This is a preliminary draft of the “priority” approach to financing statements filed against individual debtors. Under the draft, a financing statement providing either the name designated under the “waterfall” in amended Section 9-503(a)(4) or the debtor’s “true” name under new Section 9-503(h) would be sufficient to perfect and to achieve priority over a subsequent judicial lien creditor. (The same would be true for a financing statement that provides a name that is neither the “waterfall” name nor the “true” name but is disclosed by a Section 9-506(b) search under either of those names). However, as explained more fully below, a security interest perfected by a financing statement providing the “true” name would enjoy lower priority as against most other competing claimants.

Even today, practical difficulties may arise if (1) the filing office rejects a filing in the debtor’s “correct” name because of limitations on the field length or character set, (2) the filing office accepts a filing in the “correct” name but indexes it such that the financing statement is not disclosed by a standard-search-search under that name (e.g., because it truncates the name or substitutes one or more characters), or (3) the filing office accepts the filing in the “correct” name but refuses to do a search under that name. If the Joint Review Committee adopts the “priority” approach, it may wish to consider whether, and, if so, how to address these problems in that context.

The draft does not address Section 9-503(a)(2) and (3), which may require that a financing statement provide the name of an individual when the debtor is decedent’s estate or a trust.

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

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

* * *

(46A) “High-priority filing” means the filing of a financing statement providing the name of the debtor that is sufficient under Section 9-503(a)(4).

* * *

(52A) “Low-priority filing” means the filing of a financing statement providing a name of the debtor that is insufficient under Section 9-503(a)(4) but sufficient under Section 9-503(h).
SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.

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

(3) * * *

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

(4) subject to subsection (g) and except as otherwise provided in subsection (h), if the debtor is an individual:

(A) to whom this State has issued a [driver’s license] that, at the time the financing statement is filed, appears on its face not to have expired, only if it provides the name of the individual which is indicated on the [driver’s license];

(B) as to whom paragraph (A) does not apply, and to whom this State has issued an [identification card] that, at the time the financing statement is filed, appears on its face not to have expired, only if it provides the name of the individual which is indicated on the [identification card];

(C) as to whom neither paragraph (A) nor paragraph (B) applies, and to whom the United States has issued a passport that, at the time the financing statement is filed,
appears on its face not to have expired, only if it provides the name of the individual which is indicated on the passport;

(D) as to whom none of the preceding paragraphs applies, and to whom another country has issued a passport that, at the time the financing statement is filed, appears on its face not to have expired, only if it provides the name of the individual which is indicated on the passport;

(E) as to whom none of the preceding paragraphs applies, only if it provides the surname, first given name, and first initial of the second given name, if any, of the individual; and

(4)(5) in other cases:

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

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

* * *

(g) [Multiple licenses or cards.] If this State, the United States, or another country has issued to an individual more than one [driver’s license], [identification card], or passport of a kind described in the applicable paragraph of subsection (a)(4), the one that was issued most recently is the one to which the paragraph refers.

(h) [Exception for individual debtor’s name.] A financing statement that does not sufficiently provide the name of a debtor who is an individual pursuant to subsection (a)(4)
nevertheless sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor.

**Reporter’s Note**

1. A financing statement that provides the name determined under subsection (a)(4) affords to the secured party all the benefits of being perfected by filing. The draft uses the term “high-priority filing” for a filing of this kind. A name that would be disclosed by a search described in Section 9-506(b) under the name specified in subsection (a)(4) would be “sufficient under Section 9-503(a)(4)” within the meaning of the definition of “high-priority filing” and would “sufficiently provide the name of a debtor who is an individual pursuant to subsection (a)(4)” within the meaning of Section 9-503(h). The Joint Review Committee may wish to consider whether this point is clear from the text.

2. Subsection (a)(4) adopts the cascading approach suggested by the Committee at its March, 2009, meeting. The first four steps of the cascade are the debtor’s driver’s license, identification card, U.S. passport, and non-U.S. passport, in that order. Because States use different terms for the driver’s licenses and identification cards they issue, the words “driver’s license” and “identification card” appear in brackets. If a debtor has been issued more than one source document (i.e., license, identification card, or passport) described in the applicable paragraph of Section 9-503(a)(4), the document that was issued most recently would be the one that indicates the debtor’s name for purposes of that paragraph. See subsection (g).

