

REVISIONS CONCERNING FILING

Reporters' Prefatory Note

This draft consists of a revised Part 4, accompanied by one revised and several new definitions in 9-105. It is marked (additional material is underlined and deletions are indicated by ~~strikeout~~) to reflect changes from the current official text.

The proposed revisions stem largely from two new concepts that the draft introduces. These concepts are drawn from recommendations of the Study Committee (see Section 11 of the Report), from suggestions made by participants in the Article 9 Filing Project and the Drafting Committee (including members, advisors, and observers), and from preliminary deliberations of the Drafting Committee. First, the draft is "media neutral." It recognizes that one can "communicate" (defined in draft 9-105(o)) a "record" (defined in draft 9-105(r)) by means other than writing or other tangible media. Second, draft 9-411 provides for administrative regulations to address details that are better left outside of the statute. Under the draft, this detail includes some matters that are treated under the current Part 4, such as fees for filing, searching, etc. The draft leaves most matters of detail to the regulations, resulting in a somewhat cleaner, more general statute. The Drafting Committee may wish to consider whether the draft appropriately allocates legal rules between the statute and the regulations.

The draft is the Drafting Committee's first look at a systematic revisions of Part 4. To focus the discussion, the draft generally leaves unchanged and in place provisions whose substance would be unaffected by the desire for media neutrality or the promulgation of regulations. Many other changes to the language and structure of Part 4 are possible. The Explanatory Notes identify some of them. After reviewing and discussing this preliminary draft, the Drafting Committee may wish to see a more complete reworking of Part 4.

Section 9-105. Definitions and Index of Definitions.

(1a) In this Article unless the context otherwise requires:

* * *

(o) "Communicate" means to (i) send a written or other tangible record, (ii) transmit a record by any means agreed upon by the persons sending and receiving the record; or (iii) in the case of transmissions of records to and by the filing office, transmit a record by any means prescribed by the regulations;

* * *

(p) "Filing office" means the office[s] designated in Section 9-401 as the proper place to file a financing statement;

* * *

(q) "Jurisdiction of organization" of a debtor means [e.g., for a corporation, its state of incorporation; more complete definition to come];

* * *

(r) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

[(s) "Registered agent" means a registered agent of a debtor designated under Section 9-409;]

(t) "Regulations" means the regulations issued by [] pursuant to Section 9-411;

* * *

(mu) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, general intangibles or chattel paper have been sold. When If the holders of obligations issued under an indenture of trust, equipment trust agreement or the like obligees or buyers are represented by a trustee, indenture trustee, agent, collateral agent or other person representative, the representative is the secured party;

* * *

[(v) "Tax identification number" of a debtor means a debtor's social security number if the debtor is an individual and in other cases a number, if any, determined by a method prescribed in the regulations;]

* * *

Reporters' Explanatory Notes

1. These definitions are largely self-explanatory. Note that a "record" includes information that is in intangible form (*e.g.*, electronically stored) as well as tangible form (*e.g.*, written). Whatever is filed in the Article 9 filing system, including financing statements, termination statements, and amendments, whether submitted in tangible or intangible form, would fall within the definition. The definition of "communicate" derives in part from Revised 8-102(a)(5) (1994); it includes the act of transmitting both tangible and intangible records.

2. We understand that the definition of "record" is the current working definition approved by the NCCUSL Committee on Style for revised UCC Article 5 and the Uniform Limited Liability Company Act. We wish to thank Commissioner Patricia Brumfield Fry (North Dakota) for bringing us up to date. Professor Fry has passed on to us the following language (which we have "lightly" edited) that might be suitable for the official comment:

This definition is designed to embrace all means of communicating or storing information except human memory. Given the rapid development and commercial adoption of modern communication and storage technologies, requirements that documents or communications be

"written" or "in writing" do not necessarily reflect or aid commercial practices. Examples of current technologies commercially used to communicate or store information include, but are not limited to, magnetic media, optical discs, digital voice messaging systems, electronic mail, audio tapes, and photographic media, as well as paper. "Record" is an inclusive term that includes all of these methods of storing or communicating information. Any "writing" is a record.

A "record" need not be permanent or indestructible, but the term does not include any oral or other communication that is not stored or preserved by any means. The information must be stored on paper or in some other medium. Information that has not been retained other than through human memory does not qualify as a record. A record may be signed. See 1-201(39). A record may be created without the knowledge or intent of a particular party.

Like the terms "written" or "in writing," the term "record" does not establish the purposes, permitted uses or legal effect that a record may have under any particular provision of law. A record may or may not be admissible in evidence, satisfy Statutes of Frauds, or be in appropriate form for filing with a filing office. Other provisions of this [Article] [Act] must be consulted to determine the admissibility, etc. of any particular record.

