

D R A F T

FOR DISCUSSION ONLY

**REVISION OF UNIFORM COMMERCIAL CODE
ARTICLE 9 – SECURED TRANSACTIONS;
SALES OF ACCOUNTS AND CHATTEL PAPER**

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

JANUARY, 1998

WITH PREFATORY NOTE AND SELECTED COMMENTS

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ON UNIFORM STATE LAWS

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SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER**

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**REVISION OF UNIFORM COMMERCIAL CODE
ARTICLE 9 – SECURED TRANSACTIONS;
SALES OF ACCOUNTS AND CHATTEL PAPER**

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**REVISION OF UNIFORM COMMERCIAL CODE
ARTICLE 9 – SECURED TRANSACTIONS;
SALES OF ACCOUNTS AND CHATTEL PAPER**

REPORTERS’ PREFATORY NOTE
JANUARY, 1998, DRAFT

This draft is marked to reflect changes from the October, 1997, Draft. Additions are underlined and deletions appear in ~~strikeout~~.

Please note that, as part of the continuing effort at “simplification, described below, Part 6 of this draft divides many provisions of the prior draft into several paragraphs. The resulting punctuation changes and paragraph designations (e.g., (1), (A), (i), (I)) generally *are not marked*. Also not marked are certain corrections of typographical and other obvious errors, changes in the numbering of definitions in Section 9-102, and the change of terminology from “depository institution” to “bank.”

A member of the Committee on Style suggested many changes to Parts 1-5 of the draft. Most of the changes have been marked, but some particularly minor ones have not been.

The combination of “simplification” and style changes (some of which might be characterized as “desimplification”) has resulted in a substantial amount of renumbering. We have done our best to conform the statutory cross-references but lacked sufficient time to conform the Reporters’ Comments. For this reason, and because a draft containing all the Reporters’ Comments prepared to date runs around 400 pages, this draft includes only selected Comments.

The Reporters’ Comments identify many of the major substantive changes, often following a heading designated “Change from Prior Draft.” Please note, however, some important substantive changes are not discussed in the Comments at all. In addition, some Reporters’ Comments contain “Discussion Questions.” As is the case with the “Changes,” we have made no effort to include an exhaustive list of discussion questions in the draft. The Tentative Agenda contains additional questions and issues that the Drafting Committee may wish to discuss.

1 **REVISION OF UNIFORM COMMERCIAL CODE**
2 **ARTICLE 9 – SECURED TRANSACTIONS[;**
3 **SALES OF ACCOUNTS AND CHATTEL PAPER]**

4 **PART 1**

5 **GENERAL PROVISIONS**

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

7 **SECTION 9-101. SHORT TITLE. *[MINOR STYLE CHANGES ONLY]***

8 This article may be cited as Uniform Commercial Code–Secured Transactions.

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

10 (a) In this article [unless the context otherwise requires]:

11 (1) “Account debtor means a person obligated on an account, chattel
12 paper, ~~[instrument other than a negotiable instrument,]~~ or general intangible. The
13 term does not include a person obligated to pay a negotiable instrument even if the
14 instrument constitutes part of chattel paper.

15 (2) “Accounting means a record:

16 (A) authenticated by a secured party;

17 (B) indicating the aggregate unpaid secured obligations as of a date
18 not more than [] days earlier than the date of the record; and

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

1 (3) (A) “Agricultural lien means ~~a statutory lien~~ an interest in
2 [personal property other than fixtures] [farm products]:
3 (i) which secures payment or performance of an obligation for:
4 (I) goods or services furnished in connection with a debtor’s
5 farming operation; or
6 (II) rent on real property leased by a debtor in connection
7 with its farming operation;
8 (ii) which is created by statute in favor of a person that:
9 (I) in the ordinary course of its business ~~furnished~~ furnishes
10 goods or services to a debtor in connection with a debtor’s farming operation; or
11 (II) leased real property to a debtor in connection with the
12 debtor’s ~~engaged in a~~ farming operation; and
13 (iii) the effectiveness of which does not depend on the person’s
14 possession of the personal property.
15 (B) The term does not include a security interest.
16 (4) “As-extracted collateral means:
17 (A) oil, gas, or other minerals: ~~(i)~~ that are subject to a security
18 interest;
19 (i) that is created by a debtor having an interest in the minerals
20 before extraction; and
21 (ii) ~~which~~ that attaches to the minerals as extracted; and

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

3 (5) “Authenticate means to:

4 (A) sign; or

5 (B) execute or adopt a symbol, or encrypt a record in whole or in
6 part. with present intent to:

7 (i) identify the authenticating party;

8 (ii) adopt or accept a record or term; or

9 (iii) establish the authenticity of a record or term that contains
10 the authentication or to which a record containing the authentication refers.

11 (6) “Certificate of title means a certificate of title with respect to which
12 a statute provides for the security interest in question to be indicated on the
13 certificate as a condition or result of the security interest’s obtaining priority over
14 the rights of a lien creditor with respect to the collateral.

15 (7) “Chattel paper means a record or records ~~writing or writings~~ that
16 evidence both a monetary obligation and a ~~[purchase money]~~ security interest in or
17 a lease of specific goods. The term does not include a charter or other contract
18 involving the use or hire of a vessel. If a transaction is evidenced both by a security
19 agreement or lease and by an instrument or series of instruments, the group of
20 records ~~writings~~ taken together constitutes chattel paper.

