

DRAFT
FOR DISCUSSION ONLY

AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

Draft for March 26-28, 2010, Drafting Committee Meeting

Amendments Shown in Strike and Score

With Reporter's Prefatory Note and Comments

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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March 17, 2010

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1 11. The provisions governing the name of a debtor with respect to property held in trust
2 (§ 9-503) have been revised:

3
4 12. The provisions governing the name of a debtor with respect to property held in a
5 decedent's estate (§ 9-503) have been revised.

6
7 13. The provisions explaining which public organic record states the name of a
8 registered organization (§ 9-503) have been modified.

9
10 14. A new Comment 5 has been added to § 9-512 to address issues arising from the
11 conversion of an entity from one form to another.

12
13 15. The requirements for the affidavit of a debtor who initiates a termination statement
14 under § 9-513A now require the affiant to state that he was a governmental employee.

15
16 16. § 9-518 and Comment 2 (concerning the "information statement") have been revised
17 and a conforming change has made to § 9-516.

18
19 17. Comment 10 to § 9-611 has been revised to flag considerations in determining the
20 relationship of other law to the notification requirements of Article 9, part 5.

21
22 18. An erroneous cross-reference in § 9-616, Comment 2, has been corrected.

23
24 19. Transition provisions have been added as Part 8. These have been marked to show
25 changes from the transition provisions in Part 7.

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

2
3 **PART ONE**

4
5 **AMENDMENTS TO THE OFFICIAL TEXT AND RELATED COMMENTS**

6
7 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

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

9 * * *

10 (7) “Authenticate” means:

11 (A) to sign; or

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

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

14 ~~identify the person and adopt or accept a record~~ with present intent to adopt or accept a record, to

15 attach to or logically associate with the record an electronic sound, symbol, or process.

16 **Reporter’s Note**

17
18 The revised definition of “authenticate” derives from the definitions of “sign” in Revised
19 Articles 1 and 7.

20
21
22 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

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

24 * * *

25 (10) “Certificate of title” means a certificate of title with respect to which a

26 statute provides for the security interest in question to be indicated on the certificate as a

27 condition or result of the security interest’s obtaining priority over the rights of a lien creditor

28 with respect to the collateral. The term includes another record maintained by the governmental

29 unit that issues certificates of title as an alternative to issuing a certificate for the collateral if a

30 statute permits the security interest in question to be indicated on the record as a condition or

1 result of the security interest’s obtaining priority over the rights of a lien creditor with respect to
2 the collateral.

3 * * *

4 * * *

5 **Official Comment**

6 * * *

7
8
9 **11. Choice-of-Law-Related Definitions: “Certificate of Title”; “Governmental**
10 **Unit”; “Jurisdiction of Organization”; “Registered Organization”; “State.”** These new
11 definitions reflect the changes in the law governing perfection and priority of security interests
12 and agricultural liens provided in Part 3, Subpart 1.

13
14 Statutes often require applicants for a certificate of title to identify all security interests
15 on the application and require the issuing agency to indicate the identified security interests on
16 the certificate. Some of these statutes provide that priority over the rights of a lien creditor (i.e.,
17 perfection of a security interest) in goods covered by the certificate occurs upon indication of the
18 security interest on the certificate; that is, they provide for the indication of the security interest
19 on the certificate as a “condition” of perfection. Other statutes contemplate that perfection is
20 achieved upon the occurrence of another act, e.g., delivery of the application to the issuing
21 agency, that “results” in the indication of the security interest on the certificate. A certificate
22 governed by either type of statute can qualify as a “certificate of title” under this Article. The
23 statute need not expressly state the connection between the indication and perfection. For
24 example, a certificate issued pursuant to a statute that requires applications to identify security
25 interests, requires the issuing agency to indicate the identified security interests on the
26 certificate, but is silent concerning the legal consequences of the indication would be a
27 “certificate of title” if, under a judicial interpretation of the statute, perfection of a security
28 interest is a legal consequence of the indication.

29
30 The first sentence of the definition of “certificate of title” includes both tangible and
31 electronic records. If a state’s certificate-of-title statute provides for the issuance of both a
32 tangible and electronic record, the records taken together constitute a “certificate of title.”

33
34 In many states, a certificate of title covering goods that are encumbered by a security
35 interest is delivered to the secured party by the issuing authority. To eliminate the need for the
36 issuance of a paper certificate under these circumstances, several states have revised their
37 certificate-of-title statutes to permit or require a state agency to maintain an electronic record
38 that evidences ownership of the goods and in which a security interest in the goods may be
39 noted. Such a record is a “certificate of title” if it is in fact maintained as an alternative to the
40 issuance of a paper certificate of title, regardless of whether the certificate-of-title statute
41 provides that the record is a certificate of title and even if the statute does not expressly state that
42 the record is maintained instead of issuing a paper certificate.

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

4 (3) the secured party becomes the bank’s customer with respect to the deposit
5 account; or

6 (4) a person, other than the bank, having previously acquired control of the
7 deposit account, [acknowledges] [authenticates a record acknowledging] that it has control on
8 behalf of the secured party.

9 * * *

10 **Official Comment**

11 * * *

12
13
14 **3. Requirements for “Control.”** This section derives from Section 8-106 of Revised
15 Article 8, which defines “control” of securities and certain other investment property. Under
16 subsection (a)(1), the bank with which the deposit account is maintained has control. The effect
17 of this provision is to afford the bank automatic perfection. No other form of public notice is
18 necessary; all actual and potential creditors of the debtor are always on notice that the bank with
19 which the debtor’s deposit account is maintained may assert a claim against the deposit account.

20
21 **Example:** D maintains a deposit account with Bank A. To secure a loan from Banks X,
22 Y, and Z, D creates a security interest in the deposit account in favor of Bank A, as agent
23 for Banks X, Y, and Z. Because Bank A is a “secured party” as defined in Section 9-102,
24 the security interest is perfected by control under subsection (a)(1).

25
26 Under subsection (a)(2), a secured party may obtain control by obtaining the bank’s
27 authenticated agreement that it will comply with the secured party’s instructions without further
28 consent by the debtor. The analogous provision in Section 8-106 does not require that the
29 agreement be authenticated. An agreement to comply with the secured party’s instructions
30 suffices for “control” of a deposit account under this section even if the bank’s agreement is
31 subject to specified conditions, e.g., that the secured party’s instructions are accompanied by a
32 certification that the debtor is in default. (Of course, if the condition is the *debtor’s* further
33 consent, the statute explicitly provides that the agreement would *not* confer control.) See revised
34 Section 8-106, Comment 7.

35
36 Under subsection (a)(3), a secured party may obtain control by becoming the bank’s
37 “customer,” as defined in Section 4-104. As the customer, the secured party would enjoy the
38 right (but not necessarily the exclusive right) to withdraw funds from, or close, the deposit

1 account. See Sections 4-401(a), 4-403(a).

2
3 Subsection (a)(4) enables a secured party to obtain control through the acknowledgment
4 of another secured party that has control. This subsection differs from the analogous provision
5 in Section 8-106 in two ways. First, it does not expressly provide that a secured party may
6 obtain control of a deposit account if another person has control on its behalf. This result
7 follows from the law of agency, which applies generally to Article 9. See Section 1-103.
8 Second, control does not arise under subsection (a)(4) if the acknowledging secured party is the
9 bank with which the deposit account is maintained. This limitation, which is inherent in Section
10 8-106, follows from the fact that the key to the control concept is that the secured party has the
11 ability to reach the collateral (here, the funds on deposit) without further action by the debtor. A
12 secured party may lack the ability to reach the funds on deposit without further action by the
13 debtor, even if the bank with which the deposit account is maintained, and which has control
14 under Section 9-104, acknowledges that it has control on behalf of the secured party.

15 * * *

16 17 18 **Reporter's Note**

19
20 Draft subsection (a)(4) derives from Section 8-106(d)(3), which provides that a purchaser
21 has control of a security entitlement if “another person [i] has control of the security entitlement
22 on behalf of the purchaser or, [ii] having previously acquired control of the security entitlement,
23 acknowledges that it has control on behalf of the purchaser.” Clause [i] appears to express the
24 idea that a purchaser (secured party) may have control through an agent. Clause [ii] is meant to
25 cover cases in which a secured party may have control through another person who has control
26 but is not the secured party’s agent.

27
28 A literal reading of clause [ii] may prove problematic. As Section 8-106, Comment 7
29 explains, “The key to the control concept is that the purchaser has the ability to have the
30 securities sold or transferred without further action by the transferor.” Consider the case under
31 clause [ii] where D creates a security interest in favor of SP and the securities intermediary with
32 which the security entitlement is maintained and which has control under Section 8-106
33 acknowledges that it has control on behalf of SP. Unless the securities intermediary’s
34 acknowledgment imposes duties on the intermediary, SP may lack the ability to have the
35 securities transferred without further action by D.

36
37 Draft subsection (a)(4) would address the problem in the context of deposit accounts by
38 limiting clause [ii] to acknowledging persons other than the bank with which the deposit account
39 is maintained. An Official Comment would explain that Section 8-106(d)(3) should be limited
40 in an analogous way. In addition, subsection (a)(4) would delete clause [i].

41
42 Unlike the analogous provision in Section 8-106, subsection (a)(2) requires that a
43 “control agreement” be contained in an authenticated record. The Joint Review Committee may
44 wish to impose a similar requirement with respect to the acknowledgment in subsection (a)(4).

45 46 47 **SECTION 9-327. PRIORITY OF SECURITY INTERESTS IN DEPOSIT**

1 **ACCOUNT.** The following rules govern priority among conflicting security interests in the
2 same deposit account:

3 (1) A security interest held by a secured party having control of the deposit account
4 under Section 9-104 has priority over a conflicting security interest held by a secured party that
5 does not have control.

6 (2) Except as otherwise provided in paragraphs (3) and (4), security interests perfected
7 by control under Section 9-314 rank according to priority in time of obtaining control. For
8 purposes of this paragraph, if a secured party obtained control through another person under
9 Section 9-104(a)(4), the time of obtaining control is the time the other person obtained control.

10 (3) Except as otherwise provided in paragraph (4), a security interest held by the bank
11 with which the deposit account is maintained has priority over a conflicting security interest held
12 by another secured party.

13 (4) A security interest perfected by control under Section 9-104(a)(3) has priority over a
14 security interest held by the bank with which the deposit account is maintained.

15 **Reporter's Note**

16
17 The amendment to Section 9-327(2) explains when a secured party that has control under
18 new Section 9-104(a)(4) obtains control for purposes of the first-to-obtain-control priority rule.
19

20 21 **SECTION 9-607. COLLECTION AND ENFORCEMENT BY SECURED PARTY.**

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

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

27 (2) a secured party may take any proceeds to which the secured party is entitled

1 under Section 9-315;

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

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

10 (5) ~~if it~~ a secured party that holds a security interest in a deposit account perfected
11 by control under Section 9-104(a)(2) or (3); may instruct the bank to pay the balance of the
12 deposit account to or for the benefit of the secured party; and

13 (6) if a secured party holds a security interest in a deposit account perfected by
14 control under Section 9-104(a)(4), the person that acknowledges that it has control on behalf of
15 the secured party may take the action specified in subsection(a)(5).

16 * * *

17 Official Comment

18 * * *

19
20
21 **7. Deposit Account Collateral.** Subsections (a)(4), ~~and (5), and (6)~~ set forth the
22 self-help remedy for a secured party whose collateral is a deposit account. Subsection (a)(4)
23 addresses the rights of a secured party that is the bank with which the deposit account is
24 maintained. That secured party automatically has control of the deposit account under Section
25 9-104(a)(1). After default, and otherwise if so agreed, the bank/secured party may apply the
26 funds on deposit to the secured obligation.

27
28 If a security interest of a third party is perfected by control under (Section
29 9-104(a)(2) or (a)(3)), then after default, and otherwise if so agreed, the secured party may
30 instruct the bank to pay out the funds in the account. If the third party has control under Section
31 9-104(a)(3), the depository institution is obliged to obey the instruction because the secured

1 party is its customer. See Section 4-401. If the third party has control under Section
2 9-104(a)(2), the control agreement determines the depository institution's obligation to obey.

3
4 If a security interest of a third party is perfected through the control of another
5 person under Section 9-104(a)(6), then after default, and otherwise if so agreed, the person
6 having control may instruct the bank to pay out the funds in the account.
7

8 If a security interest in a deposit account is unperfected, or is perfected by filing
9 by virtue of the proceeds rules of Section 9-315, the depository institution ordinarily owes no
10 obligation to obey the secured party's instructions. See Section 9-341. To reach the funds
11 without the debtor's cooperation, the secured party must use an available judicial procedure.
12

13 **Reporter's Note**

14
15 The amendment to 9-607(a) specifies the remedy of a secured party that has control
16 through the control of another secured party under new Section 9-104(a)(4) .
17

18 **SECTION 9-106. CONTROL OF INVESTMENT PROPERTY.**

19
20 * * *

21 (b) **[Control of commodity contract.]** A secured party has control of a commodity
22 contract if:

23 (1) the secured party is the commodity intermediary with which the commodity
24 contract is carried; ~~or~~

25 (2) the commodity customer, secured party, and commodity intermediary have
26 agreed that the commodity intermediary will apply any value distributed on account of the
27 commodity contract as directed by the secured party without further consent by the commodity
28 customer; or

29 (3) another person has control of the commodity contract on behalf of the secured
30 party, or, having previously acquired control of the commodity contract, acknowledges that it
31 has control on behalf of the secured party.