* * *

A specification that a document or communication must be in writing excludes the use of any other form of record. In some instances, statutes or the regulations of filing offices may require that a writing be filed or that a particular form of signature be employed. In such cases, whether or not a record is permitted under this [Article] [Act], compliance with those statutes or regulations is necessary. When a filing office adopts modern technologies, any record satisfying modified statutes or regulations as may be adopted would be sufficient under this [Article] [Act].

3. The definition of "secured party" in revised subsection (u) clarifies the status of representatives other than indenture trustees. The draft treats the representative as the secured party. One consequence of this approach is that the agent in a multi-bank facility, like the trustee under an indenture, would have the duties and potential liability that Part 5 imposes upon the secured party. Ordinarily, the agent would require indemnity from the banks; however, an indemnity would not relieve the agent of potential liability to the debtor. The Drafting Committee may wish to address the liability question elsewhere (*e.g.*, in 9- 501) by giving effect to an agreement by the debtor that the represented parties (banks), rather than the representative (agent), have the duties of the secured party. Another approach would be to provide that the name of the agent would qualify as the name of the secured party in a financing statement, but leave the banks as secured parties for other purposes.

PART 4 FILING

Section 9-401. Place of Filing; Erroneous Filing; Removal of Collateral.

First Alternative Subsection (1)

(1a) The proper place to file a financing statement in order to perfect a security interest is as follows:

(a₁) when If the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to subsection (5) of Section 9-103([5]), or when if the financing statement is filed as a fixture filing (Section 9-313) and the collateral is goods which that are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

[(2) if the debtor has designated a registered agent under Section 9-409, in the office of the debtor's registered agent;]

(b₃) in all other cases, in the office of the [Secretary of State] [].

Note: *The state should designate the filing office where the brackets appear. The filing office may be that of a governmental official (e.g., the Secretary of State) or a private party with which the state has made arrangements for maintaining the state's filing system (see 9-410).*

Second Alternative Subsection (1)

(1) The proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is equipment used in farming operations, or farm products, or accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the _____ in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the _____ in the county where the goods are kept, and in addition when the collateral is crops growing or to be grown in the office of the _____ in the county where the land is located;

(b) when the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to subsection (5) of Section 9-103, or when the financing statement is filed as a fixture filing (Section 9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

(c) in all other cases, in the office of the [Secretary of State].

Third Alternative Subsection (1)

(1) The proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is equipment used in farming operations, or farm products, or accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the _____ in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the _____ in the county where the goods are kept, and in addition when the collateral is crops growing or to be grown in the office of the _____ in the county where the land is located;

(b) when the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to subsection (5) of Section 9-103, or when the financing statement is filed as a fixture filing (Section 9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

(c) in all other cases, in the office of the [Secretary of State] and in addition, if the debtor has a place of business in only one county of this state, also in the office of _____ of such county, or, if the debtor has no place of business in this state, but resides in the state, also in the office of _____ of the county in which he resides.

Note: One of the three alternatives should be selected as subsection (1).

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this Article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

Alternative Subsection (3)

[(3) A filing which is made in the proper county continues effective for four months after a change to another county of the debtor's residence or place of business or the location of the collateral, whichever controlled the original filing. It becomes ineffective thereafter unless a copy of the financing statement signed by the secured party is filed in the new county within said period. The security interest may also be perfected in the new county after the expiration of the four-month period; in such case perfection dates from the time of perfection in the new county. A change in the use of the collateral does not impair the effectiveness of the original filing.]

(4b) The rules stated in Section 9-103 determine whether filing is necessary in this state.

(5c) Notwithstanding the preceding subsections, and subject to subsection (3) of Section 9-302([3]), the proper place to file a financing statement in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the [Secretary of State] []. This filing financing statement constitutes a fixture filing (Section 9-313) as to the collateral described therein which that is or is to become fixtures.

(6) For the purposes of this section, the residence of an organization is its place of business if it has one or its chief executive office if it has more than one place of business.

Note: Subsection (6) should be used only if the state chooses the Second or Third Alternative Subsection (1).

Reporters' Explanatory Note

Draft 9-401(a) indicates where in a given state a financing statement is to be filed. The draft removes the Second and Third Alternatives of current 9-401(1). These alternatives provide for local filing under certain circumstances. Draft subsection (a) dictates central filing for most situations, while retaining local filing for real-estate-related collateral and special filing provisions for transmitting utilities. (Whether the current definition of "transmitting utility" is adequate will be on the agenda for a future meeting.) The elimination of alternatives for local filing for collateral such as farm products and consumer goods, and for dual (central and local) filing for businesses that have a place of business in only one county, makes current subsections (2), (3), and (6) unnecessary. Accordingly, the draft deletes those subsections.

