partnerships, and limited liability companies), then the debtor’s name is the
23 name shown on the public records of the debtor’s “jurisdiction of organization” (also defined in
24 Section 9-102). Subsections (a)(2) and (a)(3) contain special rules for decedent’s estates and
25 common-law trusts. (Subsection (a)(1) applies to business trusts that are registered
26 organizations; however it does not apply to a trustee acting with respect to property held in trust,
27 even if the trustee is a registered organization.)

28 * * *

29
30
31 **Reporter’s Note**

32
33 The amendments are meant to clarify current law. The Joint Review Committee did not
34 discuss the proposed change to subsection (a)(3)(A).

1
2
3 *[Agenda Item XX.D.]*
4 *[Changes to Official Comment revised from previous draft]*
5

6 **SECTION 9-307. LOCATION OF DEBTOR.**

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

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

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

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

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

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

24 **Official Comment**

25 * * *

26
27
28 3. **Non-U.S. Debtors.** Under the general rules of this section, a non-U.S. debtor often

1 would be located in a foreign jurisdiction and, as a consequence, foreign law would govern
2 perfection. When foreign law affords no public notice of security interests, the general rule
3 yields unacceptable results.
4

5 Accordingly, subsection (c) provides that the normal rules for determining the location of
6 a debtor (i.e., the rules in subsection (b)) apply only if they yield a location that is “a jurisdiction
7 whose law generally requires information concerning the existence of a nonpossessory security
8 interest to be made generally available in a filing, recording, or registration system as a condition
9 or result of the security interest’s obtaining priority over the rights of a lien creditor with respect
10 to the collateral.” The phrase “generally requires” is meant to include legal regimes that
11 generally require notice in a filing or recording system as a condition of perfecting nonpossessory
12 security interests, but which permit perfection by another method (e.g., control, automatic
13 perfection, temporary perfection) in limited circumstances. A jurisdiction that has adopted this
14 Article or an earlier version of this Article is such a jurisdiction. If the rules in subsection (b)
15 yield a jurisdiction whose law does not generally require notice in a filing or registration system
16 and none of the special rules in subsections (e), (f), (i), and (j) applies, the debtor is located in the
17 District of Columbia.
18

19 **Example 1:** Debtor is an English corporation with 7 offices in the United States
20 and its chief executive office in London, England. Debtor creates a security
21 interest in its accounts. Under subsection (b)(3), Debtor would be located in
22 England. However, subsection (c) provides that subsection (b) applies only if
23 English law generally conditions perfection on giving public notice in a filing,
24 recording, or registration system. Otherwise, Debtor is located in the District of
25 Columbia. Under Section 9-301(1), perfection, the effect of perfection, and
26 priority are governed by the law of the jurisdiction of the debtor’s location—here,
27 England or the District of Columbia (depending on the content of English law).
28

29 **Example 2:** Debtor is an English corporation with 7 offices in the United States
30 and its chief executive office in London, England. Debtor creates a security
31 interest in equipment located in London. Under subsection (b)(3) Debtor would
32 be located in England. However, subsection (c) provides that subsection (b)
33 applies only if English law generally conditions perfection on giving public notice
34 in a filing, recording, or registration system. Otherwise, Debtor is located in the
35 District of Columbia. Under Section 9-301(1), perfection is governed by the law
36 of the jurisdiction of the debtor’s location, whereas, under Section 9-301(3), the
37 law of the jurisdiction in which the collateral is located—here, England—governs
38 priority.
39

40 The foregoing discussion assumes that each transaction bears an appropriate relation to
41 the forum State. In the absence of an appropriate relation, the forum State’s entire UCC,
42 including the choice-of-law provisions in Article 9 (Sections 9-301 through 9-307), will not
43 apply. See Section 9-109, Comment 9.
44

45 **Reporter’s Note**

46

1 The proposed revision to the Comment clarifies that subsection (c) does not apply if one
2 of the special rules in subsections (e), (f), (i), and (j) applies.