32 * * *

33 **SECTION 9-328. PRIORITY OF SECURITY INTERESTS IN INVESTMENT**

1 **PROPERTY.** The following rules govern priority among conflicting security interests in the
2 same investment property:

3 * * *

4 (2) Except as otherwise provided in paragraphs (3) and (4), conflicting security
5 interests held by secured parties each of which has control under Section 9-106 rank according to
6 priority in time of:

7 * * *

8 (C) if the collateral is a commodity contract carried with a commodity
9 intermediary, ~~the satisfaction of the requirement for control specified in Section 9-106(b)(2) with~~
10 ~~respect to commodity contracts carried or to be carried with the commodity intermediary and:~~

11 (i) if the secured party obtained control under Section 9-106(b)(2),
12 the commodity intermediary's agreement to apply any value distributed on account of the
13 commodity contract as directed by the secured party; or

14 (ii) if the secured party obtained control through another person
15 under Section 9-106(b)(3), the time on which priority would be based under this paragraph if the
16 other person were the secured party.

17 (3) A security interest held by a securities intermediary in a security entitlement
18 or a securities account maintained with the securities intermediary has priority over a conflicting
19 security interest held by another secured party.

20 (4) A security interest held by a commodity intermediary in a commodity
21 contract or a commodity account maintained with the commodity intermediary has priority over
22 a conflicting security interest held by another secured party.

23 * * *

24 **Reporter's Note**
25

1 New Section 9-106(a)(3) conforms “control” of a commodity contract to “control” of a
2 security entitlement in Section 8-106. The corresponding amendment to Section 9-328(2)(C)
3 explains when a secured party that has control under Section 9-106(a)(3) obtains control for
4 purposes of the first-in-time priority rule.
5

6
7 **SECTION 9-105. CONTROL OF ELECTRONIC CHATTEL PAPER.**

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

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

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

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

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

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

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

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

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Official Comment

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

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

3. **Development of Control Systems.** This Article leaves to the marketplace the development of systems and procedures, through a combination of suitable technologies and business practices, for dealing with control of electronic chattel paper in a commercial context. Systems that evolve for control of electronic chattel paper may or may not involve a third party custodian of the relevant records. As under UETA, a system must be shown to reliably establish that the secured party is the assignee of the chattel paper. Reliability is a high standard and encompasses the general principles of uniqueness, identifiability, and unalterability found in subsection (b) without setting forth strict guidelines as to how these principles must be achieved. However, the standards applied to determine whether a party is in control of electronic chattel paper should not be more stringent than the standards now applied to determine whether a party is in possession of tangible chattel paper. For example, just as a secured party does not lose possession of tangible chattel paper merely by virtue of the possibility that a person acting on its behalf could wrongfully redeliver the chattel paper to the debtor, so control of electronic chattel paper would not be defeated by the possibility that the secured party’s interest could be subverted by the wrongful conduct of a person (such as a custodian) acting on its behalf.

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

34. **“Authoritative Copy” of Electronic Chattel Paper.** One requirement for establishing control under subsection (b) is that a particular copy be an “authoritative copy.”

1 Although other copies may exist, they must be distinguished from the authoritative copy. This
2 may be achieved, for example, through the methods of authentication that are used or by
3 business practices involving the marking of any additional copies. When tangible chattel paper
4 is converted to electronic chattel paper, in order to establish that a copy of the electronic chattel
5 paper is the authoritative copy it may be necessary to show that the tangible chattel paper no
6 longer exists or has been permanently marked to indicate that it is not the authoritative copy.
7

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

28 ~~Systems that evolve for control of electronic chattel paper may or may not involve a third~~
29 ~~party custodian of the relevant records. However, this section and the concept of control of~~
30 ~~electronic chattel paper are not based on the same concepts as are control of deposit accounts~~
31 ~~(Section 9-104), security entitlements, a type of investment property (Section 9-106), and letter-~~
32 ~~of-credit rights (Section 9-107). The rules for control of that collateral are based on existing~~
33 ~~market practices and legal and regulatory regimes for institutions such as banks and securities~~
34 ~~intermediaries. Analogous practices for electronic chattel paper are developing nonetheless.~~
35 ~~The flexible approach adopted by this section, moreover, should not impede the development of~~
36 ~~these practices and, eventually, legal and regulatory regimes, which may become analogous to~~
37 ~~those for, e.g., investment property.~~
38

39 **Reporter's Note**

40
41 1. Subsection (a) is new. With its addition, satisfaction of the requirements currently
42 enumerated in Section 9-105 would become sufficient, but not necessary, to establish control.
43 Control may arise under the general standard (new subsection (a)) even if the specific
44 requirements are not satisfied.
45

46 Subsection (a) largely conforms to Section 7-106, which defines control of an electronic
47 document of title. However, two changes were necessary. First, in keeping with the general

1 usage in Article 9, Section 9-105 uses the term “assign” rather than “transfer.” Second, although
2 Section 7-106 (which is not limited to secured parties) expands the control concept to include not
3 only an assignee of an electronic document of title but also a person to which an electronic
4 document is originally issued, under Section 9-105 only an assignee electronic chattel paper can
5 have control of the chattel paper.

6
7 The amendments to paragraphs (4), (5), and (6) of subsection (b) are stylistic.

8
9 2. The change from current Section 9-105 to the revised Section *ipso facto* may result in
10 a secured party’s achieving control of electronic chattel paper. In these circumstances, control
11 would date from the effective date of the revision and would not relate back.

12
13
14 **SECTION 9-316. ~~CONTINUED PERFECTION OF SECURITY INTEREST~~**
15 **FOLLOWING EFFECT OF CHANGE IN GOVERNING LAW.**

16 * * *

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

20 (1) Subject to paragraph (3), a financing statement filed before the change
21 pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) is effective to
22 perfect a security interest in the collateral if the financing statement would have been effective to
23 perfect a security interest in the collateral if the debtor had not changed its location.

24 (2) Subject to paragraph (3), if a security interest that is perfected by a financing
25 statement that is effective under paragraph (1) becomes perfected under the law of the other
26 jurisdiction before the earlier of the time the financing statement would have become ineffective
27 under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) or the expiration of
28 the four-month period, it remains perfected thereafter. If the security interest does not become
29 perfected under the law of the other jurisdiction before the earlier time or event, it becomes
30 unperfected and is deemed never to have been perfected as against a purchaser of the collateral

1 for value.

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

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

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

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

15 * * *

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

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

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

23 (3) subject to subsection (h), the time of filing or perfection as to a security
24 interest in collateral which remains perfected under Section 9-316(h)(2) is the time the security

1 interest becomes perfected under the law of the other jurisdiction.

2 * * *

3 (h) [Limitation on subsection (b)(3).] Subsection (b)(3) does not affect the priority of
4 competing security interests, each of which remains perfected under Section 9-316(h)(2).

5 **Reporter's Note**

6
7 1. When a debtor changes its location, the law governing perfection generally changes
8 also. See Section 9-301(1). Current Section 9-316 addresses security interests that are perfected
9 (i.e., that have attached and as to which any required perfection step has been taken) before the
10 debtor changes its location. It does not apply to security interests that have not attached before
11 the debtor's location changes. Suppose, for example, that Debtor is an individual who resides in
12 Pennsylvania. Lender perfects a security interest in Debtor's inventory by filing in
13 Pennsylvania. Then, without Lender's knowledge, Debtor's principal residence is relocated to
14 New Jersey. Under Section 9-316, Lender's security interest in inventory on hand as of the
15 relocation date remains perfected for four months thereafter (or, if earlier, until perfection would
16 have ceased under Pennsylvania law). However, although Lender's security interest attaches to
17 inventory that Debtor acquires after relocating to New Jersey, the security interest is unperfected
18 because Lender has not filed in New Jersey.

19
20 New Section 9-316(h) would change the result. In the example, Lender's filing in
21 Pennsylvania would be effective to perfect a security interest in inventory acquired by Debtor
22 within the four months after Debtor relocates (assuming that the financing statement would not
23 have become ineffective earlier). The security interest will remain continuously perfected if,
24 before the expiration of the four-month period (and before the financing statement would have
25 become ineffective), the security interest is perfected under the law of New Jersey. Otherwise,
26 the security interest will become unperfected at the end of the four-month period (or, if earlier,
27 when perfection would have ceased) and will be deemed never to have been perfected as against
28 a purchaser for value.

29
30 2. Under current law, a competing secured party generally can rely on the public record
31 in New Jersey to determine its priority as to collateral acquired by Debtor post-relocation. This
32 is because a filing against Debtor in another state would be ineffective to perfect a security
33 interest in that collateral. Proposed Section 9-316(h) would make Lender's pre-relocation filing
34 in Pennsylvania effective against collateral acquired after the Debtor relocates to New Jersey.
35 Under the normal rule in Section 9-322(a)(1), the priority of Lender's security interest in that
36 collateral would date from the time a filing covering the collateral was first made in
37 Pennsylvania. Application of this rule in cases covered by proposed Section 9-316(h) would
38 impose a new risk on a competing secured party. Accordingly, new Section 9-322(b)(3) would
39 date Lender's priority from the time it became perfected under the law of the other jurisdiction
40 (New Jersey).

41
42 Proposed Section 9-322(b)(3) carries with it its own difficulties. Suppose, for example,
43 that both Lender and Bank file financing statements under Pennsylvania law while Debtor is

1 located in Pennsylvania. Lender files first. Debtor then relocates to New Jersey. Both Lender
2 and Bank file against Debtor in New Jersey within four-months after relocation, but Bank files
3 first. If Section 9-322(b)(3) were to apply, Bank’s security interest—previously junior—would
4 become senior. New Section 9-322(h) preserves Lender’s priority under these circumstances.
5

6 3. Standing alone, new Section 9-316(h)(1) would impose on buyers, lessees, and
7 licensees a risk that is analogous to the risk that the section would impose on secured parties that
8 take an interest in collateral acquired after the debtor’s relocation. Paragraph (h)(3) would
9 protect these purchasers.
10

11 4. Although new subsection (h) is likely to be most useful to creditors having a security
12 interest in inventory and receivables, it would apply to all kinds of collateral.
13

14 5. The addition of subsection (h) will require explanatory and other changes to the
15 official comments. The revised comments will also explain the application of this subsection to
16 entities that convert from one organizational form to another. They may also include a general
17 statement to the effect that, when used in this section, “another jurisdiction” and “the other
18 jurisdiction” mean the jurisdiction whose Section 9-316 is being applied.
19
20

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

23 * * *

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

28 (1) Subject to paragraph (3), the financing statement is effective to perfect a
29 security interest in collateral in which the new debtor has or acquires rights before or within four
30 months after the new debtor becomes bound under Section 9-203(d), if the financing statement
31 would have been effective to perfect a security interest in the collateral if it had been acquired by
32 the original debtor.

33 (2) Subject to paragraph (3), a security interest that is perfected by the financing
34 statement and which becomes perfected under the law of the other jurisdiction before the earlier

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

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

11 **Reporter's Note**

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

17
18 Consider the difficulty faced by Lender under the facts of official comment 5 to Section
19 9-316:

20
21 Debtor is a Pennsylvania corporation. Debtor grants to Lender a security interest in
22 Debtor's existing and after-acquired inventory. Lender perfects by filing in
23 Pennsylvania. Debtor's shareholders decide to "reincorporate" in Delaware. They form
24 a Delaware corporation (Newcorp) into which they merge Debtor. By virtue of the
25 merger, Newcorp becomes bound by Debtor's security agreement. See Section 9-203.
26 After the merger, Newcorp acquires inventory to which Lender's security interest
27 attaches. Because Newcorp is located in Delaware, Delaware law governs perfection of a
28 security interest in Newcorp's inventory. See Sections 9-301, 9-307.

29
30 Delaware's current Section 9-316(a) applies to the pre-merger collateral that was
31 transferred from Debtor to Newcorp, and in which Lender held a security interest perfected
32 under Pennsylvania law. Under this section, Lender's security interest in the transferred
33 collateral remains perfected for one year after the merger (assuming that perfection would not
34 have ceased earlier under Pennsylvania law). Because Lender's financing statement was filed in
35 Pennsylvania and not Delaware, current Section 9-316(a) would have no application to inventory
36 acquired by Newcorp, a Delaware corporation, after the merger. For the same reason, Lender's
37 security interest in Newcorp's post-merger inventory would be unperfected until Lender files

1 against Newcorp in Delaware.
2

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

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

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

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

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

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

42 4. Under current law, the security interest of a secured party in the position of Lender
43 would be unperfected, and a buyer, lessee, or licensee normally would take free of it under
44 Section 9-317. New subsection (i)(3) preserves this result.
45

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

1 financing statement was filed against Debtor. The first-to-file-or-perfect rule (Section 9-
2 322(a)(1)) would award priority to SP-D. However, it is subject to Section 9-326, which awards
3 priority to SP-S. Section 9-326 identifies the subordinated security interest as one that is
4 “perfected by a filed financing statement that is effective solely under Section 9-508.”
5

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

15 New subsection (i) would address this second problem by making SP-D’s Pennsylvania
16 filing effective with respect to inventory that Survivor had at the time of the merger and
17 inventory that Survivor acquired within four months after the merger. To insure that the first-to-
18 file-or-perfect rule subordinates a security interest like SP-D’s, Section 9-326 would be amended
19 to subordinate a security interest that is perfected by a financing statement that is “effective
20 solely under Section 9-508 or Sections 9-508 and 9-316(i)(1).”
21
22

23 SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY

24 INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.

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

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

32 * * *

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

35 (1) the time of filing or perfection as to a security interest in collateral is also the

1 time of filing or perfection as to a security interest in proceeds; ~~and~~

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

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

8 * * *

9 (h) [Limitation on subsection (b)(3).] Subsection (b)(3) does not affect the priority of
10 competing security interests, each of which remains perfected under Section 9-316(i)(2).