At the October, 1994, Drafting Committee meeting, the Reporters distributed a proposal under which a state would permit each debtor to select a "registered agent" to maintain financing statements and other Article 9 records pertaining to the debtor. Draft subsection (a)(2) provides for filing with such a registered agent, should the Drafting Committee elect to pursue this proposal.

Section 9-402. Formal Requisites of Financing Statement; Amendments; Mortgage as Financing Statement; Effectiveness of Financing Statement After Certain Changes.

(1a) A financing statement is sufficient only if it (i) is in the form, if any, prescribed by the regulations, (ii) gives the names of the debtor and the secured party, but if the secured party is a representative the name of the secured party is sufficient whether or not it indicates the representative capacity, is signed by the debtor, (iii) gives an address of the secured party from which information concerning the security interest may be obtained, (iv) gives a mailing address of the debtor, and (v) contains a statement indicating the types of collateral, or describing the items, of collateral, or otherwise indicating the collateral covered by the financing statement, (vi) gives the debtor's jurisdiction of organization, if the debtor has one, [(vii) gives the debtor's tax identification number, if the debtor has one,] and (vii[i]) contains the additional information, if any, prescribed in the regulations. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When If the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of Section 9-103([5]), or when if the financing statement is filed as a fixture filing (Section 9-313) and the collateral is goods which that are or are to become fixtures, the statement must also comply with subsection (5c). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or

(b) proceeds under Section 9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

(c) collateral as to which the filing has lapsed;

(d) collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) _____

Address _____

Name of secured party (or assignee) _____

Address _____

1. This financing statement covers the following types (or items) of property:

(Describe) _____

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate) _____

3. (If applicable) The above goods are to become fixtures on]*

* Where appropriate substitute either "The above timber is standing on" or "The above minerals or the like (including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on"

(Describe Real Estate) _____ and this financing statement is to be filed [for record] in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is _____

4. (If products of collateral are claimed) Products of the collateral are also covered.

(use (.....

(Signature of Debtor (or Assignor)

whichever (

(

is (

(.....

applicable) (Signature of Secured Party (or Assignee) (4b) A The secured party may add or release collateral covered by a financing statement or otherwise amend the information contained in a financing statement may be amended by filing a writing signed by both the debtor and the secured party an amendment that identifies the original financing statement by the date of filing and the file number assigned under Section 9-403(e) or by another method specified in the regulations. An amendment does not extend the period of effectiveness of a financing statement. If any an amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this Article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments, statements of assignment, and continuation statements relating to the original financing statement. The secured party may file an original financing statement or an amendment that adds collateral covered by a financing statement only if authorized by the debtor.

(5c) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of Section 9-103(~~5~~), or a financing statement filed as a fixture filing (Section 9-313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed [for record] in the real estate records, and the financing statement must contain a description of the real estate [sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state]. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(6d) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if

(a~~1~~)the goods are described in the mortgage by item or type the mortgage contains a statement indicating the goods that it covers ; and

(b~~2~~) the goods are or are to become fixtures related to the real estate described in the mortgage; and

(c~~3~~) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and

(d~~4~~) the mortgage is duly recorded.

No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7e) A financing statement sufficiently shows the name of the debtor only if it gives the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or names of partners. A financing statement that sufficiently shows the name of the debtor is not rendered ineffective by the addition or absence of trade or other names or names of partners.

(f) Where the debtor so changes his its name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading,:

(1) the financing statement remains effective to perfect a security interest in collateral acquired by the debtor within four months after the change, and

(2) the filing financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement an amendment to the financing statement that renders the financing statement not seriously misleading is filed before the expiration of that time.

(g) A filed financing statement remains effective with respect to collateral transferred by the debtor that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest continues under Section 9-306(2)], even though the secured party knows of or consents to the transferdisposition.

(8h) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which that are not seriously misleading. Except as provided in subsection (f) and Section 9-402(A), a financing statement is not rendered ineffective if, after the financing statement is filed, the information contained in the financing statement becomes inaccurate and seriously misleading.

Note: *Language in brackets is optional.*

Note: *Where the state has any special recording system for real estate other than the usual grantor-grantee index (as, for instance, a tract system or a title registration or Torrens system) local adaptations of subsection (5c) and Section 9-403(7g) may be necessary. See Mass.Gen.Laws Chapter 106, Section 9-409.*