3
4
5
6 *[No change from previous draft]*

7
8 **SECTION 9-307. LOCATION OF DEBTOR.**

9 * * *

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

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

16 (2) in the State that the registered organization, branch, or agency designates, if
17 the law of the United States authorizes the registered organization, branch, or agency to designate
18 its State of location; ~~or~~

19 (3) in the State in which the designated office of the registered organization,
20 branch, or agency is located, if the law of the United States authorizes the registered
21 organization, branch, or agency to designate its main office, home office, or other comparable
22 office; or

23 ~~(3)(4)~~ in the District of Columbia, if ~~neither paragraph (1) nor paragraph (2)~~
24 applies none of the preceding paragraphs applies.

25 * * *

26 **Official Comments**

27 **5. Registered Organizations Organized Under Law of United States; Branches and**
28

1 **Agencies of Banks Not Organized Under Law of United States.** Subsection (f) specifies the
2 location of a debtor that is a registered organization organized under the law of the United States.
3 It defers to the law of the United States, to the extent that that law determines, or authorizes the
4 debtor to determine, the debtor's location. Thus, if the law of the United States designates a
5 particular State as the debtor's location, that State is the debtor's location for purposes of this
6 Article's choice-of-law rules. Similarly, if the law of the United States authorizes the registered
7 organization to designate its State of location, the State that the registered organization
8 designates is the State in which it is located for purposes of this Article's choice-of-law rules.
9 The law of the United States authorizes certain registered organizations to designate a main
10 office, home office, or other comparable office. See, e.g., 12 U.S.C. Sections 22 and 1464(a); 12
11 C.F.R. Section 552.3. Where the registered organization designates an office pursuant to such an
12 authorization, the State in which the designated office is located is the location of the debtor for
13 purposes of Section 9-307(f). In other cases, the debtor is located in the District of Columbia.

14
15 ~~In some cases, the law of the United States authorizes the registered organization to~~
16 ~~designate a main office, home office, or other comparable office. See, e.g., 12 U.S.C. Sections 22~~
17 ~~and 1464(a); 12 C.F.R. Section 552.3. Designation of such an office constitutes the designation~~
18 ~~of the State of location for purposes of Section 9-307 (f)(2).~~

19
20 Subsection (f) also specifies the location of a branch or agency in the United States of a
21 foreign bank that has one or more branches or agencies in the United States. The law of the
22 United States ~~authorized~~ authorizes a foreign bank (or, on behalf of the bank, a federal agency) to
23 designate a single home state for all of the foreign bank's branches and agencies in the United
24 States. See 12 U.S.C. Section 3103(c) and 12 C.F.R. Section 211.22. As authorized, the
25 designation constitutes the State of location for the branch or agency for purposes of Section 9-
26 307(f), unless all of a foreign bank's branches or agencies that are in the United States are
27 licensed in only one State, in which case the branches and agencies are located in that State. See
28 subsection (i).

29
30 In cases not governed by subsection (f) or (i), the location of a foreign bank is determined
31 by subsections (b) and (c).

32
33
34
35 *[Agenda Item XX.E.]*
36 *[New]*

37
38 **SECTION 9-518. CLAIM CONCERNING INACCURATE OR WRONGFULLY**
39 **FILED RECORD.**

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

41 A person may file in the filing office a ~~correction~~ statement of a claim with respect to a record
42 indexed there under the person's name if the person believes that the record is inaccurate or was

1 wrongfully filed.

2 **[Alternative A]**

3 (b) **[Sufficiency of ~~correction~~ statement under subsection (a).]** A ~~correction~~ statement
4 of a claim under subsection (a) must:

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

7 (2) indicate that it is a ~~correction~~ statement of a claim; and

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

11 **[Alternative B]**

12 (b) **[Sufficiency of ~~correction~~ statement under subsection (a).]** A ~~correction~~ statement
13 of a claim under subsection (a) must:

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

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

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

20 (2) indicate that it is a ~~correction~~ statement of a claim; and

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

1 **[End of Alternatives]**

2 (c) [Statement by secured party of record.] A person may file in the filing office a
3 statement of a claim with respect to a record filed there if the person is a secured party of record
4 with respect to the financing statement to which the record relates and believes that the person
5 who filed the record was not entitled to do so under Section 9-509(d).