11 Reporter's Note

12 Consider this example:

13
14
15 SP-D holds a security interest in the existing and after-acquired inventory of Debtor, a
16 Pennsylvania corporation. In 2007 SP-D perfected its security interest by filing a
17 financing statement against Debtor in Pennsylvania. SP-S holds a security interest in the
18 existing and after-acquired inventory of Survivor, a Delaware corporation. In 2008 SP-S
19 perfected its security interest by filing a financing statement against Survivor in
20 Delaware. In 2009 Debtor merges into Survivor. Shortly after the merger, Survivor
21 acquires additional inventory.

22
23 SP-S's security interest would attach to the post-merger inventory and would be perfected by
24 SP-S's filing in Delaware. SP-D's security interest also would attach to the post-merger
25 inventory and, under new Section 9-316(i)(1), would be a perfected security interest until four
26 months after the merger. Because SP-D's security interest would be perfected by a financing
27 statement that is "effective solely under . . . Sections 9-508 and 9-316(i)(1)," Section 9-326(a)
28 would subordinate SP-D's security interest to SP-S's.

29
30 Now suppose that SP-D files an initial financing statement against Survivor in Delaware
31 before the expiration of the four-month period. Under new Section 9-316(i)(2), SP-D's security
32 interest in the inventory that Survivor acquired post-merger would remain perfected after the
33 period expires. SP-D's Delaware filing should not, however, elevate the priority of SP-D's
34 subordinate security interest. SP-S was the first to file against Survivor; Debtor never had an
35 interest in the collateral in question, which Survivor acquired independently of the merger. But
36 once SP-D files against Survivor in Delaware, SP-D's security interest in this collateral no
37 longer would be perfected by a financing statement that is "effective solely under . . . Sections 9-

1 508 and 9-316(i)” and so no longer would be covered by the subordination rule in Section 9-
2 326(a).

3
4 The amendments to Section 9-322(a) and (b) would preserve the subordination by dating
5 SP-D’s priority, for purposes of the first-to-file-or-perfect rule, from the time of its Delaware
6 filing. The amendments would relieve SP-S, which was the first secured party to file against
7 Survivor, from any need to check for subsequent filings by competing secured parties. (Note
8 that the amendments would not affect the rule in Section 9-325(a), which governs the priority of
9 security interests in inventory that Debtor transferred to Survivor in the merger.)
10

11
12 **SECTION 9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE**
13 **OF SECURITY INTEREST OR AGRICULTURAL LIEN.**

14 * * *

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

20 * * *

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

26 * * *

27 **Official Comment**

28 * * *

29
30
31 **6. Purchasers Other Than Secured Parties.**
32

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

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

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

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

16 * * *

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

20 (a) **[Term restricting assignment generally ineffective.]** Except as otherwise provided
21 in subsection (b), a term in a promissory note or in an agreement between an account debtor and
22 a debtor which relates to a health-care-insurance receivable or a general intangible, including a
23 contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent
24 of the person obligated on the promissory note or the account debtor to, the assignment or

1 transfer of, or creation, attachment, or perfection of a security interest in, the promissory note,
2 health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

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

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

8 (b) **[Applicability of subsection (a) to sales of certain rights to payment.]** Subsection
9 (a) applies to a security interest in a payment intangible or promissory note only if the security
10 interest arises out of a sale, other than a sale pursuant to a disposition under Section 9-610 or an
11 acceptance of collateral under Section 9-620, of the payment intangible or promissory note.

12 * * *

13 **Reporter's Note**

14
15 Section 9-406(a) contains a broad override of contractual restrictions on assignability of
16 receivables. Section 9-408(a) contains a similar, but narrower, override. The most significant
17 difference between the two concerns whether an assignee may enforce the assigned receivable
18 against the account debtor or other obligor, notwithstanding a provision in the underlying
19 contract that purports to prevent an assignee from doing so.

20
21 The draft addresses the allocation of transactions between the broader override in Section
22 9-406(a) and the narrower override in Section 9-408(a). The distinction is most likely to matter
23 where the collateral is the right to payment of a loan.

24
25 Under current law, if the right to payment of the loan is evidenced by chattel paper, then
26 a contractual restriction would not be effective to restrict the assignee's right to enforce against
27 the account debtor. If, however, the right to payment of the loan is evidenced by an instrument,
28 or is a payment intangible, then a contractual restriction would not be effective to restrict the
29 assignee's right to enforce against the account debtor if the assignment is made for collateral
30 purposes. If, however, the assignment is a sale of the payment intangible or promissory note,
31 then Section 9-408(a) applies and the assignee's right to enforce is limited by any contractual
32 restriction. Whether current Section 9-406 or 9-408 applies to a foreclosure sale of the
33 receivable by an assignee for collateral purposes is unclear. The proposed amendment would
34 clarify that Section 9-406 applies and that, therefore, a buyer at a foreclosure sale would be free
35 to enforce the account debtor's obligation.

1 Consider this example:
2

3 Lender makes a loan to Borrower. The loan is not evidenced by chattel paper. The loan
4 agreement (or note) provides that Lender's rights may not be assigned and, if Lender
5 wrongfully assigns the rights, an assignee may not enforce Borrower's obligation to pay.
6 Lender assigns the right to payment (i.e., the payment intangible or instrument) to
7 Assignee.
8

9 If the assignment to Assignee is a sale, then Section 9-408(a) applies and the contractual
10 restrictions are ineffective with respect to the creation, attachment, and perfection of
11 Assignee's security interest.
12

13 If the assignment to Assignee is for security, the restriction would not be effective if
14 Assignee itself sought to collect or if Assignee sold to a buyer at foreclosure (and,
15 presumably, if the foreclosure buyer resold). However, the restriction would be effective
16 against nonforeclosure buyers who did not take through a foreclosure buyer.
17

18 Section 9-406 is clear that a contractual restriction would not be effective to restrict the
19 assignee's right *qua* assignee to enforce the account debtor's obligation under Section 9-607.
20 The proposed amendment would eliminate any doubt that the restriction would not be effective
21 to restrict the assignee's right to enforce if the assignee became the owner of the payment
22 intangible or promissory note by accepting it in a "strict foreclosure" under Section 9-620.
23
24

25 **SECTION 9-513A. TERMINATION OF WRONGFULLY FILED RECORD;**

26 **REINSTATEMENT.**

27 (a) **["Government employee."]** In this section, "government employee" means:

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

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

32 (b) **[Application of this section.]** This section applies only with respect to a filed
33 financing statement that indicates all secured parties of record to be individuals, identifies as a
34 debtor an individual who was a government employee at or before the time the financing
35 statement was filed, and was filed by an individual not entitled to do so under Section 9-509(a).

36 If the financing statement indicates more than one debtor, the provisions of this section apply

1 only with respect to those debtors who are individuals and were government employees at or
2 before the time the financing statement was filed.

3 (c) [Affidavit of wrongful filing.] A government employee identified as a debtor in a
4 filed financing statement [to which this section applies] may file in the filing office a notarized
5 affidavit, made under oath or penalty of perjury, in the form prescribed by the [Secretary of
6 State], stating that the affiant is an individual who was a government employee at or before the
7 time the financing statement was filed and that the financing statement was filed by an individual
8 not entitled to do so under Section 9-509(a). The [Secretary of State] shall adopt and, upon
9 request, make available to a government employee a form of affidavit to be used under this
10 subsection.

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

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

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

23 (g) [Action for reinstatement.] An individual who believes in good faith that the
24 individual was entitled to file the financing statement as to which a termination statement was

1 filed under subsection (d) may file an action to reinstate the financing statement. The exclusive
2 venue for an action shall be in the [circuit] court for the county where the filing office in which
3 the financing statement was filed is located or, if the government employee resides in this State,
4 the county where the government employee resides. The action shall have priority on the court's
5 calendar and shall proceed by expedited hearing.

6 (h) [Action for reinstatement successful.] If, in an action under subsection (g), the
7 court determines that the financing statement should be reinstated, the secured party of record
8 may provide a copy of the court's judgment or order to the filing office. If the filing office
9 receives a copy within 30 days after the entry of the judgment or order, the filing office shall
10 promptly file a record that identifies by its file number the initial financing statement to which
11 the record relates and indicates that the financing statement has been reinstated.

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

23 (j) [Exception to subsection (i).] A financing statement whose effectiveness is
24 reinstated shall not be effective as against a person that purchased the collateral in good faith and

1 for value between the time of the filing of the termination of the financing statement and the time
2 of the filing of the record reinstating the financing statement.

3 (k) [Liability for wrongful filing.] If, in an action under subsection (g), the court
4 determines that the individual who filed the financing statement was not entitled to do so under
5 Section 9-509(a), the government employee may recover from the individual the costs and
6 expenses, including reasonable attorneys' fees, that the government employee incurred in the
7 action. [This recovery is in addition to any recovery to which the government employee is
8 entitled under Section 9-625.]

9 **Reporter's Note**

10 This section responds to those who think it desirable to provide an administrative remedy
11 to deal with "bogus" financing statements. To preserve the integrity of the filing system, it is
12 available only under specified circumstances, provides a right of action to an aggrieved secured
13 party of record, and protects good faith purchasers for value.
14

15 If the Joint Review Committee adopts this approach, it may wish to consider whether an
16 amendment to Section 9-510(a) would be necessary. Section 9-510 provides that a filed record
17 is effective only to the extent that it was filed by a person that may file it under Section 9-509.
18 Section 9-509 does not include records that would be authorized to be filed by the Secretary of
19 State under this Section.
20

21
22 **SECTION 9-515. DURATION AND EFFECTIVENESS OF FINANCING**
23 **STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT.**

24 * * *

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

30 * * *

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

4 * * *

5 **Reporter's Note**

6
7 The amendment conforms subsection (f) to subsection (b).
8
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 or enacted by the debtor's jurisdiction of organization~~which shows the~~
16 ~~debtor to have been organized;~~

17 * * *

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

21 (1) if the public organic record is composed of a single record that states the name
22 of the debtor, the name of the debtor which that record states to be the debtor's name; and

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, issued, or enacted record that purports to
25 amend or restate the debtor's name.

26 **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 (67A) “Public organic record” means:

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

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

16 (C) a record or records composed of legislation enacted by the legislature
17 of a State or the Congress of the United States which forms or organizes an organization, any
18 record amending the legislation, and any record filed with or issued by the State or United States
19 which states the name of the organization, if the record or records are available to the public for
20 inspection.

21 * * *

22 (70) “Registered organization” means an organization formed or organized solely
23 under the law of a single State or the United States and as to which the State or the United States
24 must maintain a public record showing the organization to have been organized by the filing of a

1 public organic record with, the issuance of a public organic record by, or the enactment of
2 legislation by the State or United States. The term includes a business trust that is formed or
3 organized under the law of a single State if a statute of the State governing business trusts
4 requires that the business trust’s organic record be filed with the State.

5 * * *

6
7 * * *

8
9 **Reporter’s Note**

10
11 1. The amendments to Section 9-503 and the related amendments to Sections 9-102 are
12 meant to designate more clearly the public record that is relevant to determining the name of a
13 debtor that is a registered organization. The relevant public record is always a “public organic
14 record.” In most cases, this will be a record that is “filed with a State or the United States.”
15 However, the term also includes a charter that is “issued by a State or the United States.” Any
16 other public record that the State creates, such as a certificate of good standing or an index of
17 domestic corporations, would not be a “public organic record” and so would be irrelevant to the
18 determination of the debtor’s name under Section 9-503(a)(1).
19

20 Section 9-503(f) covers cases where the public organic record may indicate more than
21 one name for the debtor. The name that must be provided in the financing statement is the name
22 that is indicated on the most recently filed public record that purports to state, amend, or restate
23 the debtor’s name. If that record indicates more than one name of the debtor, the name that must
24 be provided is the name that the record states to be the debtor’s name.
25

26 The references to the “public organic record” in Section 9-503(a) and “the most recently
27 filed or issued record” in Section 9-503(f) are not meant to refer to any randomly filed or issued
28 record. Rather, they are meant to refer to the public organic record filed or issued with respect to
29 the debtor and most recently filed or issued record that constitutes part of that public organic
30 record. The Joint Review Committee may wish to consider whether these phrases should be
31 amplified in the text.
32

33 2. The amendments to the definition of “registered organization” also are meant to
34 clarify that the term includes an organization that is created without the need for a public record
35 but that is “formed” only when a public filing has been made. For example, under Delaware
36 law, a statutory trust is “created by a governing instrument,” Del. Code Ann. tit. 12, §
37 3801(g)(1), but is “formed at the time of the filing of the initial certificate of trust in the office of
38 the Secretary of State or at any later date or time specified in the certificate of trust.” Del. Code
39 Ann. § 3810(a)(2).
40

41 3. Comments will explain that a certificate of good standing is not a “public organic
42 record” and that the definition can satisfied if a copy of the relevant record is available for public
43 inspection.