Reporters' Explanatory Notes

1. Revised subsection (a) omits the requirement (in current subsection (1)) that the debtor sign a financing statement, thereby easing the way for electronic, paperless filing initiated by a secured party. See draft 9-403(a). It also clarifies other formal requisites for a financing statement and adds some additional requirements. Clause (ii) makes it clear that the name of the secured party need not indicate the capacity of a representative as such. Clause (v) expands the class of sufficient collateral references to embrace "a statement . . . otherwise indicating the collateral covered by the financing statement." That formulation is broad enough to uphold references such as "all personal property"; if the property in question belongs to the debtor and is personal property, any searcher will know that the property is covered by the financing statement. The official comments should explicate this reasoning. Clauses (vi), (vii), and (viii) add additional

requirements. We have bracketed clause (vii), relating to social security and tax identification numbers, because these requirements may raise issues of privacy or illegality that we have not yet explored. The other currently-required information that is deleted from current subsection (1) seems unwise (real estate description for financing statements covering crops), unnecessary (adequacy of copies of financing statements), or both (copy of security agreement as financing statement). In light of the fact that a secured party owes no obligation to disclose information concerning the security interest to third parties, the Drafting Committee may wish to change the requirement in clause (iii) to refer to "a mailing address."

2. Current subsection (2) has been deleted in the draft; elimination of the debtor's signature requirement makes the exceptions provided by that subsection unnecessary. Current subsection (3), which contains a form of financing statement, also has been deleted. We contemplate that the regulations would address appropriate written forms as well as intangible records.

3. Subsection (b) (current subsection (4)) has been revised to permit secured parties to file amendments. It also provides that references to "the term 'financing statement'" include not only the original financing statement and amendments but also the remaining parts of the package that constitute the complete financing statement of record--assignments and continuation statements. Finally, subsection (b) permits the secured party to file an original financing statement or an amendment that adds collateral only if the debtor has authorized the filing. That protection is necessary to compensate for the elimination of the debtor's signature on a financing statement.

Just as the draft brings releases into the category of amendments, so it may be possible to include as amendments, all other records affecting a financing statement: termination statements, continuation statements, and statements of assignment. We did not think it advisable to pursue this approach at this stage of the Drafting Committee's consideration of the issues; however, the Drafting Committee may wish to consider whether the approach appears promising enough to warrant a draft along that line.

4. Draft subsections (c) and (d) (current subsections (5) and (6)) contain the following terms: "for record," "real estate records," "interest of record," and "record owner." The official comments should be revised to explain that these are terms traditionally used in real estate law and that this context "otherwise requires" that the proposed definition of "record" in draft 9-105(r) is not applicable. These two subsections also contain minor revisions in style. Subsection (d) conforms to draft subsection (a), clause (v), the requisite description of goods in a mortgage filed as a fixture filing. It also leaves to regulations the subject of fees applicable to a mortgage filed as a fixture-filing financing statement. The Drafting Committee may wish to consider whether the phrase "must show that it covers this type of collateral" in subsection (c) should be clarified.

5. Draft subsections (e), (f), and (g) have been discussed by the Drafting Committee in connection with its consideration of "post-closing events." This draft makes a few minor changes in style and phraseology. The proposed changes in subsection (e) respond to Study Committee Recommendation 17.A (Report, at 39-40). They reflect the prevailing view that the "individual, partnership or corporate name of the debtor" on a financing statement is both necessary and sufficient, whether or not trade or other names are included. Recommendation 17.A also calls for expanded official comments that address the names of individuals and entities other than

corporations or partnerships. Draft subsection (f) responds to Study Committee Recommendations 17.B and 17.C (Report, at 140-42) and addresses a "pure" change of name that does not implicate a new debtor. It clarifies the effectiveness of a seriously misleading financing statement for the four months following a name change and provides that the record can be corrected by an amendment to the financing statement that specifies the debtor's new correct name. Subsection (9) clarifies the third sentence of current 9-402(7), as proposed in Recommendation 17.G (Report, at 149), by providing that a financing statement remains effective following the transfer of collateral only when the security interest continues in that collateral. This result is consistent with the conclusion of PEB Commentary No. 3.

6. Draft subsection (h) derives from current subsection (8). This draft includes a new sentence providing that, except for the four-month rules in subsection (f) ("pure" name change) and Section 9-402A (new debtor that becomes bound), post-filing changes that render a financing statement inaccurate and seriously misleading have no effect on a financing statement. The financing statement remains effective. The Drafting Committee may wish to consider whether the "seriously misleading" test should be reformulated or amplified.

7. The Drafting Committee may wish to consider whether this section should be reorganized. For example, the definition of "financing statement" might be moved to 9-105; the last sentence of subsection (a) might be linked to the first sentence of subsection (c); and the rule concerning the name of secured party (subsection (a), clause (ii)) might be moved closer to the rule concerning the name of the debtor (subsection (e)).

Section 9-402A. Effectiveness of Financing Statement If New Debtor Becomes Bound by Security Agreement.

(a) In this section:

(1) "new debtor" means a person who becomes bound by a security agreement [signed] [entered into] by another person [if the person becomes bound in connection with a transaction or series of transactions pursuant to which the person who becomes bound continues to operate the business or a portion of the business previously operated by the other person]; and

(2) "original debtor" means the person who [signed] [entered into] the security agreement to which the new debtor has become bound.