The last step in the cascade (draft Section 9-503(a)(4)(E)) is based upon the approach taken by the filing-office regulations of some Canadian provinces. It is independent from the remainder of these provisions. If the Joint Review Committee wishes to retain this approach, it may wish to consider whether paragraph (E) is too limiting. For example, should it be expanded to include debtors whose names do not include both a surname and a first given name?

3. To satisfy Section 9-503(a)(4)(A)–(D), the name provided on the financing statement must be the same as the name indicated on the applicable source document. For example, a filing against “Joseph A. Jones” or “Joseph Jones” would not satisfy either of those sections if Jones’s driver’s license shows his name to be “Joseph Allan Jones.” Determining whether the name provided on the financing statement is the same as the name indicated on the license must not be done mindlessly. For example, the order in which the components of an individual’s name appear on a driver’s license differs among the States. Some States, such as Illinois, put the individual’s “last name” (as the term is used on the financing statement form in Section 9-521) last, e.g., “Joseph Allan Jones.” But even where the driver’s license puts the individual’s “last name” first, the driver’s license may indicate that the name appearing first is the debtor’s “last name” for the purpose of the financing statement. This would be the case, for example, with a driver’s license on which the debtor’s name appears as “Jones, Joseph Allan.”
The draft refers to a license or ID card issued by “this State.” Perfection of a security interest by filing is determined by the law of the jurisdiction in which the debtor is located. See Section 9-301(1). A debtor who is an individual is located at the individual’s principal residence. Thus, a given State’s Section 9-503 will apply during any period when the debtor maintains his principal residence in that State. Consider the following example:

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

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

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

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

Subsection (h) gives effect to a financing statement that does not provide the name specified in subsection (a)(4) but instead provides the debtor’s individual name. The draft uses the term “low-priority filing” for a filing of this kind. Although a low-priority financing is sufficient to perfect a security interest, the security interest would be subordinate to the rights of most third parties other than a lien creditor and a competing security interest perfected by a low-priority filing.
SECTION 9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE
OF SECURITY INTEREST OR AGRICULTURAL LIEN.

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

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

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

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

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

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

(c) [Lessees that receive delivery.] Except as otherwise provided in subsection (e), a
lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and
receives delivery of the collateral without knowledge of the security interest or agricultural lien
and before it is perfected by a method other than a low-priority filing.

(d) [Licensees and buyers of certain collateral.] A licensee of a general intangible or a
buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or
investment property other than a certificated security takes free of a security interest if the
licensee or buyer gives value without knowledge of the security interest and before it is perfected
by a method other than a low-priority filing.

(e) [Purchase-money security interest.] Except as otherwise provided in Sections
9-320 and 9-321, if a person files a financing statement with respect to a purchase-money
security interest before or within 20 days after the debtor receives delivery of the collateral, the
security interest takes priority over:

(1) the rights of a buyer, lessee, or lien creditor which arise between the time the
security interest attaches and the time of filing; and

(2) except if the filing of the financing statement constitutes a low-priority filing,
the rights of a buyer or lessee which arise between the time the security interest attaches and the
time of filing.

Reporter’s Note

As against a lien creditor, a security interest perfected by a low-priority filing has the
same rights as any other perfected security interest. However, the draft assumes that non-secured
party buyers, lessees, and licensees generally would take their interests free of such a security
interest. To implement these results, subsections (b) (buyers of tangible collateral), (c) (lessees),
and (d) (licensees and buyers of intangible collateral) have been amended to distinguish between
security interests perfected by a low-priority filing and security interests perfected by other
methods. To implement the same distinction, PMSIs perfected by a low-priority filing are treated
separately in new subsection (e)(2).

When a security interest in original collateral is perfected by a low-priority filing, a
security interest that is perfected in proceeds under Section 9-315(c) likewise would be perfected
by a low-priority filing.
SECTION 9-322. PRIORITY AMONG CONFLICTING SECURITY INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.