1 *[Alternative Approaches to Name of Individual Debtor]*

2
3 *[Alternative A: Name for Individual Debtor—“Only If” Approach]*

4
5 **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.**

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

8 * * *

9 (3) * * *

10 * * *

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

13 (4) subject to subsection (g), if the debtor is an individual to whom this State has
14 issued a [driver’s license] that appears not to have expired, only if it provides the name of the
15 individual which is indicated on the [driver’s license];

16 (5) if the debtor is an individual as to whom paragraph (4) does not apply, only if
17 it provides the individual name of the debtor or the surname and first personal name of the
18 debtor; and

19 ~~(4)~~(6) in other cases:

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

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

24 * * *

25 (g) [Multiple licenses or cards.] If this State has issued to an individual more than one
26 [driver’s license] or [identification card] of a kind described in the applicable subparagraph of

1 subsection (a)(4), the one that was issued most recently is the one to which the subparagraph
2 refers.

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

5 * * *

6 (c) **[Change in debtor’s name.]** If a name of a debtor which is sufficient under Section
7 9-503~~so~~ changes its name such that a filed financing statement becomes seriously misleading
8 under Section 9-506:

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

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

15 *[End of Alternative A—“Only If” Approach]*

16 **Reporter’s Note**

17
18 1. Under Alternative A, the name of an individual debtor which is sufficient for a
19 financing statement is the name that appears on the most recent unexpired driver’s license issued
20 to the debtor by the State in which the debtor maintains the principal residence. Because States
21 use different terms for the driver’s licenses they issue, the words “driver’s license” appear in
22 brackets.

23
24 The debtor’s name requirement for a debtor who does not hold an unexpired driver’s
25 license issued by the State of principal residence can be met in either of two ways. As under
26 existing law, a financing statement would be sufficient if it provides the “individual name of the
27 debtor.” Alternatively, the financing statement would be sufficient if it provides the debtor’s
28 surname and first personal name. The term “surname” refers to the family name. The term “first
29 personal name” refers to the first name other than the surname. The national form will be
30 changed to use these terms. In some cultures (e.g., China) the personal (or “given”) name
31 normally is presented after the surname. An Official Comment will give guidance for the use of
32 names that include both a matronymic and patronymic, e.g., Vicente Fox Quesada (the former

1 President of Mexico).

2
3 2. The draft refers to a license issued by “this State.” Perfection of a security interest by
4 filing is determined by the law of the jurisdiction in which the debtor is located. See Section 9-
5 301(1). A debtor who is an individual is located at the individual’s principal residence. Thus, a
6 given State’s Section 9-503 will apply during any period when the debtor maintains his principal
7 residence in that State. Consider the following example:

8
9 Debtor, who resides in Illinois, grants a security interest to SP in certain business
10 equipment. SP files a financing statement with the Illinois filing office. The financing
11 statement provides the name appearing on Debtor’s Illinois driver’s license (“Joseph
12 Allan Jones”). Illinois’ Section 9-503(a)(4) would make this filing sufficient, even
13 though Debtor’s correct middle name is Alan, not Allan. As long as Illinois remains
14 Debtor’s principal residence, Debtor’s acquisition of a driver’s license from another State
15 would not affect the effectiveness of the Illinois filing.

16
17 If the debtor relocates by changing his principal residence, perfection will be governed
18 by the law of the debtor’s new location. As a consequence of the application of that State’s
19 Section 9-316, a security interest that is perfected by filing under the law of the debtor’s former
20 location will remain perfected for four months after the relocation, and thereafter if the secured
21 party perfects under the law of the debtor’s new location. Consider the following example:

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

32
33 In the example, the name on Debtor’s Illinois driver’s license would be irrelevant for
34 purposes of Indiana’s Section 9-503(a)(4), inasmuch as it was not issued by “this State,” i.e.,
35 Indiana. Of course, a financing statement providing that name might be effective under Section
36 9-506 (i.e., it might not be seriously misleading) and, under Alternative B, it might satisfy
37 Indiana’s Section 9-503(a)(4) (e.g., it might be the individual name of the debtor).

38
39 3. Section 9-507(c) is designed to limit the search burden for secured parties. It
40 addresses cases where a filed financing statement provides a name that, at the time of filing,
41 satisfies the requirements of Section 9-503 but, at a later time, no longer does so. The existing
42 emphasis on the debtor’s behavior (“If a debtor so changes its name”) might lead a court to read
43 the statute, erroneously, as applying only to cases where the debtor actively changes his name
44 and not to cases where the debtor passively permits an event to occur that results in a change of
45 the debtor’s name for purposes of Article 9. Accordingly, a proposed amendment would change
46 the emphasis of the chapeau to Section 9-507(c) from the debtor’s having made a name change
47 (“If a debtor so changes its name”) to the fact that a name required for an effective financing

1 statement has changed (“If a name of a debtor . . . changes”). The reference to “a name” rather
2 than “the name” is meant to reflect the fact that, more than one name may satisfy the
3 requirements of Section 9-503 for a given individual.
4

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

18 5. Under draft Section 9-503(a)(4), if the debtor has a current (i.e., unexpired) driver’s
19 license, the debtor’s name would be the name on the license that was issued most recently. If the
20 debtor does not have a current driver’s license, the debtor’s name would be determined under
21 subsection (a)(5). It follows that a financing statement providing the name on the debtor’s
22 then-current driver’s license may become seriously misleading if the license expires before
23 renewal and the debtor’s name under subsection (a)(5) is different. Of course, even if the name
24 change were to cause the financing statement to become seriously misleading, adverse
25 consequences would follow only with respect to collateral that the debtor acquires more than
26 four months after the name change. Despite the name change, the financing statement would
27 remain effective with respect to collateral acquired by the debtor before the name change and
28 within four months thereafter. See § 9-507.
29

30 Even if the debtor’s name changes, the filed financing statement does not become
31 seriously misleading if it can be found by searching under the debtor’s “correct” name, using the
32 filing office’s standard search logic. Any name that satisfies the then-applicable subsection of
33 Section 9-503(a) is a “correct name” for these purposes.
34

35
36 *[Alternative B: Name for Individual Debtor— “Safe Harbor” Approach]*
37

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

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

41 * * *

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

1 (A) it provides the individual name of the debtor;

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

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

6 (45) in other cases:

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

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

11 * * *

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

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

17 * * *

18 (c) **[Change in debtor's name.]** If a name of a debtor which is sufficient under Section
19 9-503~~so~~ changes its name such that a filed financing statement becomes seriously misleading
20 under Section 9-506:

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

23 (2) the financing statement is not effective to perfect a security interest in
24 collateral acquired by the debtor more than four months after the change, unless an amendment

1 to the financing statement which renders the financing statement not seriously misleading is filed
2 within four months after the change.

3 *[End of Alternative B1]*

4 *[End of Alternatives]*

5 **Legislative Notes:**

6
7 1. The Legislature should replace the term “driver’s license” with the analogous term
8 used in the enacting State.

9
10 2. Before enacting Alternative A, the legislature should insure that the protocols, field
11 sizes, and character sets used to indicate names on the State’s driver’s licenses are such that the
12 filing office will accept, index, and disclose financing statements providing those names.
13 Adoption and publication of rules pursuant to Section 9-526, or changes to the protocols, field
14 sizes, and character sets used for driver’s licenses may be necessary to achieve this result.

15
16 **Reporter’s Note**

17
18 1. Alternative B provides three ways in which a financing statement may sufficiently
19 provide the name of an individual who is a debtor: As under current law, the “individual name
20 of the debtor would be sufficient. See Section 9-503(a)(4)(A). In addition, the debtor’s-name
21 requirement would be satisfied by providing the debtor’s surname and first personal name. See
22 Section 9-503(a)(4)(B). If the individual holds a current driver’s license issued by the principal
23 residence, the name on the driver’s license also would be sufficient. See Section 9-503(a)(4)(C).
24 Subparagraphs (B) and (C) are explained in the Reporter’s Note to Alternative A.

25
26 2. As under Alternative A, any name that satisfies one of the subparagraphs of Section 9-
27 503(a)(4) is a “correct name” for purposes of Section 9-507(c).

28
29 *[End of Alternative Approaches to Name of Individual Debtor]*

30
31
32 **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.**

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

35 (1) except as otherwise provided in paragraph (3), if the debtor is a registered
36 organization or the collateral is held in a trust that is a registered organization, only if the
37 financing statement provides the name of the ~~debtor~~ registered organization indicated on the

1 public organic record of filed with or issued or enacted by the debtor's registered organization's
2 jurisdiction of organization ~~which shows the debtor to have been organized;~~

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

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

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

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

12 collateral is held in a trust that is not a registered organization, only if the financing statement:

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

14 (i) if the organic record of the trust specifies the name of the trust,
15 the name so specified; or

16 (ii) if the organic record of the trust does not specify a name for the
17 trust, the name of the settlor under subsection (x); and

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

19 (i) if the name is provided in accordance with subparagraph (A)(i),
20 indicates that the debtor is a trust or is a trustee acting with respect to property held in a trust; or

21 (ii) if the name is provided in accordance with subparagraph
22 (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having
23 one or more of the same settlors and indicates that the debtor is a trust or is a trustee acting with
24 respect to property held in a trust, unless the additional information so indicates;

1 (4) * * *

2 * * *

3 (x) The “name of the settlor” in subsection (a)(3) means:

4 (1) if the settlor is a registered organization, the name of the registered
5 organization indicated on the public organic record filed with or issued or enacted by the
6 registered organization’s jurisdiction of organization; and

7 (2) in other cases, the name of the settlor indicated in the trust’s organic record.

8 **Reporter’s Note**

9
10 1. To be sufficient under Section 9-502(a)(1), a financing statement must provide the
11 name of the debtor. The revisions to Section 9-503(a) give additional guidance for satisfying the
12 requirement with respect to collateral that is the res of a trust. The revisions contain rules,
13 described below, that address the variety of situations that may arise.

14
15 *Collateral that is held in a trust that is not a registered organization.* If the collateral is
16 held in a trust and the trust is not a registered organization, subsection (a)(3) applies, regardless
17 of whether, as typically is the case with common-law trusts, the debtor is a trustee acting with
18 respect to the collateral, or the trust itself is the debtor.

19
20 In these situations, if the trust’s organic record specifies a name for the trust, the
21 financing statement must provide, as the name of the debtor, the name specified in the organic
22 record. In addition, the financing statement must indicate that the collateral is held in a trust.
23 This indication must be provided in a field separate from the debtor-name field. If the organic
24 record of the trust does not specify a name for the trust, the name required is the name of the
25 settlor, as explained in subsection (x). In addition, the financing statement must provide
26 sufficient additional information to distinguish the trust from other trusts having one or more of
27 the same settlors. Although required for the sufficiency of the financing statement, this
28 additional information is not part of the debtor’s name. If neither the settlor’s name nor the
29 additional information indicates that the collateral is held in a trust, the financing statement must
30 indicate that fact, but not as part of the debtor’s name.

31
32 *Collateral that is held in a trust that is a registered organization.* If the collateral is held
33 in a trust that is not a registered organization, subsection (a)(1) applies, regardless of whether the
34 trust or the trustee is the debtor. The name that is sufficient is the name that appears on the
35 trust’s public organic record.

36
37 2. An Official Comment might explain the following points, all of which would appear
38 to be clarifications of current law:

39
40 (a) A financing statement that fails to provide an indication that the debtor is a trust or is

1 a trustee acting with respect to property held in a trust does not “substantially satisfy[] the
2 requirements” of Part 5 within the meaning of Section 9-506(a) and so is ineffective.

3
4 (b) A financing statement that fails to provide additional information that is sufficient to
5 distinguish the trust from other trusts having the same settlor does not “substantially satisfy[]
6 the requirements” of Part 5 within the meaning of Section 9-506(a) and so is ineffective.

7
8 (c) The “minor-error-not-seriously-misleading” test of Section 9-506(a), and not the
9 debtor-name rules of Section 9-503(b) and (c), determines whether a financing statement that
10 provides the wrong indication of the debtor’s status (e.g., it indicates that the debtor is a trust
11 when in fact the debtor is a trustee) is sufficient to perfect.

12
13 3. A question has arisen whether the sufficiency of “additional information . . . to
14 distinguish the trust from other trusts having one or more of the same settlors” is to be tested
15 with respect to other trusts actually settled by the same settlor or with respect to other trusts that
16 hypothetically might be settled by the same settlor. For example, is any additional information
17 required if the settlor settles only one trust and the financing statement includes the required
18 indication that the debtor is a trust or is a trustee acting with respect to property held in a trust?
19 The Joint Review Committee may wish to consider whether an Official Comment addressing
20 this issue would be useful.

21
22
23 *[Each State Should Select One Alternative]*

24
25 *[Alternative A]*
26 *Section 9-503(a)(2)*

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 * * *

32 (2) if the ~~debtor is collateral is held in~~ a decedent’s estate, only if the financing
33 statement provides, as the name of the debtor, the name of the decedent indicated on [letters
34 testamentary or letters of administration] [an order appointing a personal representative] issued
35 by the court having jurisdiction over the collateral and, in a separate part of the financing
36 statement, indicates that the ~~debtor is collateral is held in~~ an estate.

37 * * *

1 * * *

2 *[End of Alternative A]*

3 *[Alternative B]*

4 *Section 9-503(a)(2), (w)*

5
6
7 **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.**

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

10 * * *

11 (2) subject to subsection (w), if the debtor is collateral is held in a decedent's
12 estate, only if the financing statement provides, as the name of the debtor, the name of the
13 decedent and, in a separate part of the financing statement, indicates that the debtor is an estate;

14 * * *

15 * * *

16 (w) **[Name of decedent.]** The name of the decedent indicated on [letters testamentary or
17 letters of administration] [an order appointing a personal representative] issued by the court
18 having jurisdiction over the collateral in which the decedent's estate was opened is sufficient as
19 the "name of the decedent" under subsection (a)(2).