(b) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under Section 9-402(g).

(c) [At the time when the new debtor becomes bound by the security agreement, a] [A] filed financing statement naming the original debtor [becomes] [is] effective to perfect a security interest in collateral that is described in the security agreement and covered by the financing statement and in which the new debtor has or acquires rights.

(d) If a filed financing statement that [becomes] [is] effective under subsection (c) is seriously misleading with respect to the name of the new debtor:

(1) the financing statement [remains] [is] effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound, and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound unless an amendment to the financing statement that renders the financing statement not seriously misleading is filed before the expiration of that time.

Reporters' Explanatory Note

Draft 9-402A has been discussed by the Drafting Committee in connection with its consideration of "post-closing events." It reflects Study Committee Recommendations 17.E and F. It deals with the situation where one party (B) becomes bound by another party's (A's) security agreement (including any after-acquired property clause) in favor of SP-A.

Section 9-403. What Constitutes Filing a Record; Rejection of Records; Duration of Filing Financing Statement; Effect of Lapsed Filing Financing Statement; Duties of Filing Officer Office.

(1a) [Presentation] [Submission] of a record to the filing office for filing of a financing statement and tender of the any applicable filing fee or acceptance of the statement record by the filing officer office constitutes filing under this Article.

(b) The filing office may refuse to accept a record for filing only for the following reasons:

(1) failure to tender the applicable filing fee;

(2) the omission of information necessary to index the record in accordance with this [Article] and the regulations; or

(3) any other reason for refusal as may be specified in the regulations.

If the filing office refuses to accept a record for filing it shall communicate its refusal and the reason for its refusal to the secured party at the time and in the manner prescribed in the regulations.

(2c) Except as provided in subsection (6f) a filed financing statement is effective for a period of five years from the date of filing or, if authorized by the regulations, for a longer period specified in the financing statement. The effectiveness of a filed financing statement lapses on the expiration of the five year its period of effectiveness unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of [sixty days] or until expiration of the five year its period of effectiveness, whichever occurs later. Upon lapse a financing statement becomes ineffective and any the security interest that was perfected by the financing

statement becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected [as against a person who became a purchaser or lien creditor before lapse] [at all times prior thereto].

(3d) A continuation statement may be filed by the secured party of record for a financing statement [only within six months one year] [at any time] prior to the expiration of the five year period of effectiveness specified in subsection (2c). A Any such continuation statement must be signed by the secured party, identify the original financing statement by file number and the date of filing or by another method specified in the regulations and state that the original statement is still effective it is a continuation statement or that it is filed for the purpose of continuing the effectiveness of the financing statement. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of Section 9-405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original financing statement is continued for five years after the last date to which the filing financing statement was effective or, if authorized by the regulations, for a longer period specified in the financing statement, whereupon it the financing statement lapses in the same manner as provided in subsection (2c) unless another continuation statement is filed under this subsection prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original financing statement. Unless a statute on disposition of public records provides otherwise, the filing officer office may remove a lapsed cause the files to reflect the fact that a financing statement has lapsed under this Section or has become ineffective under Section 9-404 from the files and may destroy it any written record evidencing the financing statement immediately if he the filing office has retained a microfilm or other photographic record of the financing statement, or in other cases after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4e) Except as provided in subsection (7g), a the filing officer office shall mark each statement with assign a file number to each record filed with the filing office, and with create a record that reflects the file number and the date and hour of filing, and shall hold the statement or a microfilm or other photographic copy thereof for maintain the record for public inspection. In addition, the filing officer office shall index the statement filed records according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement date and hour of filing.

(5) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall be \$_____ if the statement is in the standard form prescribed by the [Secretary of State] and otherwise shall be \$_____, plus in each case, if the financing statement is subject to subsection (5) of Section 9-402, \$_____. The uniform fee for each name more than one required to be indexed shall be \$_____. The secured party may at his option show a trade

name for any person and an extra uniform indexing fee of \$_____ shall be paid with respect thereto.

(6f) If the debtor is a transmitting utility (subsection (5) of Section 9-401(c)) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which that is effective as a fixture filing under subsection (6) of Section 9-402(d) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7g) When If a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of Section 9-103([5]), or is filed as a fixture filing, [it shall be filed for record and] the filing officer office shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he the secured party were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

Note: In states in which writings will not appear in the real estate records and indices unless actually recorded the bracketed language in subsection (7g) should be used.