6 **[Subsection (d)—Alternative A]**

7 (d) [Sufficiency of statement under subsection (c).] A statement of a claim under
8 subsection (c) must:

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

11 (2) indicate that it is a statement of a claim; and

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

14 **[Subsection (d)—Alternative B]**

15 (d) [Sufficiency of statement under subsection (c).] A statement of a claim under
16 subsection (c) must:

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

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

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

23 (2) indicate that it is a statement of a claim; and

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

3 **[End of Alternatives]**

4 (ε)(e) **[Record not affected by ~~correction~~ statement of claim.]** The filing of a
5 ~~correction~~ statement of a claim under this Section does not affect the effectiveness of an initial
6 financing statement or other filed record.

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

10
11
12 *[Agenda Item XX.F.]*
13 *[No draft]*

14
15
16 *[Agenda Item XX.G.]*
17 *[Official Comment changed from previous draft]*

18
19 **SECTION 9-509. PERSONS ENTITLED TO FILE A RECORD.**

20 (a) **[Person entitled to file record.]** A person may file an initial financing statement,
21 amendment that adds collateral covered by a financing statement, or amendment that adds a
22 debtor to a financing statement only if:

23 (1) the debtor authorizes the filing in an authenticated record or pursuant to
24 subsection (b) or (c); or

25 (2) the person holds an agricultural lien that has become effective at the time of
26 filing and the financing statement covers only collateral in which the person holds an agricultural
27 lien.

28 * * *

29 (d) **[Person entitled to file certain amendments.]** A person may file an amendment

1 other than an amendment that adds collateral covered by a financing statement or an amendment
2 that adds a debtor to a financing statement only if:

3 (1) the secured party of record authorizes the filing; or

4 (2) the amendment is a termination statement for a financing statement as to

5 which the secured party of record has failed to file or send a termination statement as required by
6 Section 9-513(a) or (c), the debtor authorizes the filing, and the termination statement indicates
7 that the debtor authorized it to be filed.

8 * * *

9 **Official Comment**

10 * * *

11
12
13 **6. Amendments; Termination Statements Authorized by Debtor.** Most amendments
14 may not be filed unless the secured party of record, as determined under Section 9-511,
15 authorizes the filing. See subsection (d)(1). However, under subsection (d)(2), the authorization
16 of the secured party of record is not required for the filing of a termination statement if the
17 secured party of record failed to send or file a termination statement as required by Section 9-
18 513, the debtor authorizes it to be filed, and the termination statement so indicates. Although a
19 person filing a record would be prudent to obtain and retain an authenticated record authorizing
20 the filing, an authorization under subsection (d) is effective even if it is not in an authenticated
21 record. Compare subsection (a)(1).

22 * * *

23
24
25 *[Agenda Item XX.H.]*
26 *[No change from previous draft]*
27

28 **SECTION 9-706. WHEN INITIAL FINANCING STATEMENT SUFFICES TO**
29 **CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.**

30 (a) **[Initial financing statement in lieu of continuation statement.]** The filing of an
31 initial financing statement in the office specified in Section 9-501 continues the effectiveness of a
32 financing statement filed before this [Act] takes effect if:

33 (1) the filing of an initial financing statement in that office would be effective to

1 perfect a security interest under this [Act];

2 (2) the pre-effective-date financing statement was filed in an office in another
3 State or another office in this State; and

4 (3) the initial financing statement satisfies subsection (c).

5 * * *

6 (c) [**Requirements for initial financing statement under subsection (a).**] To be
7 effective for purposes of subsection (a), an initial financing statement must:

8 (1) satisfy the requirements of Part 5 for an initial financing statement;

9 (2) identify the pre-effective-date financing statement by indicating the office in
10 which the financing statement was filed and providing the dates of filing and file numbers, if any,
11 of the financing statement and of the most recent continuation statement filed with respect to the
12 financing statement; and

13 (3) indicate that the pre-effective-date financing statement remains effective.