20 *[End of Alternative B]*

21 *[End of Alternatives]*

22 **Reporter's Note**

23
24 The Joint Review Committee has yet to determine how best to describe the collateral to
25 which subsection (a)(2) applies, how best to describe the document to which to refer for the
26 name of the decedent, and whether to offer alternatives to the States.

27
28
29 **SECTION 9-307. LOCATION OF DEBTOR.**

1 * * *

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

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

8 (2) in the State that the registered organization, branch, or agency designates, if
9 the law of the United States authorizes the registered organization, branch, or agency to
10 designate its State of location, including by designating its main office, home office, or other
11 comparable office; or

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

13 * * *

14 Official Comment

15
16 5. **Registered Organizations Organized Under Law of United States; Branches and**
17 **Agencies of Banks Not Organized Under Law of United States.** Subsection (f) specifies the
18 location of a debtor that is a registered organization organized under the law of the United States.
19 It defers to the law of the United States, to the extent that that law determines, or authorizes the
20 debtor to determine, the debtor's location. Thus, if the law of the United States designates a
21 particular State as the debtor's location, that State is the debtor's location for purposes of this
22 Article's choice-of-law rules. Similarly, if the law of the United States authorizes the registered
23 organization to designate its State of location, the State that the registered organization
24 designates is the State in which it is located for purposes of this Article's choice-of-law rules. In
25 other cases, the debtor is located in the District of Columbia.

26
27 In some cases, the law of the United States authorizes the registered organization to
28 designate a main office, home office, or other comparable office. See, e.g., 12 U.S.C. Sections
29 22 and 1464(a); 12 C.F.R. Section 552.3. Designation of such an office constitutes the
30 designation of the State of location for purposes of Section 9-307 (f)(2).

31
32 Subsection (f) also specifies the location of a branch or agency in the United States of a
33 foreign bank that has one or more branches or agencies in the United States. The law of the
34 United States ~~authorized~~ authorizes a foreign bank (or, on behalf of the bank, a federal agency)

1 to designate a single home state for all of the foreign bank's branches and agencies in the United
2 States. See 12 U.S.C. Section 3103(c) and 12 C.F.R. Section 211.22. As authorized, the
3 designation constitutes the State of location for the branch or agency for purposes of Section 9-
4 307(f), unless all of a foreign bank's branches or agencies that are in the United States are
5 licensed in only one State, in which case the branches and agencies are located in that State. See
6 subsection (i).

7
8 In cases not governed by subsection (f) or (i), the location of a foreign bank is determined
9 by subsections (b) and (c).

11 **Reporter's Note**

12
13 1. The amendment to subsection (f) would remove any doubt that, as the comment
14 indicates, when the law of the United States authorizes a registered organization to designate a
15 main office, home office, or other comparable office, designation of such an office constitutes
16 the designation of the State of location for purposes of Section 9-307(f)(2).

17
18 2. The amendment to the comment would correct a typographical error.

20 21 **SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF** 22 **FILING.**

23 * * *

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

26 * * *

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

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

31 (B) indicate whether the debtor is an individual or an organization; or

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

33 provide:

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

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

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

3 indicate that the debtor has none;

4 * * *

5 **Reporter's Note**

6
7 A financing statement is legally sufficient if it provides the information required by
8 Section 9-502(a), even if it does provide the additional information specified in Section 9-
9 516(b)(5). However, the filing office is required to reject a financing statement that does not
10 provide this additional information. The additional information is meant to assist searchers in
11 weeding out "false positives," i.e., records that a search reveals but which do not pertain to the
12 debtor in question, and to assist filers by helping to ensure that the financing statement is filed in
13 the proper jurisdiction. Experience has shown that the benefits afforded by requiring the filer to
14 provide the information specified in paragraph (C) are less than the costs that the paragraph
15 imposes.
16

17 18 **SECTION 9-518. CLAIM CONCERNING INACCURATE OR WRONGFULLY** 19 **FILED RECORD.**

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

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

24 **[Alternative A]**

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

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

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

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

30 (3) provide the basis for the person's belief that the record is inaccurate and

1 indicate the manner in which the person believes the record should be amended to cure any
2 inaccuracy or provide the basis for the person’s belief that the record was wrongfully filed.

3 **[Alternative B]**

4 (b) **[Sufficiency Contents of correction statement under subsection (a).]** ~~A~~
5 ~~correction~~ An information statement under subsection (a) must:

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

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

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

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

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

16 **[End of Alternatives]**

17 (c) **[Statement by secured party of record.]** A person may file in the filing office an
18 information statement with respect to a record filed there if the person is a secured party of
19 record with respect to the financing statement to which the record relates and believes that the
20 person that filed the record was not entitled to do so under Section 9-509(d).

21 **[Subsection (d)—Alternative A]**

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

24 (1) identify the record to which it relates by the file number assigned to the initial

1 financing statement to which the record relates;

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

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

5 **[Subsection (d)—Alternative B]**

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

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

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

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

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

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

17 **[End of Alternatives]**

18 **(e)(e) [Record not affected by ~~correction~~ information statement.]** The filing of a
19 ~~correction~~ an information statement does not affect the effectiveness of an initial financing
20 statement or other filed record.

21 ***Legislative Note:*** States whose real-estate filing offices require additional information in
22 amendments and cannot search their records by both the name of the debtor and the file number
23 should enact Alternative B to Sections 9-512(a), 9-518(b), 9-518(d), 9-519(f) and 9-522(a).
24

25 **Official Comment**

26 * * *
27

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

12
13 Sometimes a person files a termination statement or other record relating to a financing
14 statement without being entitled to do so. A secured party of record with respect to the financing
15 statement who believes that such a record has been filed may—but need not—file an information
16 statement under subsection (c). If the person filing the record was not entitled to do so, the filed
17 record is ineffective, regardless of whether the secured party of record files an information
18 statement. Likewise, if the person filing the record was entitled to do so, the filed record is
19 effective, even if the secured party of record files an information statement. See Section 9-
20 510(a), 9-518(e).

21
22 This section does not displace other provisions of this Article that impose liability for
23 making unauthorized filings or failing to file or send a termination statement (see Section 9-
24 625(e)), nor does it displace any available judicial remedies.

25
26 3. **Resort to Other Law.** This Article cannot provide a satisfactory or complete solution
27 to problems caused by misuse of the public records. The problem of “bogus” filings is not
28 limited to the UCC filing system but extends to the real-property records, as well. A summary
29 judicial procedure for correcting the public record and criminal penalties for those who misuse
30 the filing and recording systems are likely to be more effective and put less strain on the filing
31 system than provisions authorizing or requiring action by filing and recording offices.

32
33
34 **SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF**
35 **FILING.**

36 * * *

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

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

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

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

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

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

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

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

11 * * *

12 * * *

13
14 **Reporter's Note**

15
16 The reference to "correction statement" in Section 9-101, Comment 4.h, will be changed
17 to "information statement."
18

19
20 **SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF**
21 **FILING.**

22 * * *

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

25 * * *

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

27 * * *

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

1 record:

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

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

6 * * *

7 * * *

8 **Reporter's Note**

9
10
11 1. Current Section 9-518 provides a mechanism whereby an aggrieved debtor may use
12 the filing office to make a public declaration concerning the debtor's belief that a filed financing
13 statement naming the debtor is inaccurate or was wrongfully filed. New subsections (c) and (d)
14 would provide a similar mechanism to a secured party of record for a financing statement to
15 express its belief that a person who filed a record relating to the financing statement was not
16 entitled to do so. As the current text does with respect to subsection (b), the amendments would
17 provide alternative versions of subsection (d). Each State would choose the alternative that is
18 better suited to the method by which searches are conducted in the real-estate records maintained
19 in the State.

20
21 2. Because this section currently refers to the statement as a "correction statement,"
22 some debtors have filed one under the misapprehension that the filing has legal effect. It does
23 not. See subsection (c) (as amended, subsection (e)). To prevent future confusion, the
24 amendment would refer to the statement as an "information statement." The comments will be
25 amended to reflect this change in terminology.

26 27 28 **SECTION 9-607. COLLECTION AND ENFORCEMENT BY SECURED PARTY.**

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

31 * * *

32 (3) may enforce the obligations of an account debtor or other person obligated on
33 collateral and exercise the rights of the debtor with respect to the obligation of the account
34 debtor or other person obligated on collateral to make payment or otherwise render performance

1 to the debtor, and with respect to any property that secures the obligations of the account debtor
2 or other person obligated on the collateral;

3 * * *

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

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

9 (2) the secured party's sworn affidavit in recordable form stating that:

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

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

13 **Reporter's Note**

14
15 The amendment to paragraph (b)(2)(A) is for clarification only; it does not reflect a
16 change in meaning. Accordingly, the amendment should apply to all transactions governed by
17 Article 9, including those that were entered into before the effective date of the amendment.

18
19
20 **PART 7 8**

21
22 **TRANSITION**

23
24 *[Note: These provisions have been marked to show changes from current Part 7]*

25
26 **SECTION ~~9-701~~ 9-801. EFFECTIVE DATE.** This [Act] takes effect on July 1,
27 ~~2001~~2013.

28 **SECTION 9-802. DEFINITION.** As used in this part, "pre-effective-date financing
29 statement" means a financing statement filed before this [Act] takes effect.

30 **SECTION ~~9-702~~ 9-803. SAVINGS CLAUSE.**

31
32 (a) **[Pre-effective-date transactions or liens.]** Except as otherwise provided in this

1 part, this [Act] applies to a transaction or lien within its scope, even if the transaction or lien was
2 entered into or created before this [Act] takes effect.

3 (b) ~~[Continuing validity.] Except as otherwise provided in subsection (c) and Sections~~
4 ~~9-703 through 9-709:~~

5 (1) ~~transactions and liens that were not governed by [former Article 9], were~~
6 ~~validly entered into or created before this [Act] takes effect, and would be subject to this [Act] if~~
7 ~~they had been entered into or created after this [Act] takes effect, and the rights, duties, and~~
8 ~~interests flowing from those transactions and liens remain valid after this [Act] takes effect, and~~

9 (2) ~~the transactions and liens may be terminated, completed, consummated, and~~
10 ~~enforced as required or permitted by this [Act] or by the law that otherwise would apply if this~~
11 ~~[Act] had not taken effect.~~

12 (e) ~~[Pre-effective-date proceedings.] This [Act] does not affect an action, case, or~~
13 ~~proceeding commenced before this [Act] takes effect.~~

14 **SECTION ~~9-703~~ 9-804. SECURITY INTEREST PERFECTED BEFORE**
15 **EFFECTIVE DATE.**

16 [(a) **[Continuing priority over lien creditor perfection: perfection requirements**
17 **satisfied.]** A security interest that is ~~enforceable~~ a perfected security interest immediately
18 before this [Act] takes effect and ~~would have priority over the rights of a person that becomes a~~
19 ~~lien creditor at that time~~ is a perfected security interest under [Article 9 as amended by this
20 [Act]] if, when this [Act] takes effect, the applicable requirements for ~~enforceability~~ attachment
21 and perfection under [Article 9 as amended by this [Act]] are satisfied without further action.

22 [(b) **[Continuing priority over lien creditor perfection: perfection requirements not**
23 **satisfied.]** Except as otherwise provided in Section ~~9-705~~ 9-806, if, immediately before this
24 [Act] takes effect, a security interest is ~~enforceable~~ and ~~would have priority over the rights of a~~

1 ~~person that becomes a lien creditor at that time~~ a perfected security interest, but the applicable
2 requirements for ~~enforceability or perfection~~ under [Article 9 as amended by this [Act]] are not
3 satisfied when this [Act] takes effect, the security interest:

4 (1) ~~is a perfected security interest for one year after this [Act] takes effect;~~

5 (2) ~~remains enforceable thereafter only if the security interest becomes~~
6 ~~enforceable under Section 9-203 before the year expires; and~~

7 (3) ~~remains perfected thereafter only if the applicable requirements for perfection~~
8 ~~under [Article 9 as amended by this [Act]] are satisfied before the year expires~~ within one year
9 after this [Act] takes effect.

10 **Reporter's Note**

11 Inasmuch as Section 9-806 governs security interests that were perfected by a pre-
12 effective-date filing, the one-year rule in subsection (b) would apply only to security interests
13 that are perfected before the effective date by a method other than by filing but would be
14 unperfected under Article 9 as amended. The Joint Review Committee should consider whether
15 the amendments would give rise to any such cases.

16
17
18 **SECTION ~~9-704~~ 9-805. SECURITY INTEREST UNPERFECTED BEFORE**
19 **EFFECTIVE DATE.** A security interest that is ~~enforceable~~ an unperfected security interest
20 immediately before this [Act] takes effect ~~but which would be subordinate to the rights of a~~
21 ~~person that becomes a lien creditor at that time:~~

22 (1) ~~remains an enforceable security interest for one year after this [Act] takes effect;~~

23 (2) ~~remains enforceable thereafter if the security interest becomes enforceable under~~
24 ~~Section 9-203 when this [Act] takes effect or within one year thereafter; and~~

25 (3) ~~becomes perfected:~~

26 (A)(1) without further action, when this [Act] takes effect if the applicable requirements
27 for perfection under [Article 9 as amended by this [Act]] are satisfied before or at that time; or

28 (B)(2) when the applicable requirements for perfection are satisfied if the requirements

1 are satisfied after that time.