Reporters' Explanatory Notes

1. Current subsection (1) deals solely with what constitutes filing of a *financing statement*. Draft subsection (a) deals generically with what constitutes filing of a *record*.
2. Draft subsection (b) is new. It limits the bases for the filing office to reject records and requires the filing office to notify the secured party of a rejection. We contemplate that additional bases of rejection and the method and timing of notification would be dealt with in the regulations.
3. Draft subsection (c) modifies current subsection (2) so as to accommodate regulations providing that a secured party may specify a period of effectiveness for a financing statement that is longer than 5 years (presumably for an additional fee). Section 204 of the Bankruptcy Reform Act of 1994 would permit a secured party to continue or maintain the perfected status of its security interest without first obtaining relief from the automatic stay. The Drafting Committee should consider whether the tolling provision remains necessary (or even effective) in the light of this amendment to the Bankruptcy Code.
4. Draft subsection (d) deals with the details of filing continuation statements. Current subsection (d) provides a six-month window before expiration during which a continuation statement may be filed. The draft offers two alternatives--a one-year window and no window. Consistent with the media neutral approach of draft Part 4 as a whole, the secured party's signature is not required under the draft. The other suggested changes give effect to the media neutral approach or are for

clarification. The revisions proposed in draft subsection (e) (current subsection (4)) also reflect media neutral drafting.

5. The draft proposes deletion of current subsection (5), which deals with fees for filing, and also proposes deletion of the other, similar provisions elsewhere in Part 4. We contemplate that the fees would be specified in the regulations.

6. Concerning the references to "of record" and "for record" in draft subsections (f) and (g), see Explanatory Note 4 to draft 9-402.

Section 9-404. Termination Statement.

(a) A termination statement for a financing statement is a record that identifies the financing statement by file number and the date of filing or by another method specified in the regulations and states that the secured party does not claim a security interest perfected by the financing statement.

(1b) The secured party of record for a financing statement may file a termination statement for the financing statement. If a financing statement covering covers [consumer goods] is filed on or after _____, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party of record must file with each the filing officer with whom the financing statement was filed, office a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number for the financing statement. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party of record for a financing statement must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number for the financing statement. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with subsection (2) of Section 9-405, including payment of the required fee. If the affected secured party of record fails to file such or send a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor, he the secured party of record shall be liable to the debtor for [one hundred [insert amount] dollars] [an amount specified in the regulations], and in addition for any loss caused to the debtor by such failure.

(2c) On presentation to the filing officer of such a termination statement he must note it in the index filing a termination statement with the filing office under subsection (b) the financing statement to which the termination statement relates becomes ineffective. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at

any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one year after receipt of the termination statement.

(3) If the termination statement is in the standard form prescribed by the [Secretary of State], the uniform fee for filing and indexing the termination statement shall be \$_____, and otherwise shall be \$_____, plus in each case an additional fee of \$_____ for each name more than one against which the termination statement is required to be indexed.

Note: *The date to be inserted should be the effective date of the revised Article 9.*

Reporters' Explanatory Notes

1. Subsection (a) establishes the requirements for a termination statement, thereby eliminating some redundancies in the remainder of draft 9-404. Most of the other changes in the section are for clarification or to embrace media neutral drafting.

2. Draft subsection (b) specifies when a secured party of record must file a termination statement. After elimination of the requirement of a debtor's signature, this will be the debtor's principal protection against a secured party's filing an unauthorized financing statement or amendment. In addition, draft 9-411(l) would permit regulations "prescribing remedies for a person aggrieved by a secured party's noncompliance with this Part or the regulations."

Section 9-405. Assignment of Security Interest; Duties of Filing Officer Office; Fees.

(1a) A An original financing statement may disclose an contain a statement of assignment of a security interest in the collateral described in the secured party's rights under the financing statement by indication indicating in the financing statement of the name of the assignee and an address of the assignee from which information concerning the security interest may be obtained or by an assignment itself or a copy thereof on the face or back of the statement.

(2b) A secured party of record may assign of record all or part of his the secured party's rights under a financing statement by the filing in the place where the original financing statement was filed of filing office a separate written statement of assignment signed by the secured party of record and setting forth that identifies the original financing statement by file number and the date of filing or by another method specified in the regulations and indicates the name names of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee, and containing a description of the collateral assigned an address of the assignee from which information concerning the security interest may be obtained. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement, or in The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be \$_____ if the statement is in the standard form prescribed by the [Secretary of State] and otherwise shall be \$_____, plus in each case an additional fee of \$_____ for each name more than one against which the statement of assignment is required to be indexed.

(3c) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record. Upon filing the assignee named in a statement of assignment filed under subsection (a) or (b) is the secured party of record for the financing statement. A statement of assignment may state that the rights under the financing statement are being assigned only with respect to the portion of the collateral covered by the financing statement that is indicated in the statement of assignment; otherwise, the rights under the financing statement are assigned of record with respect to all of the collateral covered by the financing statement.