14 **Official Comment**

15 * * *

16
17
18 **2. Requirements of Initial Financing Statement Filed in Lieu of Continuation**
19 **Statement.** Subsection (c) sets forth the requirements for the initial financing statement under
20 subsection (a). These requirements are needed to inform searchers that the initial financing
21 statement operates to continue a financing statement filed elsewhere and to enable searchers to
22 locate and discover the attributes of the other financing statement. The notice-filing policy of
23 this Article applies to the initial financing statements described in this section. Accordingly, an
24 initial financing statement that substantially satisfies the requirements of subsection (c) is
25 effective, even if it has minor errors or omissions, unless the errors or omissions make the
26 financing statement seriously misleading. See Section 9-506.
27

28 A single initial financing statement may continue the effectiveness of more than one
29 financing statement filed before this Article's effective date. See Section 1-102(5)(a) (words in
30 the singular include the plural). If a financing statement has been filed in more than one office in
31 a given jurisdiction, as may be the case if the jurisdiction had adopted former Section 9-401(1),
32 third alternative, then an identification of the filing in the central filing office suffices for
33 purposes of subsection (c)(2). If under this Article the collateral is of a type different from its

1 type under former Article 9—as would be the case, e.g., with a right to payment of lottery
2 winnings (a “general intangible” under former Article 9 and an “account” under this Article),
3 then subsection (c) requires that the initial financing statement indicate the type under this
4 Article.

5
6
7 *[Agenda Item XX.I.]*
8 *[New]*
9

10 **SECTION 9-513A. TERMINATION OF WRONGFULLY FILED RECORD;**
11 **REINSTATEMENT.**

12 (a) [**“Government employee.”**] In this section, “government employee” means:

13 (1) an employee or elected or appointed official of this State, the United States, or
14 a governmental unit of this State or the United States; and

15 (2) a member of an authority, board, or commission established by this State, the
16 United States, or a governmental unit of this State or the United States.

17 (b) [**Application of this section.**] This section applies only with respect to a filed
18 financing statement that indicates all secured parties of record to be individuals, identifies as a
19 debtor an individual who was a government employee at or before the time the financing
20 statement was filed, and was filed by an individual not entitled to do so under Section 9-509(a).
21 If the financing statement indicates more than one debtor, the provisions of this section apply
22 only with respect to those debtors who are individuals and were government employees at or
23 before the time the financing statement was filed.

24 (c) [**Affidavit of wrongful filing.**] A government employee identified as a debtor in a
25 filed financing statement [to which this section applies] may file in the filing office a notarized
26 affidavit, made under oath or penalty of perjury, in the form prescribed by the [Secretary of
27 State], stating that the financing statement was filed by an individual not entitled to do so under
28 Section 9-509(a). The [Secretary of State] shall adopt and, upon request, make available to a

1 government employee a form of affidavit to be used under this subsection.

2 (d) **[Termination statement by filing office.]** If an affidavit is filed under subsection
3 (c), the filing office shall promptly file a termination statement with respect to the financing
4 statement. The termination statement must indicate that it was filed pursuant to this section.

5 (e) **[No fee charged or refunded.]** The filing office shall not charge a fee for the filing
6 of an affidavit under subsection (c) or a termination statement under subsection (d). The filing
7 office shall not return any fee paid for filing the financing statement to which the affidavit
8 relates, whether or not the financing statement is reinstated under subsection (h).

9 (f) **[Notice of termination statement.]** On the same day that a filing office files a
10 termination statement under subsection (d), it shall send to the secured party of record for the
11 financing statement a notice advising the secured party of record that the termination statement
12 has been filed. The notice shall be sent by certified mail, return receipt requested, to the address
13 provided for the secured party in the financing statement.

14 (g) **[Action for reinstatement.]** An individual who believes in good faith that the
15 individual was entitled to file the financing statement as to which a termination statement was
16 filed under subsection (d) may file an action to reinstate the financing statement. The exclusive
17 venue for an action shall be in the [circuit] court for the county where the filing office in which
18 the financing statement was filed is located or, if the government employee resides in this State,
19 the county where the government employee resides. The action shall have priority on the court's
20 calendar and shall proceed by expedited hearing.