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

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection, except that a security interest perfected by a low-priority filing is subordinate to a security interest perfected by a high-priority filing. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

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Reporter’s Note

1. The amendment to subsection (a)(1) states the basic rule of the “priority” approach, i.e., that a security interest perfected by a low-priority filing is subordinate to a security interest perfected by a high-priority filing. The first-to-file-or-perfect rule would continue to apply as between competing low-priority filings and as between competing security interests, one of which is perfected by filing and the other of which is perfected by another method (subject, of course, to the “superpriority” rules elsewhere in part 3).

2. The amendment to subsection (a)(1) can result in a circular priority. Suppose, for example, that after SP-1 perfects by a low-priority filing, SP-2 perfects by taking possession.
Under the first-to-file-or-perfect rule, SP-1’s perfected security interest has priority over SP-2’s. Thereafter, SP-3 perfects by a high-priority filing. Under the first-to-file-or-perfect rule, SP-2’s security interest is senior to SP-3’s; however, under the new exception in subsection (a)(1), SP-3’s security interest would be senior to SP-1’s, which is senior to SP-2’s, which is senior to SP-3’s, etc.

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

(a) [General rule: purchase-money priority.] Except as otherwise provided in subsections (g) and (h), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in Section 9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(b) [Inventory purchase-money priority.] Subject to subsection (c) and except as otherwise provided in subsections (g) and (h), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 9-330, and, except as otherwise provided in Section 9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;
(2) the purchase-money secured party sends an authenticated notification to the
holder of the conflicting security interest;
(3) the holder of the conflicting security interest receives the notification within
five years before the debtor receives possession of the inventory; and
(4) the notification states that the person sending the notification has or expects to
acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) **Holders of conflicting inventory security interests to be notified.** Subsections
(b)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing
statement covering the same types of inventory:
(1) if the purchase-money security interest is perfected by filing, before the date of
the filing; or
(2) if the purchase-money security interest is temporarily perfected without filing
or possession under Section 9-312(f), before the beginning of the 20-day period thereunder.

(d) **Livestock purchase-money priority.** Subject to subsection (e) and except as
otherwise provided in subsections (g) and (h), a perfected purchase-money security
interest in livestock that are farm products has priority over a conflicting security interest in the
same livestock, and, except as otherwise provided in Section 9-327, a perfected security interest
in their identifiable proceeds and identifiable products in their unmanufactured states also has
priority, if:
(1) the purchase-money security interest is perfected when the debtor receives
possession of the livestock;
(2) the purchase-money secured party sends an authenticated notification to the
holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives the notification within
six months before the debtor receives possession of the livestock; and

(4) the notification states that the person sending the notification has or expects to
acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) [Holders of conflicting livestock security interests to be notified.] Subsections
(d)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing
statement covering the same types of livestock:

(1) if the purchase-money security interest is perfected by filing, before the date of
the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing
or possession under Section 9-312(f), before the beginning of the 20-day period thereunder.

(f) [Software purchase-money priority.] Except as otherwise provided in subsection
subsections (g) and (h), a perfected purchase-money security interest in software has priority over
a conflicting security interest in the same collateral, and, except as otherwise provided in Section
9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that
the purchase-money security interest in the goods in which the software was acquired for use has
priority in the goods and proceeds of the goods under this section.

(g) [Conflicting purchase-money security interests.] Except as otherwise provided
in subsection (h), if more than one security interest qualifies for priority in the same collateral
under subsection (a), (b), (d), or (f):

-11-
(1) a security interest securing an obligation incurred as all or part of the price of
the collateral has priority over a security interest securing an obligation incurred for value given
to enable the debtor to acquire rights in or the use of collateral; and

(2) in all other cases, Section 9-322(a) applies to the qualifying security interests.

(h) **[Exception for low-priority filing.]** This section does not award priority to the
holder of a security interest that is perfected by a low-priority filing except as against a
competing security interest that is perfected by a low-priority filing or when it attaches under
Section 9-309.