(d)1 The provisions in subsection (d) are found in the current 9-405(2) and are marked to reflect changes therefrom. In the case of a fixture filing, or a filing financing statement covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of Section 9-103([5]), he the filing office shall index the a statement of assignment filed under subsection (a) or (b) under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he the filing office shall index the assignment of the financing statement under the name of the assignee. Notwithstanding the provisions of this subsection Section, an assignment of record of a security interest in a fixture contained in covered by a mortgage effective as a fixture filing (subsection (6) of Section 9-402(d)) may be made only by an assignment of record of the mortgage in the manner provided by the law of this state other than this Act.

Reporters' Explanatory Note

Most of the proposed changes in draft 9-405 are for clarification or to embrace media neutral drafting. In addition, draft subsection (c) deals with the troublesome issue of partial assignments and the identification of the secured party/parties of record.

Section 9-406. Release of Collateral; Duties of Filing Officer; Fees Multiple Secured Parties.

If there is more than one secured party of record for a financing statement, each secured party of record may file an amendment, continuation statement, termination statement, or statement of assignment under this Part concerning its rights under the financing statement, but a filing by one secured party of record does not affect the rights under the financing statement of another secured party of record.

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of Section 9-405, including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be \$_____ if

the statement is in the standard form prescribed by the [Secretary of State] and otherwise shall be \$_____, plus in each case an additional fee of \$_____ for each name more than one against which the statement of release is required to be indexed.

Reporters' Explanatory Notes

1. The draft deletes the entire statutory text of current 9-406, which deals with releases of collateral. Under draft 9-402(b), releases of collateral are dealt with as a form of amendment that modifies the collateral covered by a financing statement.

2. Draft 9-406 deals with multiple secured parties. In general, it permits a secured party of record to make filings concerning its own rights under a financing statement, but protects the secured party's rights from the effects of filings made by another secured party of record. For example, assume that a financing statement names A and B as the secured parties. If B files an amendment that limits the collateral covered by the financing statement or files a termination statement, A's rights would not be affected. The financing statement would continue to name A as a secured party and, as to A, the collateral description would remain unaffected by B's amendment.

Section 9-407. Information From Filing Officer Office; Sale or License of Records.

[(1a) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, a written record furnishes the filing officer office a copy thereof, the filing officer office shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.]

[(2b) Upon request of any person, the filing officer office shall issue his certificate showing communicate to the requesting person whether there is on file on a date and hour stated therein specified by the filing office, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such financing statement and the names and addresses of each secured party information contained therein. The uniform fee for such a certificate shall be \$_____ if the request for the certificate is in the standard form prescribed by the [Secretary of State] and otherwise shall be \$_____. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of \$_____ per page.]

(c) The [insert appropriate official or governmental agency] [filing office] shall sell or license to the public records filed with it under this Part in the manner and on the terms prescribed in the regulations.

Note: *This section is Subsections (a) and (b) are proposed as an optional provision provisions to require filing officers to furnish certificates. Local law and practices should be consulted with regard to the advisability of adoption.*

Reporters' Explanatory Notes

1. Most of the proposed changes in draft 9-407 are for clarification or to embrace media neutral drafting.
2. Draft subsection (c) mandates that the appropriate official or the filing office sell or license the filing records, although it leaves to the regulations the details of implementation.

Section 9-408. Filing and Compliance with Other Statutes and Treaties for Consignments, Leases, Bailments and Other Transactions Financing Statements Covering Consigned or Leased Goods.

A consignor, or lessor, bailor [or buyer] of property goods may file a financing statement or may comply with a statute or treaty described in Section 9-302(3) using the terms "consignor," "consignee," "lessor," "lessee," "bailor," "bailee," "owner," "registered owner"[, "buyer," "seller"] or the like instead of the terms "debtor" and "secured party." the terms specified in Section 9-402. The provisions of this Part shall apply as appropriate to such a financing statement and to such compliance, which is equivalent to filing a financing statement under 9-302(4), but neither the its filing nor compliance shall not of itself be a factor in determining whether or not the consignment, or lease, bailment[, sale] or other transaction creates a security interest is intended as security (Section 1-201(37)). However, if it is determined for other reasons that the consignment, or lease, bailment[, sale] or other transaction creates a security interest is so intended, a security interest held by of the consignor, or lessor, bailor, owner [or buyer] that which attaches to the collateral consigned or leased goods is perfected by the such filing or compliance.