21 (h) **[Action for reinstatement successful.]** If, in an action under subsection (g), the
22 court determines that the financing statement should be reinstated, the secured party of record
23 may provide a copy of the court's judgment or order to the filing office. If the filing office

1 receives a copy within 30 days after the entry of the judgment or order, the filing office shall
2 promptly file a record that identifies by its file number the initial financing statement to which
3 the record relates and indicates that the financing statement has been reinstated.

4 (i) **[Effect of reinstatement.]** Except as otherwise provided in subsection (j), upon the
5 filing of a record reinstating a financing statement under subsection (h), the effectiveness of the
6 financing statement is retroactively reinstated and the financing statement shall be considered
7 never to have been ineffective as against all persons and for all purposes. If the effectiveness of a
8 financing statement that is reinstated would have lapsed between the time of the filing of the
9 termination statement and the time of the filing of the record reinstating the financing statement,
10 the secured party of record may file a continuation statement not later than 30 days after the time
11 of the filing of the record reinstating the financing statement. Upon the timely filing of a
12 continuation statement, the effectiveness of the financing statement continues for a period of five
13 years commencing on the day on which the financing statement would have become ineffective
14 had no termination statement been filed by the filing office.

15 (j) **[Exception to subsection (i).]** A financing statement whose effectiveness is
16 reinstated shall not be effective as against a person that purchased the collateral in good faith and
17 for value between the time of the filing of the termination of the financing statement and the time
18 of the filing of the record reinstating the financing statement.

19 (k) **[Liability for wrongful filing.]** If, in an action under subsection (g), the court
20 determines that the individual who filed the financing statement was not entitled to do so under
21 Section 9-509(a), the government employee may recover from the individual the costs and
22 expenses, including reasonable attorneys' fees, that the government employee incurred in the
23 action. [This recovery is in addition to any recovery to which the government employee is

1 entitled under Section 9-625.]

2 **Reporter’s Note**

3 This section responds to those who think it desirable to provide an administrative remedy
4 to deal with “bogus” financing statements. To preserve the integrity of the filing system, it is
5 available only under specified circumstances, provides a right of action to an aggrieved secured
6 party of record, and protects good faith purchasers for value.
7

8 If the Joint Review Committee adopts this approach, it may wish to consider whether an
9 amendment to Section 9-510(a) would be necessary. Section 9-510 provides that a filed record is
10 effective only to the extent that it was filed by a person that may file it under Section 9-509.
11 Section 9-509 does not include records that would authorized to be filed by the Secretary of State
12 under this Section.
13

14
15 *[Agenda Item XX.J.]*

16 *[Text and Reporter’s Note revised from previous draft]*

17
18 *[Section 9-503—Alternative A]*
19

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

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

23 (1) if the debtor is a registered organization, only if the financing statement
24 provides the name of the debtor indicated on the public record of the debtor’s jurisdiction of
25 organization which shows the debtor to have been organized;

26 (2) if the debtor is a decedent’s estate, only if the financing statement provides the
27 name of the decedent and indicates that the debtor is an estate;

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

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

1 (B) indicates, in the debtor's name or otherwise, that the debtor is a trust or
2 is a trustee acting with respect to property held in trust; ~~and~~

3 (4) if the debtor is an individual to whom this State has issued a [driver's license]
4 or [identification card] that, at the time the financing statement is filed, has not expired or [been
5 cancelled], only if it provides the name of the individual which is indicated on the [driver's
6 license] or [identification card]; and

7 ~~(4)~~(5) in other cases:

8 (A) if the debtor has a name, only if it provides the individual or
9 organizational name of the debtor; and

10 (B) if the debtor does not have a name, only if it provides the names of the
11 partners, members, associates, or other persons comprising the debtor.