**Reporter’s Note**

1. New subsection (h) implements the “priority” rule. This subsection does not
affirmatively state that a security interest perfected by a high-priority filing is senior to a security
interest perfected by a low-priority filing (which would be the case under the general rule in
amended Section 9-322(a)(1)). Rather, subsection (h) prevents Section 9-324 from giving a
“superpriority” to a PMSI perfected by a low-priority filing as against a security interest perfected
by a high-priority filing. Under these circumstances, subsection (h) disappplies the PMSI
“superpriority” rules with respect to both the purchase-money collateral itself and the proceeds of
the purchase-money collateral.

2. Current subsection (g) deals with the relatively unusual case in which a debtor creates
two purchase-money security interests in the same collateral and both security interests qualify
for special priority under one of the other subsections. It gives priority to a seller-retained PMSI
over a PMSI that secures an enabling loan. As amended, it would be subject to new subsection
(h), which would deny priority to a seller-retained PMSI that is perfected by a low-priority filing
as against an enabling lender’s PMSI that is perfected by a high-priority filing.
SECTION 9-318. NO INTEREST RETAINED IN RIGHT TO PAYMENT THAT
IS SOLD; RIGHTS AND TITLE OF SELLER OF ACCOUNT OR CHATTEL PAPER
WITH RESPECT TO CREDITORS AND PURCHASERS.

(a) [Seller retains no interest.] A debtor that has sold an account, chattel paper,
payment intangible, or promissory note does not retain a legal or equitable interest in the
collateral sold.

(b) [Deemed rights of debtor if buyer’s security interest unperfected.] For purposes
of determining the rights of creditors of, and purchasers for value of an account or chattel paper
from, a debtor that has sold an account or chattel paper, while the buyer’s security interest is
unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical
to those the debtor sold.

(c) [Deemed rights of debtor if buyer’s security interest perfected by low-priority
filing.] For purposes of determining the rights of purchasers for value of an account or chattel
paper from a debtor that has sold an account or chattel paper, while the buyer’s security interest
is perfected by a low-priority filing, the debtor is deemed to have rights and title to the account or
chattel paper identical to those the debtor sold.

Reporter’s Note

Consider the case in which the first buyer of accounts or chattel paper (B-1) perfects its
security interest by a low-priority filing and the second buyer (B-2) perfects by a high-priority
filing. Subsection (a) would prevent B-2 from acquiring any interest in the sold receivables, and
subsection (b) would not apply because B-1’s security interest is perfected. But the policy
underlying the “priority” approach dictates that B-2 should become the owner of the collateral
free of B-1’s security interest. New subsection (c) would enable B-2’s interest to attach
notwithstanding subsection (a), and amended Section 9-322(a)(1) would give priority to B-2’s
interest.
Subsection (c) also would come into play when intangible collateral is sold to a buyer, other than a secured party, who would take free of B-1’s perfected-by-low-priority-filing security interest under amended Section 9-317(d)(1).

**Reporter’s Note on Other Priority Rules**

The Joint Review Committee should note that the draft does not distinguish between security interests perfected by a high-priority filing and those perfected by a low-priority filing in the following circumstances:

1. Section 9-334, which deals with the priority of a security interest in fixtures as against a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

2. Section 9-336, which deals with conflicting security interests in a product or mass that results when goods become commingled goods.

3. Sections 9-326 and 9-325, which address “double-debtor” problems.

Section 9-326 addresses the priority contests that may arise when a new debtor becomes bound by the security agreement of an original debtor and each debtor has a different secured creditor. It subordinates the original debtor’s secured party’s security interest when it is perfected against the new debtor solely under Section 9-508. The security interest is subordinated to security interests in the same collateral perfected by another method, e.g., by filing against the new debtor.

**Example 1:** SP-X holds a perfected-by-filing security interest in X Corp’s existing and after-acquired inventory, and SP-Z holds a perfected-by-filing security interest in Z Corp’s existing and after-acquired inventory. Z Corp becomes bound as debtor by X Corp’s security agreement. Subsequently, Z Corp acquires a new item of inventory. Under Section 9-508, SP-X’s financing statement is effective to perfect a security interest in the new item of inventory in which Z Corp has rights. However, because SP-Z’s security interest was perfected by another method, Section 9-326(a) provides that SP-X’s security interest is subordinate to SP-Z’s, regardless of which financing statement was filed first. This would be the case even if SP-Z filed after Z Corp became bound by X Corp’s security agreement.