2 **SECTION ~~9-705~~ 9-806. EFFECTIVENESS OF ACTION TAKEN BEFORE**
3 **EFFECTIVE DATE.**

4 (a) ~~[Pre-effective-date action; one-year perfection period unless reperfected.]~~ If
5 action, other than the filing of a financing statement, is taken before this [Act] takes effect and
6 the action would have resulted in priority of a security interest over the rights of a person that
7 becomes a lien creditor had the security interest become enforceable before this [Act] takes
8 effect, the action is effective to perfect a security interest that attaches under this [Act] within
9 one year after this [Act] takes effect. An attached security interest becomes unperfected one
10 year after this [Act] takes effect unless the security interest becomes a perfected security interest
11 under this [Act] before the expiration of that period.

12 (b) ~~[Pre-effective-date filing effective.]~~ The filing of a financing statement before this
13 [Act] takes effect is effective to perfect a security interest to the extent the filing would satisfy
14 the applicable requirements for perfection under Article 9 as amended by this [Act].

15 (c)(b) ~~[Pre-effective-date filing in jurisdiction formerly governing perfection]~~ When
16 pre-effective-date filing becomes ineffective. This [Act] does not render ineffective an
17 effective financing statement that, before this [Act] takes effect, is filed and satisfies the
18 applicable requirements for perfection under the law of the jurisdiction governing perfection as
19 provided in [former Section 9-103 Part 3 of Article 9 in force immediately prior to the effective
20 date of this Act]. However, except as otherwise provided in subsections (d) and (e) and
21 Section ~~9-706~~ 9-807, the financing statement ceases to be effective at the ~~earlier~~ earliest of:

22 (1) if the financing statement is filed in this State, the time the financing statement
23 would have ceased to be effective had this [Act] not taken effect; or

24 (2) if the financing statement is filed in another jurisdiction, the time the

1 financing statement would have ceased to be effective under the law of ~~the~~ that jurisdiction ~~in~~
2 ~~which it is filed~~; or

3 (23) June 30, ~~2006~~ 2018.

4 ~~(d)~~(c) **[Continuation statement.]** The filing of a continuation statement after this [Act]
5 takes effect does not continue the effectiveness of the financing statement filed before this [Act]
6 takes effect. However, upon the timely filing of a continuation statement after this [Act] takes
7 effect and in accordance with the law of the jurisdiction governing perfection as provided in Part
8 3 [of Article 9 in force immediately prior to the effective date of this Act], the effectiveness of a
9 financing statement filed in the same office in that jurisdiction before this [Act] takes effect
10 continues for the period provided by the law of that jurisdiction.

11 ~~(e)~~(d) **[Application of subsection ~~(c)~~(2) (b)(3) to transmitting utility financing**
12 **statement.]** Subsection ~~(c)~~(2) (b)(3) applies to a financing statement that, before this [Act] takes
13 effect, is filed against a transmitting utility and satisfies the applicable requirements for
14 perfection under the law of the jurisdiction governing perfection as provided in ~~[former Section~~
15 ~~9-103~~ Part 3 of Article 9 in force immediately prior to the effective date of this Act], only to the
16 extent that Part 3 as amended by this [Act] provides that the law of a jurisdiction other than the
17 jurisdiction in which the financing statement is filed governs perfection of a security interest in
18 collateral covered by the financing statement.

19 ~~(f)~~(e) **[Application of Part 5.]** A financing statement that includes a financing
20 statement filed before this [Act] takes effect and a continuation statement filed after this [Act]
21 takes effect is effective only to the extent that it satisfies the requirements of Part 5 as amended
22 by this [Act] for an initial financing statement.

1 **SECTION ~~9-706~~ 9-807. WHEN INITIAL FINANCING STATEMENT SUFFICES**
2 **TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.**

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

6 (1) the filing of an initial financing statement in that office would be effective to
7 perfect a security interest under [Article 9 as amended by this [Act]];

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

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

11 (b) **[Period of continued effectiveness.]** The filing of an initial financing statement
12 under subsection (a) continues the effectiveness of the pre-effective-date financing
13 statement:

14 (1) if the initial financing statement is filed before this [Act] takes effect, for the
15 period provided in ~~[former Section 9-403~~ 9-515] with respect to ~~a~~ an initial financing statement;
16 and

17 (2) if the initial financing statement is filed after this [Act] takes effect, for the
18 period provided in Section 9-515 as amended by this [Act] with respect to an initial financing
19 statement.

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

22 (1) satisfy the requirements of Part 5 as amended by this [Act] for an initial
23 financing statement;

24 (2) identify the pre-effective-date financing statement by indicating the office in

1 which the financing statement was filed and providing the dates of filing and file numbers, if
2 any, of the financing statement and of the most recent continuation statement filed with respect
3 to the financing statement; and

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

5 **SECTION ~~9-707~~ 9-808. AMENDMENT OF PRE-EFFECTIVE-DATE**
6 **FINANCING STATEMENT.**

7 (a) ~~["Pre-effective-date financing statement"].~~ In this section, "pre-effective-date
8 financing statement" means a financing statement filed before this [Act] takes effect.

9 ~~(b)~~ **[Applicable law.]** After this [Act] takes effect, a person may add or delete collateral
10 covered by, continue or terminate the effectiveness of, or otherwise amend the information
11 provided in, a pre-effective-date financing statement only in accordance with the law of the
12 jurisdiction governing perfection as provided in Part 3 as amended by this [Act]. However, the
13 effectiveness of a pre-effective-date financing statement also may be terminated in accordance
14 with the law of the jurisdiction in which the financing statement is filed.

15 ~~(c)~~ **[Method of amending: general rule.]** Except as otherwise provided in subsection
16 ~~(d)~~, if the law of this State governs perfection of a security interest, the information in a pre-
17 effective-date financing statement may be amended after this [Act] takes effect only if:

18 (1) the pre-effective-date financing statement and an amendment are filed in the
19 office specified in Section 9-501;

20 (2) an amendment is filed in the office specified in Section 9-501 concurrently
21 with, or after the filing in that office of, an initial financing statement that satisfies Section ~~9-~~
22 ~~706(c)~~ 9-807(c); or

23 (3) an initial financing statement that provides the information as amended and
24 satisfies ~~Section 9-706(c)~~ 9-807(c) is filed in the office specified in Section 9-501.

1 ~~(dc)~~ **[Method of amending: continuation.]** If the law of this State governs perfection of
2 a security interest, the effectiveness of a pre-effective-date financing statement may be continued
3 only under Section ~~9-705(d)~~ 9-806(c) and ~~(fe)~~ or ~~9-706~~ 9-807.

4 ~~(ed)~~ **[Method of amending: additional termination rule.]** Whether or not the law of
5 this State governs perfection of a security interest, the effectiveness of a pre-effective-date
6 financing statement filed in this State may be terminated after this [Act] takes effect by filing a
7 termination statement in the office in which the pre-effective-date financing statement is filed,
8 unless an initial financing statement that satisfies Section ~~9-706(e)~~ 9-807(c) has been filed in the
9 office specified by the law of the jurisdiction governing perfection as provided in Part 3 as
10 amended by this [Act] as the office in which to file a financing statement.

11 ~~SECTION 9-708~~ **9-809. PERSONS ENTITLED TO FILE INITIAL FINANCING**
12 **STATEMENT OR CONTINUATION STATEMENT.** A person may file an initial financing
13 statement or a continuation statement under this part if:

14 (1) the secured party of record authorizes the filing; and

15 (2) the filing is necessary under this part:

16 (A) to continue the effectiveness of a financing statement filed before this [Act]
17 takes effect; or

18 (B) to perfect or continue the perfection of a security interest.

19 ~~SECTION 9-709~~ **9-810. PRIORITY.**

20 ~~(a) [Law governing priority.]~~ This [Act] determines the priority of conflicting claims
21 to collateral. However, if the relative priorities of the claims were established before this [Act]
22 takes effect, ~~[former pre-amendment Article 9]~~ [former pre-amendment Article 9] determines priority.

23 ~~(b) [Priority if security interest becomes enforceable under Section 9-203.]~~ For
24 purposes of Section ~~9-322(a)~~, the priority of a security interest that becomes enforceable under

1 Section 9-203 of this [Act] dates from the time this [Act] takes effect if the security interest is
2 perfected under this [Act] by the filing of a financing statement before this [Act] takes effect
3 which would not have been effective to perfect the security interest under [former Article 9].
4 This subsection does not apply to conflicting security interests each of which is perfected by the
5 filing of such a financing statement.

6 **SECTION 8-103. RULES FOR DETERMINING WHETHER CERTAIN**
7 **OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS.**

8 * * *

9 (h) An obligation, share, participation, or interest does not satisfy Section 8-
10 102(a)(13)(ii) or 8-102(a)(15)(i) merely because the issuer or a person acting on its behalf:

11 (1) maintains records of the owner thereof for a purpose other than registration of
12 transfer; or

13 (2) could, but does not, maintain books for the purpose of registration of transfer.

14 **Official Comment**

15 * * *

16
17
18 9. Subsection (h) rejects the holding of *Highland Capital Management LP v. Schneider*, 8
19 N.Y.3d 406 (2007). The registrability requirement in the definition of “registered form,” and its
20 parallel in the definition of “security,” are satisfied only if books are maintained by or on behalf of
21 the issuer for the purpose of registration of transfer, including the determination of rights under
22 Section 8-207(a) (or if, in the case of a certificated security, the security certificate so states). It is
23 not sufficient that the issuer records ownership, or records transfers thereof, for other purposes. Nor
24 is it sufficient that the issuer, while not in fact maintaining books for the purpose of registration of
25 transfer, could do so, for such is always the case. Subsection (h) is declaratory of the proper
26 interpretation of the definitions of “registered form” and “security,” not a change in law.
27

28 **Reporter’s Note**

29
30 This proposed amendment to Section 8-103 would be wholly unnecessary but for the
31 New York Court of Appeals’ opinion in *Highland Capital*. The opinion’s interpretation of the
32 definitions of “registered form” and “security” in Section 8-102 cannot be supported by the
33 existing statutory text.

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PART TWO

**MODIFICATIONS TO THE COMMENTS UNACCOMPANIED BY AMENDMENTS
TO THE OFFICIAL TEXT**

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

* * *

Official Comment

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5. Receivables-related Definitions.

* * *

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

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

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

The definition of electronic chattel paper does not dictate that it be created in any particular fashion. For example, a record consisting of a tangible writing may be converted to

1 electronic form (e.g., by creating electronic images of a signed writing). Or, records may be
2 initially created and executed in electronic form (e.g., a lessee might authenticate an electronic
3 record of a lease that is then stored in electronic form). In either case the resulting records are
4 electronic chattel paper. Likewise, tangible chattel paper results when chattel paper in electronic
5 form is converted to tangible form.

6
7 * * *

8
9 d. **“General Intangible”;** **“Payment Intangible.”** “General intangible”
10 is the residual category of personal property, including things in action, that is not included in
11 the other defined types of collateral. Examples are various categories of intellectual property
12 and the right to payment of a loan of funds that is not evidenced by chattel paper or an
13 instrument. A debtor’s right to payment from another person of amounts received by the other
14 person on the debtor’s behalf, including the right of a merchant in a credit-card, debit-card,
15 prepaid-card, or other payment-card transaction to payment of amounts received by its bank
16 from the card system in settlement of the transaction, is also a “general intangible.” (In contrast,
17 the right of a credit-card issuer to payment arising out of the use of a credit card is an “account.”)
18 As used in the definition of “general intangible,” “things in action” includes rights that arise
19 under a license of intellectual property, including the right to exploit the intellectual property
20 without liability for infringement. The definition has been revised to exclude commercial tort
21 claims, deposit accounts, and letter-of-credit rights. Each of the three is a separate type of
22 collateral. One important consequence of this exclusion is that tortfeasors (commercial tort
23 claims), banks (deposit accounts), and persons obligated on letters of credit (letter-of-credit
24 rights) are not “account debtors” having the rights and obligations set forth in Sections 9-404,
25 9-405, and 9-406. In particular, tortfeasors, banks, and persons obligated on letters of credit are
26 not obligated to pay an assignee (secured party) upon receipt of the notification described in
27 Section 9-404(a). See Comment 5.h. Another important consequence relates to the adequacy of
28 the description in the security agreement. See Section 9-108.

29
30 “Payment intangible” is a subset of the definition of “general intangible.” The sale of a
31 payment intangible is subject to this Article. See Section 9-109(a)(3). Virtually any intangible
32 right could give rise to a right to payment of money once one hypothesizes, for example, that the
33 account debtor is in breach of its obligation. The term “payment intangible,” however, embraces
34 only those general intangibles “under which the account debtor’s *principal* obligation is a
35 monetary obligation.” (Emphasis added.)

36
37 In classifying intangible collateral, a court should begin by identifying the particular
38 rights that have been assigned. The account debtor (promisor) under a particular contract may
39 owe several types of monetary obligations as well as other, nonmonetary obligations. If the
40 promisee’s right to payment of money is assigned separately, the right is an account or payment
41 intangible, depending on how the account debtor’s obligation arose. When all the promisee’s
42 rights are assigned together, an account, a payment intangible, and a general intangible all may
43 be involved, depending on the nature of the rights.