12 * * *

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

16
17 *[Section 9-503—Alternative B]*

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

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

21 * * *

22 (4) in other cases:

23 (A) except as provided in subsection (g), if the debtor has a name, only if it

1 provides the individual or organizational name of the debtor; and

2 (B) if the debtor does not have a name, only if it provides the names of the
3 partners, members, associates, or other persons comprising the debtor.

4 * * *

5 (g) [Exception for individual debtor's name.] Subject to subsection (h), a financing
6 statement that does not provide the individual name of the debtor nevertheless sufficiently
7 provides the name of a debtor who is an individual if:

8 (1) it provides the name of the individual which is indicated on a [driver's license]
9 or [identification card] that, at the time the financing statement is filed, has been issued to the
10 individual by this State and has not yet expired or [been cancelled]; and

11 (2) the filing office indexes the financing statement in such a manner that a search
12 of the records of the filing office under the name indicated, using the filing office's standard
13 search logic, if any, would disclose the financing statement.

14 (h) [Multiple licenses or cards.] If this State has issued to an individual more than one
15 [driver's license] or [identification card] of a kind described in subsection (g)(1), the one that was
16 issued most recently is the one to which the subsection refers.

17 *[End of Alternatives]*

18
19 **SECTION 9-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF**
20 **FINANCING STATEMENT.**

21 * * *

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

1 financing statement is filed, the information provided in the financing statement becomes
2 seriously misleading under Section 9-506.

3 (c) **[Change in debtor's name.]** If a debtor so changes its name that a filed financing
4 statement becomes seriously misleading under Section 9-506:

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

7 (2) the financing statement is not effective to perfect a security interest in
8 collateral acquired by the debtor more than four months after the change, unless an amendment to
9 the financing statement which renders the financing statement not seriously misleading is filed
10 within four months after the change.

11 (d) **[Name sufficient only under Section 9-503(g).]** If, after the filing of a financing
12 statement that provides a name that is sufficient [Alternative A: under Section 9-503(a)(4),]
13 [Alternative B: only under Section 9-503(g),] this State issues to the debtor a [driver's license]
14 or [identification card] that indicates a name different from the name provided, the debtor
15 changes his or her name for purposes of subsection (c).

16
17 *[The following accompanies Section 9-503, Alternative B]*

18 **SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.**

19 (a) **[Minor errors and omissions.]** A financing statement substantially satisfying the
20 requirements of this part is effective, even if it has minor errors or omissions, unless the errors or
21 omissions make the financing statement seriously misleading.

22 (b) **[Financing statement seriously misleading.]** Except as otherwise provided in
23 subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in

1 accordance with Section 9-503(a) or (g) is seriously misleading.

2 (c) **[Financing statement not seriously misleading.]** If a search of the records of the
3 filing office under the debtor’s correct name, using the filing office’s standard search logic, if
4 any, would disclose a financing statement that fails sufficiently to provide the name of the debtor
5 in accordance with Section 9-503(a) or (g), the name provided does not make the financing
6 statement seriously misleading.

7 (d) **[“Debtor’s correct name.”]** For purposes of Section 9-508(b), the “debtor’s correct
8 name” in subsection (c) means the correct name of the new debtor.

9 (e) **[Individual “debtor’s correct name.”]** If a debtor who is an individual changes his
10 or her name by virtue of Section 9-507(d), the “debtor’s correct name” in subsection (c) means
11 the name of the debtor indicated on the [driver’s license] or [identification card] that indicates a
12 name different from the name provided on the financing statement.

13 **Reporter’s Note**

14
15 1. This draft presents alternative approaches to giving effectiveness to a financing
16 statement that provides the name of an individual debtor which appears on the debtor’s driver’s
17 license or identification card. Under both Alternatives for Section 9-503, the name appearing on
18 the debtor’s driver’s license or identification card would be sufficient as the name of the debtor
19 on a financing statement. Under Alternative A, if the debtor has a current driver’s license or
20 identification card issued by the State in which the debtor is located, a financing statement
21 providing another name—even if it is the debtor’s actual name—would not be sufficient unless a
22 search of the records of the filing office under the name indicated on the license or card, using
23 the filing office’s standard search logic, if any, would disclose the financing statement. See
24 Section 9-506(c). Under Alternative B, a financing statement providing the name on the debtor’s
25 debtor’s driver’s license or identification card would be sufficient; however, a financing
26 statement that provides the debtor’s actual name would also be sufficient, even if that name does
27 not appear on the license or card. A new subsection (g) (Alternative A) or (h) (Alternative B)
28 would cover the case where the State has issued more than one qualifying license or
29 identification card to the same debtor.