It may the case that SP-X’s security interest is perfected by a high-priority filing and SP-Z’s is perfected by a low-priority filing. Under this draft, SP-Z would nevertheless enjoy priority.
Section 9-325 addresses the problem that arises when a debtor acquires property that is subject to a security interest created by another debtor. Currently, this section provides that a security interest created by the transferor has priority over a security interest created by the transferee, if the security interest created by the transferor was perfected when the transferee acquired the collateral.

Example 2: A owns an item of equipment subject to a perfected security interest in favor of SP-A. A sells the equipment to B, not in the ordinary course of business. B acquires its interest subject to SP-A’s security interest. Under current Section 9-325, if B creates a security interest in the equipment in favor of SP-B, SP-B’s security interest is subordinate to SP-A’s security interest, even if SP-B filed against B before SP-A filed against A, and even if SP-B took a purchase-money security interest. Normally, SP-B could have investigated the source of the equipment and discovered SP-A’s filing before making an advance against the equipment, whereas SP-A had no reason to search the filings against someone other than its debtor, A.

Under the current draft, a non-ordinary course buyer would take free of a security interest perfected by a low-priority filing, and so it will not be possible for the situation described in Example 1 to arise if SP-A has perfected by a low-priority filing. However, if the Joint Review Committee decides not to distinguish between low- and high-priority filings as against buyers, or if it decides that a buyer with knowledge of a security interest perfected by a low-priority filing take subject to the security interest (i.e., if it approves the bracketed language in draft subsections (b), (c), and (d) of Section 9-317, then the situation in Example 1 might arise when SP-A has perfected by a low-priority filing. If so, the Joint Review Committee should consider whether SP-A’s security interest should be senior to SP-B’s if SP-B has perfected by a high-priority filing.

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

* * *

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

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

(d) [Name sufficient under Section 9-503(a)(4).] An individual debtor changes the debtor’s name for purposes of subsection (c) if:

(1) after the filing of a financing statement that provides a name that is sufficient under Section 9-503(a)(4)(A):

   (A) the [driver’s license] that indicates the name appears on its face to expire and the name that, immediately upon the apparent expiration, would be sufficient under Section 9-503(a)(4) is different from the name provided; or

   (B) this State issues to the debtor a [driver’s license] that indicates a name different from the name provided;

(2) after the filing of a financing statement that provides a name that is sufficient under Section 9-503(a)(4)(B):

   (A) the [identification card] that indicates the name appears on its face to expire and the name that, immediately upon the apparent expiration, would be sufficient under Section 9-503(a)(4) is different from the name provided; or

   (B) this State issues to the debtor a [driver’s license] or [identification card] that indicates a name different from the name provided;

(3) after the filing of a financing statement that provides a name that is sufficient under Section 9-503(a)(4)(C):
(A) the passport that indicates the name appears on its face to expire and
the name that, immediately upon the apparent expiration, would be sufficient under Section 9-503(a)(4) is different from the name provided; or

(B) this State issues to the debtor a [driver’s license] or [identification card], or the United States issues to the debtor a passport, that indicates a name different from the
name provided; or

(4) after the filing of a financing statement that provides a name that is sufficient under Section 9-503(a)(4)(D):

(A) the passport that indicates the name appears on its face to expire and
the name that, immediately upon the apparent expiration, would be sufficient under Section 9-503(a)(4) is different from the name provided; or

(B) this State issues to the debtor a [driver’s license] or [identification card], or the United States or another country issues to the debtor a passport, that indicates a
name different from the name provided.