Reporters' Explanatory Notes

1. The foregoing revised 9-408 is identical to that contained in the October 26, 1994, Draft (concerning goods covered by a certificate of title), except that the terms "buyer" and "seller" have been reversed. The proposed revision provides the same benefits for compliance with a statute or treaty described in 9-302(3) that existing 9-408 provides for filing in connection with the use of terms such as "lessor," "consignor," etc. It also expands the rule to embrace more generally other bailments and transactions. We intend the references to "owner" and "registered owner" to address, for example, the situation where a putative lessor is the registered owner of an automobile covered by a certificate of title and the transaction is determined to create a security interest. Although the draft provides that the security interest is perfected, it may be advisable or necessary to amend the relevant certificate of title act in order to ensure that this result will be achieved. The bracketed language would encompass sales transactions, primarily sales of general intangibles. Whether the bracketed language is appropriate will depend on the Drafting Committee's ultimate decisions about the scope of Article 9.
2. The last two sentences of the section substitute the concept of "creation" of a security interest for the existing "intention" standard. We also expect to revise the definition of "security interest" in 1-201(37) by deleting all references to the "intention" standard.

[Section 9-409. Registered Agent.

Intentionally omitted]

Reporters' Explanatory Notes

At the October, 1994, Drafting Committee meeting, the Reporters distributed a proposal under which a state would permit each debtor to select a "registered agent" to maintain financing statements and other Article 9 records pertaining to the debtor. Pending the Drafting Committee's determination whether it wishes to pursue that proposal, we have not prepared the draft statutory text that would be needed to give effect to that proposal.

Section 9-410. Delegation of Duties to Private Contractor.

The [insert appropriate official or governmental agency] [filing office] may by contract delegate to a private contractor some or all of its powers, rights, and duties under this Part, other than the power to issue regulations under 9-411. Contracts under this Section are subject to [insert reference to any applicable statute that regulates government contracting and procurement].

Reporters' Explanatory Notes

Draft 9-410 explicitly confers on the filing office or the appropriate government agency the power to make arrangements with a private contractor for the operation of the duties of the filing office.

Section 9-411. Regulations.

The [insert appropriate official or governmental agency] [filing office] may issue regulations not inconsistent with the provisions of this [Act] [Article] [and in accordance with the [insert any applicable state administrative procedure act]]:

(a) prescribing the form and content of financing statements, amendments to financing statements, continuation statements, termination statements, statements of assignment, requests for information from the filing office[, [and] notices of [insert other liens, if any, to be "perfected" by filing in the financing statement records, such as statutory agricultural liens, judicial liens and state tax liens; also insert statutory cross references] [, and designations of registered agents];

(b) prescribing the manner and media for presenting records to the filing office for filing and for communicating with the filing office;

(c) prescribing the duties of the filing office, including the grounds on which the filing office may refuse to accept records for filing;

(d) prescribing the business hours of the filing office;

(e) prescribing the manner in which the filing office maintains, preserves, and indexes, searches, and otherwise makes available records;

(f) concerning the filing office, including the transition from the prior filing system to the system established under this Part;

(g) requiring the payment of fees to the filing office and prescribing the amount and manner of payment of fees;

(h) prescribing the amounts of compensation payable under Section 9-404 and the amount of any charge to which a secured party is entitled under Section 9-404;

(i) prescribing the basis for determining the time when the filing office has accepted for filing or received a record and requiring or permitting the use of a record to confirm that the filing office has accepted for filing or received a record;

(j) requiring or permitting the amendment or remedy of an error made by the filing office, including errors in filing, failing or refusing to accept records for filing, indexing records, and searching records, and prescribing the limits and effects of such amendments or remedies;

(k) prescribing the terms and manner of selling or licensing to the public records filed with the filing office under this Part, including the price to be charged for the records;

(l) prescribing remedies for a person aggrieved by a secured party's noncompliance with this Part or the regulations;

(m) establishing performance standards for the filing office, including standards concerning the timeliness and quality of performance by the filing office of its duties;

(n) prescribing protocols, abbreviations, symbols, expansions of definitions of terms, and definitions of terms that may be used to communicate with the filing office and in the preservation and organization of records by the filing office;

[(o) prescribing a method for determining tax identification numbers for debtors [other than individuals];]

(p) governing the right of a secured party to indicate the period of time for which a financing statement will be effective;

(q) prescribing procedures for the tolling of the lapse of financing statements under Section 9-403(c) if insolvency proceedings are commenced by or against the debtor;

(r) prescribing procedures for filing a termination statement or otherwise terminating the effectiveness of a financing statement if the secured party cannot be found, has ceased to exist, or otherwise is unavailable;

(s) prescribing criteria for determining questions of authenticity and authority concerning records;

(t) governing the delegation of powers, rights, and duties to a private contractor under 9-410;

(u) governing the rulemaking procedures for regulations issued under this Section; and

(v) governing other matters if the [] determines that the regulations will further the purposes and policies of this [Article] [Act].

Reporters' Explanatory Notes

Draft 9-411 authorizes the issuance of administrative regulations. It derives in part from provisions in the Personal Property Security Acts of British Columbia and Saskatchewan.