30
31 2. Different States use different terms for the driver’s licenses and identification cards
32 they issue. Accordingly, the words “driver’s license” and “identification card” appear in
33 brackets. If the Joint Review Committee finds one of the Alternatives appropriate, a Legislative
34 Note should be added to explain the brackets.

1 3. The phrase “or [been cancelled]” in Section 9-503 is a placeholder. The Joint Review
2 Committee should consider what events, other than expiration of a license or ID card, should
3 result in the document’s no longer providing a sufficient name for the debtor. Possibilities
4 include the State’s confiscation of the document, the State’s taking action that makes clear on the
5 face of the document that the document no longer is in effect, and the State’s cancellation of the
6 document (which event may or may not be evidenced on the license). Inasmuch as different
7 States may use different terms for these events, bracketed language together with a Legislative
8 Note may be appropriate.
9

10 4. To satisfy Section 9-503(a)(4) (Alternative A) or 9-503(g) (Alternative B), the name
11 provided on the financing statement must be the same as the name indicated on the license. For
12 example, a filing against “Joseph A. Jones” or “Joseph Jones” would not satisfy either of those
13 sections if Jones’s driver’s license shows his name to be “Joseph Allan Jones.” Determining
14 whether the name provided on the financing statement is the same as the name indicated on the
15 license must not be done mindlessly. For example, the order in which the components of an
16 individual’s name appear on a driver’s license differs among the States. Some States, such as
17 Illinois, put the individual’s “last name” (as the term is used on the financing statement form in
18 Section 9-521) last, e.g., “Joseph Allan Jones.” But even where the driver’s license puts the
19 individual’s “last name” first, the driver’s license may indicate that the name appearing first is
20 the debtor’s “last name” for the purpose of the financing statement. This would be the case, for
21 example, with a driver’s license on which the debtor’s name appears as “Jones, Joseph Allan.”
22

23 It may be the case that the filing office is unable to input the exact name indicated on the
24 license, perhaps because the name includes characters that are not included in the filing office’s
25 character set (e.g., ñ) or because it has too many characters for the filing office’s name field to
26 accommodate. Likewise, it may be that the filing office does not allow a search to be conducted
27 under the name indicated on the license. If the Joint Review Committee prefers Alternative A, it
28 should consider whether special rules would be advisable to address these and similar
29 circumstances and, if so, what the content of the rules should be.
30

31 Alternative B addresses this issue. If the filing office is unable to input the exact name
32 indicated on the license, the name on the license would be insufficient under Section 9-503(g)
33 (Alternative B) unless the financing statement would be disclosed by a search under the name
34 indicated on the license, using the filing office’s standard search logic. Likewise, if the filing
35 office does not allow a search to be conducted under the name indicated on the license, a
36 financing statement providing that name would be insufficient under Section 9-503(g), even if
37 the filing office can and does input the exact name provided.
38

39 5. The draft refers to a license or ID card issued by “this State.” Perfection of a security
40 interest by filing is determined by the law of the jurisdiction in which the debtor is located. See
41 Section 9-301(1). A debtor who is an individual is located at the individual’s principal residence.
42 Thus, a given State’s Section 9-503 will apply during any period when the debtor maintains his
43 principal residence in that State. Consider the following example:
44

45 Debtor, who resides in Illinois, grants a security interest to SP in certain business
46 equipment. SP files a financing statement with the Illinois filing office. The financing