**Reporter’s Note**

New subsection (d) would specify the events that constitute a change of the debtor’s name when the security interest is perfected by a high-priority filing. There are two such events. First, the apparent expiration of the source document indicating the name provided in the financing statement constitutes a change of name, if, after the apparent expiration, the name specified by subsection (a)(4) would be different from the name provided in the financing statement. Second, the issuance of a source document that is on the same level or on a higher level in the subsection (a)(4) cascade constitutes a change of name, if the new document indicates a different name from the name provided in the financing statement. An individual whose name is determined under Section 9-503(a)(4)(E) would change his name as under current law.
SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.

* * *

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

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

(e) [Individual “debtor’s correct name.”] If a debtor who is an individual changes the debtor’s name by virtue of Section 9-507(d), the “debtor’s correct name” in subsection (c) means:

(1) in the case of a change under Section 9-507(d)(1)(A), 9-507(d)(2)(A), 9-507(d)(3)(A), or 9-507(d)(4)(A), the name of the debtor that would be sufficient under Section 9-504(a)(4) immediately after the apparent expiration; and

(2) in the case of a change under Section 9-507(d)(1)(B), 9-507(d)(2)(B), 9-507(d)(3)(B), or 9-507(d)(4)(B), the name of the debtor indicated on the [driver’s license], [identification card], or passport, as the case may be, that indicates a name different from the name provided on the financing statement.

Reporter’s Note

Even if the debtor’s name changes, a filed financing statement does not become seriously misleading if it can be found by searching under the debtor’s “correct” name, using the filing office’s standard search logic. Draft Section 9-506(e) explains what is meant by the debtor’s
“correct name” when the debtor’s name changes under Section 9-507(d). If the name change results from the expiration of the source document, the correct name is the name that Section 9-503(a)(4) would yield after the expiration. If the name change results from the issuance of a new source document, the correct name is the name that is indicated on the new document (which, of course, is the name that Section 9-503(a)(4) would yield after the issuance of the new document).

Reporter’s Note on Effect of Name Change on Priority

The Joint Review Committee should consider whether priority should be affected by a change of the debtor’s name and, if so, whether the statute needs to be amended to reflect the desired outcome.

Example 1: Financing statements covering an item of equipment are filed in this order:

- C-1: Low priority
- C-2: High priority
- C-3: High priority

Priority would rank as follows: C-2 > C-3 > C-1.

D changes his name, such that C-1’s filing becomes high-priority and C-2’s and C-3’s filings remain high-priority. Would this change result in C-1’s security interest having priority over the other two? (Compare the case in which D’s name doesn’t change but C-1 amends its financing statement to become a high-priority filing.)

Example 2: Under the facts of Example 1, D changes his name, such that C-2’s and C-3’s filings become low-priority and C-1’s filing remains low-priority. Would the first-to-file-or-perfect rule apply, giving C-1’s security interest priority over the other two? (Compare 9-316(b) and 9-515(c).)

SECTION 9-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL.

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(b) [Notification of disposition required.] Except as otherwise provided in subsection (d), a secured party that disposes of collateral under Section 9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.
To comply with subsection (b), the secured party shall send an authenticated notification of disposition to:

   (1) the debtor;
   
   (2) any secondary obligor; and
   
   (3) if the collateral is other than consumer goods:

   (A) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;
   
   (B) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

   (i) identified the collateral;
   
   (ii) was indexed under the debtor’s name as of that date; and
   
   (iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

   (C) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9-311(a).

* * *

A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:
(1) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor’s name in the office indicated in subsection (c)(3)(B); and

(2) before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

(f) [“Debtor’s name.”] If the debtor is an individual, the “debtor’s name” for purposes of subsections (c) and (e) is the name specified in Section 9-503(a)(4).

SECTION 9-621. NOTIFICATION OF PROPOSAL TO ACCEPT COLLATERAL.

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

(1) any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) identified the collateral;
(B) was indexed under the debtor’s name as of that date; and

(C) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9-311(a).

* * *

(c) [“Debtor’s name.”] If the debtor is an individual, the “debtor’s name” for purposes of subsection (b) is the name specified in Section 9-503(a)(4).

**Reporter’s Note**

The amendments to Sections 9-611 and 9-621 make clear that an enforcing secured party need not give notice to the holder of a security interest perfected by a low-priority filing unless the enforcing party has received an authenticated notification from the holder.