44
45 [However, a] [A] right to the payment of money is frequently buttressed by ancillary
46 covenants rights, such as covenants in a purchase agreement, note, or mortgage requiring
47 insurance on the collateral or forbidding removal of the collateral, or covenants to preserve the

1 creditworthiness of the promisor, such as covenants restricting dividends and the like. This
2 Article does not treat these ancillary rights separately from the rights to payment to which they
3 relate. For example, attachment and perfection of an assignment of a right to payment of a
4 monetary obligation, whether it be an account or payment intangible, also carries these ancillary
5 rights. Among these ancillary rights are the lessor’s rights with respect to leased goods that arise
6 upon the lessee’s default. See Section 2A-523. Accordingly, and contrary to the opinion in *In re*
7 *Commercial Money Center, Inc.*, 350 B.R. 465 (B.A.P. 9th Cir. 2006), if the lessor’s rights under
8 a lease constitute chattel paper, an assignment of the lessor’s right to payment under the lease
9 also would be chattel paper, even if the assignment excludes other rights.

10
11 Every “payment intangible” is also a “general intangible.” Likewise, “software” is a
12 “general intangible” for purposes of this Article. See Comment 25. Accordingly, except as
13 otherwise provided, statutory provisions applicable to general intangibles apply to payment
14 intangibles and software.

15 * * *

16 17 18 **Reporter’s Note**

19
20 1. The point made in the sentence added to paragraph 5.b. will be further amplified in a
21 PEB Commentary.

22
23 2. The first addition to paragraph 5.d. clarifies the classification of rights to payment
24 related to credit-card and other payment-card transactions.

25
26 3. The second addition to paragraph 5.d. illustrates the correct application of the Article
27 9 classification system in the context of an assignment of the lessor’s right to payment under a
28 lease that is chattel paper.

29 30 31 **SECTION 9-109. SCOPE.**

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

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

36 * * *

37 * * *

38 **Official Comment**

39 * * *

1 (2)), security interests perfected by filing a fixture filing (see subparagraph (3)(A)), security
2 interests in timber to be cut (subparagraph (3)(B)), or security interests in as-extracted collateral
3 (see paragraph (4)).

4
5 * * *

6
7 **b. ~~Fixtures-Fixture Filings.~~ Application of Under** the general rule in paragraph
8 (1), a security interest in fixtures may be perfected by filing in the office specified by Section 9-
9 501(a) as enacted in the jurisdiction in which the debtor is located. However, application of this
10 rule to perfection of a security interest in fixtures by filing a fixture filing would yield strange
11 results. For example, perfection of a security interest in fixtures located in Arizona and owned
12 by a Delaware corporation would be governed by the law of Delaware. Although Delaware law
13 would send one to a filing office in Arizona for the place to file a financing statement as a fixture
14 filing, see Section 9-501, Delaware law would not take account of local, nonuniform, real-
15 property filing and recording requirements that Arizona law might impose. For this reason,
16 paragraph (3)(A) contains a special rule for security interests perfected by a fixture filing; the
17 law of the jurisdiction in which the fixtures are located governs perfection, including the formal
18 requisites of a fixture filing. Under paragraph (3)(C), the same law governs priority. Fixtures
19 are “goods” as defined in Section 9-102.

20
21 The filing of a financing statement to perfect a security interest in collateral of a
22 transmitting utility constitutes a fixture filing with respect to goods that are or become fixtures.
23 See Section 9-501(b). Accordingly, to perfect a security interest in goods of this kind by a
24 fixture filing, a financing statement must be filed in the office specified by Section 9-501(b) as
25 enacted in the jurisdiction in which the goods are located. If the fixtures collateral is located in
26 more than one State, filing in all of those States will be necessary to perfect a security interest in
27 all the fixtures collateral by a fixture filing. Of course, a security interest in nearly all types of
28 collateral (including fixtures) of a transmitting utility may be perfected by filing in the office
29 specified by Section 9-501(a) as enacted in the jurisdiction in which the transmitting utility is
30 located. However, such a filing will not be effective as a fixture filing except with respect to
31 goods that are located in that jurisdiction.

32
33 * * *

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35
36 **SECTION 9-501. FILING OFFICE.**

37 * * *

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

1 located at its chief executive office.

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

9 **Official Comment**

10 * * *

11
12
13 3. **Non-U.S. Debtors.** Under the general rules of this section, a non-U.S. debtor often
14 would be located in a foreign jurisdiction and, as a consequence, foreign law would govern
15 perfection. When foreign law affords no public notice of security interests, the general rule
16 yields unacceptable results.

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

31 * * *

32
33
34 **Reporter’s Note**

35
36 The proposed modification emphasizes that subsection (b), and therefore subsection (c),
37 does not apply if one of the special rules in subsections (e), (f), (i), and (j) applies.
38
39

1 Under a notice-filing system, a filed financing statement indicates to third parties that a
2 person may have a security interest in the collateral indicated. With further inquiry, they may
3 discover the complete state of affairs. When a financing statement that is ineffective when filed
4 becomes effective thereafter, the policy underlying the notice-filing system determines the “time
5 of filing” for purposes of subsection (a)(1). For example, the unauthorized filing of an otherwise
6 sufficient initial financing statement becomes authorized, and the financing statement becomes
7 effective, upon the debtor’s post-filing authorization or ratification of the filing. See Section 9-
8 509, Comment 3. Because the authorization or ratification does not increase the notice value of
9 the financing statement, the time of the unauthorized filing is the “time of filing” for purposes of
10 subsection (a)(1). The same policy applies to the other priority rules in this part.

11
12 **Example 2:** A and B make non-purchase-money advances secured by the same
13 collateral. The collateral is in Debtor’s possession, and neither security interest is
14 perfected when the second advance is made. Whichever secured party first perfects its
15 security interest (by taking possession of the collateral or by filing) takes priority. It
16 makes no difference whether that secured party knows of the other security interest at the
17 time it perfects its own.

18
19 The rule of subsection (a)(1), affording priority to the first to file or perfect, applies to
20 security interests that are perfected by any method, including temporarily (Section 9-312) or
21 upon attachment (Section 9-309), even though there may be no notice to creditors or subsequent
22 purchasers and notwithstanding any common-law rule to the contrary. The form of the claim to
23 priority, i.e., filing or perfection, may shift from time to time, and the rank will be based on the
24 first filing or perfection as long as there is no intervening period without filing or perfection.
25 See Section 9-308(c).

26
27 **Example 3:** On October 1, A acquires a temporarily perfected (20-day) security interest,
28 unfiled, in a negotiable document in the debtor’s possession under Section 9-312(e). On
29 October 5, B files and thereby perfects a security interest that previously had attached to
30 the same document. On October 10, A files. A has priority, even after the 20-day period
31 expires, regardless of whether A knows of B’s security interest when A files. A was the
32 first to perfect and maintained continuous perfection or filing since the start of the 20-day
33 period. However, the perfection of A’s security interest extends only “to the extent it
34 arises for new value given.” To the extent A’s security interest secures advances made
35 by A beyond the 20-day period, its security interest would be subordinate to B’s,
36 inasmuch as B was the first to file.

37
38 In general, the rule in subsection (a)(1) does not distinguish among various advances
39 made by a secured party. The priority of every advance dates from the earlier of filing or
40 perfection. However, in rare instances, the priority of an advance dates from the time the
41 advance is made. See Example 3 and Section 9-323.

42
43
44 **SECTION 9-509. PERSONS ENTITLED TO FILE A RECORD.**

45 * * *

1 **Official Comment**

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3 * * *

4
5 3. **Unauthorized Filings.** Records filed in the filing office do not require signatures for
6 their effectiveness. Subsection (a)(1) substitutes for the debtor’s signature on a financing
7 statement the requirement that the debtor authorize in an authenticated record the filing of an
8 initial financing statement or an amendment that adds collateral. Also, under subsection (a)(1),
9 if an amendment adds a debtor, the debtor who is added must authorize the amendment. A
10 person who files an unauthorized record in violation of subsection (a)(1) is liable under Section
11 9-625(b) and (e) for actual and statutory damages. Of course, a filed financing statement is
12 ineffective to perfect a security interest if the filing is not authorized. See Section 9-510(a).
13 Law other than this Article, including the law with respect to ratification of past acts, generally
14 determines whether a person has the requisite authority to file a record under this section. See
15 Sections 1-103, 9-502, Comment 3. This Article applies to other issues, such as the priority of a
16 security interest perfected by the filing of a financing statement. See Section 9-322, Comment 4.
17

18 **Reporter’s Note**

19
20 A record that is filed without the required authorization is ineffective. In some cases the
21 filing of a record is authorized after the record is filed or an unauthorized filing is ratified. The
22 modifications to the comments to Sections 9-322 and 9-509 illustrate the effect of such post-
23 filing authorizations and ratifications.
24

25
26 **SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY**
27 **INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.**

28 * * *

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

- 33 (1) any supporting obligation for the collateral; and
34 (2) proceeds of the collateral if:
35 (A) the security interest in proceeds is perfected;
36 (B) the proceeds are cash proceeds or of the same type as the collateral;

1 and

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

5 * * *

6 **Official Comment**

7
8 * * *

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

22
23 * * *

24
25 The proceeds of proceeds are themselves proceeds. See Section 9-102 (defining
26 “proceeds” and “collateral”). Sometimes competing security interests arise in proceeds that are
27 several generations removed from the original collateral. As the following example explains, the
28 applicability of subsection (c) may turn on the nature of the intervening proceeds.

29
30 **Example 11:** SP-1 perfects its security interest in Debtor’s deposit account by obtaining
31 control. Thereafter, SP-2 files against inventory, (presumably searches, finds no
32 indication of a conflicting security interest, and advances against Debtor’s existing and
33 after-acquired inventory. Debtor uses funds from the deposit account to purchase
34 inventory, which SP-1 can trace as identifiable proceeds of its security interest in
35 Debtor’s deposit account, and which SP-2 claims as original collateral. The inventory is
36 sold and the proceeds deposited into *another* deposit account, as to which SP-1 has not
37 obtained control. Subsection (c) does not govern priority in this other deposit account.
38 This deposit account is cash proceeds and is also the same type of collateral as SP-1's
39 original collateral, as required by subsections (c)(2)(A) and (B). However, SP-1's
40 security interest does not satisfy subsection (c)(2)(C) because the inventory proceeds,
41 which intervened between the original deposit account and the deposit account
42 constituting the proceeds at issue, are not cash proceeds, proceeds of the same type as the

1 collateral (original deposit account), or an account relating to the collateral. Stated
2 otherwise, once proceeds other than cash proceeds, proceeds of the same type as the
3 original collateral, or an account relating to the original collateral intervene in the chain
4 of proceeds, priority under subsection (c) is thereafter unavailable. The special priority
5 rule in subsection (d) also is inapplicable to this case. See Comment 9, Example 13,
6 below. Instead, the general first-to-file-or-perfect rule of subsections (a) and (b) apply.
7 Under that rule, SP-1 has priority unless its security interest in the inventory proceeds
8 became unperfected under Section 9-315(d). Had SP-2 filed against inventory before SP-
9 1 obtained control of the original deposit account, the SP-2 would have had priority even
10 if SP-1's security interest in the inventory proceeds remained perfected.
11

12 If two security interests in the same original collateral are entitled to priority in an item of
13 proceeds under subsection (c)(2), the security interest having priority in the original collateral
14 has priority in the proceeds.
15

16 **Reporter's Note**

17
18 The added language would complete the explanation of the complicated priority rules
19 applicable to proceeds.
20
21

22 **SECTION 9-326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW** 23 **DEBTOR.**

24 * * *

25 **Official Comment**

26 * * *

27
28
29 **2. Subordination of Security Interests Created by New Debtor.** This section
30 addresses the priority contests that may arise when a new debtor becomes bound by the security
31 agreement of an original debtor and each debtor has a secured creditor.
32

33 Subsection (a) subordinates the original debtor's secured party's security interest
34 perfected against the new debtor solely under Section 9-508. The security interest is
35 subordinated to security interests in the same collateral perfected by another method, e.g., by
36 filing against the new debtor. As used in this section, "a filed financing statement that is
37 effective solely under Section 9-508" refers to a financing statement filed against the *original*
38 *debtor* that ~~continues to be~~ is effective under Section 9-508 to perfect a security interest in the
39 collateral in question. It does not encompass a new initial financing statement providing the
40 name of the new debtor, even if the initial financing statement is filed to maintain the
41 effectiveness of a financing statement under the circumstances described in Section 9-508(b).
42 Nor does it encompass a financing statement filed against the original debtor which remains
43 effective against collateral transferred by the original debtor to the new debtor. See Section 9-
44 508(c). Concerning priority contests involving transferred collateral, see Sections 9-325 and 9-

1 507.

2
3 **Reporter's Note**

4
5 Under the rules in Section 9-326, the priority of a security interest depends in part on
6 whether a financing statement "is effective solely under Section 9-508." The modification
7 would emphasize that one must look only at the collateral in question when making this
8 determination.
9

10
11 **SECTION 9-330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR**
12 **INSTRUMENT.**

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

16 (1) in good faith and in the ordinary course of the purchaser's business, the
17 purchaser gives new value and takes possession of the chattel paper or obtains control of the
18 chattel paper under Section 9-105; and

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

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

27 * * *

28 **Official Comment**

29 * * *
30

1 filing and the financing statement covers only collateral in which the person holds an agricultural
2 lien.