1 statement provides the name appearing on Debtor’s Illinois driver’s license (“Joseph
2 Allan Jones”). Illinois’ Section 9-503(a)(4) (Alternative A) or 9-503(g) (Alternative B)
3 would make this filing sufficient to satisfy subsection (a)(4), even though Debtor’s
4 correct middle name is Alan, not Allan. As long as Illinois remains Debtor’s principal
5 residence, Debtor’s acquisition of a driver’s license or ID card from another State would
6 not affect the effectiveness of the Illinois filing.
7

8 6. Where the debtor relocates by changing his principal residence, perfection will be
9 governed by the law of the debtor’s new location. As a consequence of the application of that
10 State’s Section 9-316, a security interest that is perfected by filing under the law of the debtor’s
11 former location will remain perfected for four months after the relocation, and thereafter if the
12 secured party perfects under the law of the debtor’s new location. Consider the following
13 example:
14

15 Debtor, who resides in Illinois, grants a security interest to SP in certain business
16 equipment. SP files a financing statement in Illinois that provides a name that is
17 sufficient under Illinois’ Section 9-503(a)(4) (Alternative A) or 9-503(g) (Alternative B).
18 On January 1, Debtor relocates to Indiana. Upon the relocation, the governing law
19 changes from the law of Illinois to the law of Indiana. However, under Indiana’s Section
20 9-316, a security interest perfected by the Illinois filing remains perfected for four
21 months, i.e., through the end of April. If SP does not file in Indiana before the four-
22 month period expires, then the security interest will become unperfected and will be
23 deemed never to have been perfected as against a purchaser of the collateral for value.
24 See Indiana’s Section 9-316(b).
25

26 In the example, the name on Debtor’s Illinois driver’s license would be irrelevant for
27 purposes of Indiana’s Section 9-503(a)(4) (Alternative A) or 9-503(g) (Alternative B), inasmuch
28 as it was not issued by “this State,” i.e., Indiana. Of course, a financing statement providing that
29 name might be effective under Section 9-506 (i.e., it might not be seriously misleading) and,
30 under Alternative B, it might satisfy Indiana’s Section 9-503(a)(4) (i.e., it might be the individual
31 name of the debtor).
32

33 7. Under Alternative B, a financing statement satisfying Section 9-503(g) would have the
34 same priority as it would have had, had it provided the individual name of the debtor under
35 Section 9-503(a).
36

37 8. The rule in Section 9-503(g) (Alternative B) has been drafted as an exception to the
38 rule in Section 9-503(a)(4). The Joint Review Committee may wish to consider whether the rule
39 should appear instead as an alternative.
40

41 9. After the filing of a financing statement satisfying Section 9-503(a)(4) (Alternative A)
42 or 9-503(g) (Alternative B), the issuing State may issue a duplicate, substitute, or additional
43 license or ID card to the debtor. Where the name on the new document differs from that
44 provided by the financing statement, the issuance of the new document would be constitute a
45 change of the debtor’s name. See new Section 9-507(d). The effect of a name change under
46 Section 9-507(d) would be the same as if the debtor actually changed names.

1 10. If the debtor is a trust whose organic documents do not specify a name for the trust,
2 Section 9-503(a)(3) requires a financing statement to provide the name of an individual as debtor.
3 If the draft’s “driver’s license/identification card” approach is acceptable, the Joint Review
4 Committee should consider whether the same approach should be taken with respect to the name
5 of an individual shown as debtor under Section 9-503(a)(3). Any such expansion would likely
6 require additional changes to the filing provisions.
7

8 Regardless of the approach it decides to take towards specifying the name of an
9 individual debtor, the Joint Review Committee may wish to consider whether to clarify that,
10 where the debtor is not an individual but the financing statement must provide the name of an
11 individual as debtor, the financing statement must provide the name in the field designated for
12 the name of an individual debtor.
13

14 11. Adoption of the provisions under discussion would change current law. A financing
15 statement that is effective under only under Section 9-503(a)(4) as amended (Alternative A) or
16 Section 9-503(g) (Alternative B) and is filed before the section’s effective date should take effect
17 on the effective date, which would be the “time of filing” for purposes of Section 9-322(a)(1).
18 Additional text will be necessary for implementation.