3 * * *

4 (d) **[Person entitled to file certain amendments.]** A person may file an amendment
5 other than an amendment that adds collateral covered by a financing statement or an amendment
6 that adds a debtor to a financing statement only if:

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

8 (2) the amendment is a termination statement for a financing statement as to
9 which the secured party of record has failed to file or send a termination statement as required by
10 Section 9-513(a) or (c), the debtor authorizes the filing, and the termination statement indicates
11 that the debtor authorized it to be filed.

12 * * *

13 **Official Comment**

14 * * *

15
16
17 **6. Amendments; Termination Statements Authorized by Debtor.** Most amendments
18 may not be filed unless the secured party of record, as determined under Section 9-511,
19 authorizes the filing. See subsection (d)(1). However, under subsection (d)(2), the authorization
20 of the secured party of record is not required for the filing of a termination statement if the
21 secured party of record failed to send or file a termination statement as required by Section 9-
22 513, the debtor authorizes it to be filed, and the termination statement so indicates. An
23 authorization to file a record under subsection (d) is effective even if the authorization is not in
24 an authenticated record. Compare subsection (a)(1). However, the person filing the record
25 would be prudent to obtain and retain an authenticated record authorizing the filing.

26 * * *

27
28
29
30 **SECTION 9-512. AMENDMENT OF FINANCING STATEMENT.**

31 **[Alternative A]**

32 (a) **[Amendment of information in financing statement.]** Subject to Section 9-509, a

1 person may add or delete collateral covered by, continue or terminate the effectiveness of, or,
2 subject to subsection (e), otherwise amend the information provided in, a financing statement by
3 filing an amendment that:

4 (1) identifies, by its file number, the initial financing statement to which the
5 amendment relates; and

6 (2) if the amendment relates to an initial financing statement filed [or recorded] in
7 a filing office described in Section 9-501(a)(1), provides the information specified in Section 9-
8 502(b).

9 **[Alternative B]**

10 (a) **[Amendment of information in financing statement.]** Subject to Section 9-509, a
11 person may add or delete collateral covered by, continue or terminate the effectiveness of, or,
12 subject to subsection (e), otherwise amend the information provided in, a financing statement by
13 filing an amendment that:

14 (1) identifies, by its file number, the initial financing statement to which the
15 amendment relates; and

16 (2) if the amendment relates to an initial financing statement filed [or recorded] in
17 a filing office described in Section 9-501(a)(1), provides the date [and time] that the initial
18 financing statement was filed [or recorded] and the information specified in Section 9-502(b).

19 **[End of Alternatives]**

20 * * *

21 **Official Comment**

22 * * *

23
24
25
26 **4. Amendment Adding Debtor.** An amendment that adds a debtor is effective,
27 provided that the added debtor authorizes the filing. See Section 9-509(a). However, filing an
28 amendment adding a debtor to a previously filed financing statement affords no advantage over

1 filing an initial financing statement against that debtor and may be disadvantageous. With
2 respect to the added debtor, for purposes of determining the priority of the security interest, the
3 time of filing is the time of the filing of the amendment, not the time of the filing of the initial
4 financing statement. See subsection (d). However, the effectiveness of the financing statement
5 lapses with respect to added debtor at the time it lapses with respect to the original debtor. See
6 subsection (b).

7
8 **5. Amendment Adding Debtor Name.** Many states have enacted statutes governing
9 the “conversion” of one organization, e.g., a corporation, into another, e.g., a limited liability
10 company. This Article defers to those statutes to determine whether the resulting organization is
11 the same legal person as the initial, converting organization (albeit with a different name) or
12 whether the resulting organization is a different legal person. When the governing statute does
13 not clearly resolve the question, a secured party whose debtor is the converting organization may
14 wish to proceed as if the statute provides for both results. In these circumstances, an amendment
15 adding to the initial financing statement the name of the resulting organization may be preferable
16 to an amendment substituting that name for the name of the debtor appearing on the initial
17 financing statement. In the event the governing statute is construed as providing that the
18 resulting organization is the same person as the converting organization but with a different
19 name, the timely filing of such an amendment would satisfy the requirement of Section 9-
20 507(c)(2). If, however, the governing statute is construed as providing that the resulting
21 organization is a different legal person, such an amendment would have the effect of adding the
22 resulting organization as a debtor. See Comment 4. Regardless of how the governing statute is
23 construed, the converting and resulting organizations may be organized under the law of
24 different jurisdictions and so may be located in different jurisdictions under Section 9-307. In
25 that case, a filing in the location of the resulting organization may be advisable.

26
27 **56. Deletion of All Debtors or Secured Parties of Record.** Subsection (e) assures that
28 there will be a debtor and secured party of record for every financing statement.

29 * * *

30
31
32
33 **SECTION 9-602. WAIVER AND VARIANCE OF RIGHTS AND DUTIES.** Except
34 as otherwise provided in Section 9-624, to the extent that they give rights to a debtor or obligor
35 and impose duties on a secured party, the debtor or obligor may not waive or vary the rules
36 stated in the following listed sections:

37 * * *

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

39 * * *

40 (10) Sections 9-620, 9-621, and 9-622, which deal with acceptance of collateral in

1 satisfaction of obligation;

2 * * *

3 **Official Comment**

4
5 1. **Source.** Former Section 9-501(3).

6
7 2. **Waiver: In General.** Section 1-102(3) addresses which provisions of the UCC are
8 mandatory and which may be varied by agreement. With exceptions relating to good faith,
9 diligence, reasonableness, and care, immediate parties, as between themselves, may vary its
10 provisions by agreement. However, in the context of rights and duties after default, our legal
11 system traditionally has looked with suspicion on agreements that limit the debtor's rights and
12 free the secured party of its duties. As stated in former Section 9-501, Comment 4, "no
13 mortgage clause has ever been allowed to clog the equity of redemption." The context of default
14 offers great opportunity for overreaching. The suspicious attitudes of the courts have been
15 grounded in common sense. This section, like former Section 9-501(3), codifies this
16 long-standing and deeply rooted attitude. The specified rights of the debtor and duties of the
17 secured party may not be waived or varied except as stated. Provisions that are not specified in
18 this section are subject to the general rules in Section 1-102(3).

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

35
36 This section provides generally that the specified rights and duties "may not be waived or
37 varied." However, it does not restrict the ability of parties to agree to settle, compromise, or
38 renounce claims for past conduct that may have constituted a violation or breach of those rights
39 and duties, even if the settlement involves an express "waiver."

40
41 Section 9-610(c) limits the circumstances under which a secured party may purchase at
42 its own private disposition. Transactions of this kind are equivalent to "strict foreclosures" and
43 are governed by Sections 9-620, 9-621, and 9-622. The provisions of these sections can be
44 waived only as provided in Section 9-624(b).

1 any terms.

2 * * *

3 **Official Comment**

4
5 * * *

6
7 **2. Commercially Reasonable Dispositions.** Subsection (a) follows former Section 9-
8 504 by permitting a secured party to dispose of collateral in a commercially reasonable manner
9 following a default. Although subsection (b) permits both public and private dispositions,
10 including public and private dispositions conducted over the Internet, “every aspect of a
11 disposition . . . must be commercially reasonable.” This section encourages private dispositions
12 on the assumption that they frequently will result in higher realization on collateral for the
13 benefit of all concerned. Subsection (a) does not restrict dispositions to sales; collateral may be
14 sold, leased, licensed, or otherwise disposed. Section 9-627 provides guidance for determining
15 the circumstances under which a disposition is “commercially reasonable.”

16
17 * * *

18
19
20 **SECTION 9-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL.**

21 * * *

22 **Official Comment**

23
24 * * *

25
26 **10. Other Law.** Other law may contain requirements concerning notification of a
27 disposition of property by a secured party. For example, federal law imposes notification
28 requirements with respect to the enforcement of mortgages on federally documented vessels.
29 Principles of statutory interpretation and, in the context of federal law, supremacy and
30 preemption determine whether and to what extent law other than this Article supplements,
31 displaces, or is displaced by this Article. See Sections 1-103(b), 1-104, 9-109(c)(1).

32
33
34 **SECTION 9-613. CONTENTS AND FORM OF NOTIFICATION BEFORE**
35 **DISPOSITION OF COLLATERAL: GENERAL.** Except in a consumer-goods transaction,
36 the following rules apply:

37 (1) The contents of a notification of disposition are sufficient if the notification:

38 (A) describes the debtor and the secured party;

1 (B) describes the collateral that is the subject of the intended disposition;

2 (C) states the method of intended disposition;

3 (D) states that the debtor is entitled to an accounting of the unpaid indebtedness
4 and states the charge, if any, for an accounting; and

5 (E) states the time and place of a public disposition or the time after which any
6 other disposition is to be made.

7 * * *

8 Official Comment

9 * * *

10
11
12 **2. Contents of Notification.** To comply with the “reasonable authenticated notification”
13 requirement of Section 9-611(b), the contents of a notification must be reasonable. Except in a
14 consumer-goods transaction, the contents of a notification that includes the information set forth
15 in paragraph (1) are sufficient as a matter of law, unless the parties agree otherwise. (The
16 reference to “time” of disposition means here, as it did in former Section 9-504(3), not only the
17 hour of the day but also the date.) Although a secured party may choose to include additional
18 information concerning the transaction or the debtor’s rights and obligations, no additional
19 information is required unless the parties agree otherwise. A notification that lacks some of the
20 information set forth in paragraph (1) nevertheless may be sufficient if found to be reasonable by
21 the trier of fact, under paragraph (2). A properly completed sample form of notification in
22 paragraph (5) or in Section 9-614(a)(3) is an example of a notification that would contain the
23 information set forth in paragraph (1). Under paragraph (4), however, no particular phrasing of
24 the notification is required.

25
26 This section applies to a notification of a public disposition conducted electronically. A
27 notification of an electronic disposition satisfies paragraph (1)(E) if it states the time when the
28 disposition is scheduled to begin and states the electronic location. For example, under the
29 technology current in 2009, the Uniform Resource Locator (URL) or other Internet address
30 where the site of the public disposition can be accessed suffices as an electronic location.

31 Reporter’s Note

32
33
34 The additions to the comments to Sections 9-610 and 9-613 would illustrate how these
35 sections are to be applied to electronic dispositions.
36
37
38

1 **SECTION 9-625. REMEDIES FOR SECURED PARTY’S FAILURE TO**
2 **COMPLY WITH ARTICLE.**

3 * * *

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

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

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

13 * * *

14 **Reporter’s Note**

15
16 The heading for subsection (c) would be conformed to the text. Article 9 includes
17 headings for the subsections as an aid to readers. Unlike section captions, which are part of the
18 UCC, see Section 1-107, subsection headings are not a part of the official text itself.

19
20
21 **SECTION 9-706. WHEN INITIAL FINANCING STATEMENT SUFFICES TO**
22 **CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.**

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

26 (1) the filing of an initial financing statement in that office would be effective to
27 perfect a security interest under this [Act];

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

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

4 * * *

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

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

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

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

13 Official Comment

14 * * *

15
16
17 **2. Requirements of Initial Financing Statement Filed in Lieu of Continuation**
18 **Statement.** Subsection (c) sets forth the requirements for the initial financing statement under
19 subsection (a). These requirements are needed to inform searchers that the initial financing
20 statement operates to continue a financing statement filed elsewhere and to enable searchers to
21 locate and discover the attributes of the other financing statement. The notice-filing policy of
22 this Article applies to the initial financing statements described in this section. Accordingly, an
23 initial financing statement that substantially satisfies the requirements of subsection (c) is
24 effective, even if it has minor errors or omissions, unless the errors or omissions make the
25 financing statement seriously misleading. See Section 9-506.
26

27 A single initial financing statement may continue the effectiveness of more than one
28 financing statement filed before this Article's effective date. See Section 1-102(5)(a) (words in
29 the singular include the plural). If a financing statement has been filed in more than one office in
30 a given jurisdiction, as may be the case if the jurisdiction had adopted former Section 9-401(1),
31 third alternative, then an identification of the filing in the central filing office suffices for
32 purposes of subsection (c)(2). If under this Article the collateral is of a type different from its
33 type under former Article 9—as would be the case, e.g., with a right to payment of lottery
34 winnings (a “general intangible” under former Article 9 and an “account” under this Article),
35 then subsection (c) requires that the initial financing statement indicate the type under this

1 Article.

2
3 **Reporter’s Note**

4
5 The additional sentences would remove any doubt that the “minor error” rule in Section
6 9-506(a) applies to an initial financing statement, including one that is filed to continue the
7 effectiveness of a financing statement that was filed before revised Article 9 took effect.
8

9
10 **ARTICLE 11**

11 **EFFECTIVE DATE AND TRANSITION PROVISIONS**

12 * * *

13 *Legislative Note: Article 11 affects transactions that were entered into before the effective date*
14 *of the 1972 amendments to Article 9, which were supplanted by the version of Article 9 that has*
15 *been in effect in all States since at least January 1, 2002. Inasmuch as very few, if any, of these*
16 *transactions remain outstanding, States may wish to repeal Article 11.*
17

18 **Reporter’s Note**

19
20 When Article 9 was revised in 1972, it was accompanied by an Article 11, which
21 provides the effective date of the revisions as well as transition rules for transactions entered into
22 before the effective date of the revisions. It is now 36 years since the promulgation of the 1972
23 amendments and over a quarter-century since their widespread enactment. As such, it is quite
24 unlikely that there are more than a trivial number of outstanding transactions (if any) that were
25 entered into before the effective date of the 1972 amendments and for which transition rules to
26 the 1972 text of Article 9 (now supplanted by revised Article 9) remain relevant.