21 (8) “Collateral means the property subject to a security interest or
22 ~~statutory~~ agricultural lien. The term includes:

1 (A) proceeds to which a security interest attaches under Section
2 9-313;

3 (B) proceeds as to which a ~~statutory~~ an agricultural lien becomes
4 effective; and

5 (C) accounts, chattel paper, and payment intangibles that have been
6 sold.

7 (9) “Commercial tort claim” means a claim arising in tort ~~if the claim~~
8 which is generally assignable under applicable law ~~and~~ if:

9 (A) the claimant is an organization; or

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

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

12 and

13 (ii) does not include damages arising out of ~~[bodily]~~ ~~[personal]~~
14 injury to or the death of an individual.

15 (10) “Communicate” means to:

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

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

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

21 (11) “Consignee” means a merchant to which goods are delivered in a
22 consignment.

1 (12) “Consignment means a transaction, regardless of its form, in
2 which a person delivers goods to a merchant for the purpose of sale; and:

3 (A) the merchant:

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

6 (ii) is not an auctioneer; and

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

9 (B) the aggregate value of the goods is \$[1,000] or more at the time
10 of delivery;

11 (C) the goods are not consumer goods immediately ~~prior to~~ before
12 delivery; and

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

15 (13) “Consignor means a person that delivers goods to a consignee in a
16 consignment.

17 (14) “Consumer debtor means a debtor in a consumer secured
18 transaction.

19 (15) “Consumer goods secured transaction means a transaction in
20 which:

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

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

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

5 (17) “Consumer secured transaction means a transaction in which:

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

8 (B) a security interest secures the obligation; and

9 (C) the collateral is held or acquired primarily for personal, family,
10 or household purposes.

11 (18) “Debtor means:

12 (A) a person that has a property interest, other than a security interest
13 or other lien, in the collateral, whether or not the person is an obligor;

14 (B) a seller of accounts, chattel paper, or payment intangibles; [and]
15 [or]

16 (C) a consignee.

17 (19) “Deposit account means a demand, time, savings, passbook, or
18 similar ~~like~~ account maintained with a bank. The term does not include investment
19 property or an account evidenced by an instrument.

20 (20) “Bank means an organization that is engaged in the business of
21 banking. The term includes a ~~bank~~, savings bank, savings and loan association,
22 credit union, and trust company.

1 (21) “Document means a document of title or a receipt of the type
2 described in Section 7-201(2).

3 (22) “Encumbrance includes a real property mortgage, other lien on
4 real property, and any other right in real property other than an ownership interest.

5 (23) “Farming operation means raising, cultivating, propagating,
6 fattening, grazing, or any other farming, livestock, or aquacultural operation.

7 (24) “Filing office means an office designated in Section 9-501 as the
8 place to file a financing statement. [The term includes the filing officer and other
9 personnel of the office.]

10 (25) “Financing statement means an initial financing statement and
11 any record on file relating to the initial financing statement.

12 (26)(A) “Fixture filing means a filing of a financing statement:

13 (i) covering goods that are or are to become fixtures; and

14 (ii) satisfying the requirements of Section 9-502(a) and (b).

15 (B) The term includes ~~a~~ the filing of a financing statement covering
16 goods of a transmitting utility which are or are to become fixtures.

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

19 (28) “Good faith means honesty in fact and the observance of
20 reasonable commercial standards of fair dealing.

21 (29)(A) “Goods means all things that are movable when a security
22 interest attaches, including:

- 1 (i) fixtures;
- 2 (ii) standing timber that is to be cut and removed under a
- 3 conveyance or contract for sale;
- 4 (iii) the unborn young of animals; and
- 5 (iv) crops grown, growing, or to be grown, including crops
- 6 produced on trees, vines, and bushes.

7 (B) The term does not include accounts, chattel paper, deposit

8 accounts, documents, general intangibles, instruments, investment property, letters

9 of credit, money, or oil, gas, or other minerals before extraction.

10 (30) “Governmental entity means the United States, a State, a foreign

11 country, ~~nation~~, or a governmental unit.

12 (31) ~~(A)~~ “Governmental unit means a subdivision, agency,

13 department, county, parish, municipality, or other unit of the government of the

14 United States, a State, or a foreign ~~nation~~. country. ~~(B)~~ The term does not include

15 an [governmental] organization with a separate corporate existence; even if its

16 name includes “authority, “board, or the like.

17 (32)(A) “Instrument means:

18 (i) a negotiable instrument; or

19 (ii) any other writing that:

20 (I) evidences a right to the payment of money;

21 (II) is not itself a security agreement or lease; and

1 (III) is of a type that in ordinary course of business is
2 transferred by delivery with any necessary indorsement or assignment.

3 (B) The term does not include:

4 (i) investment property; or

5 (ii) a writing that evidences a right to payment arising out of the
6 use of a credit or charge card or information contained on or for use with the card.

7 (33) “Intangible chattel paper means chattel paper evidenced by a
8 record or records that are not written.

9 (34) “Jurisdiction of organization, with respect to a registered entity,
10 means the jurisdiction under whose law the entity is organized.

11 (35) ~~“Letter-of-credit rights—~~ “Letter-of-credit right means the rights a
12 right to payment and performance under a letter of credit. The term does not
13 include the right of a beneficiary to demand payment or performance under a letter
14 of credit.

15 (36) “Lien creditor means a creditor that has acquired a lien on the
16 property involved by attachment, levy, or the like. The term includes:

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

18 (B) a trustee in bankruptcy from the date of the filing of the petition;

19 and

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

21 (37) “Manufactured home ~~[has the meaning specified in title 42,~~
22 ~~section 5402(6), of the United States Code]~~ means a structure, transportable in one

1 or more sections, which in the traveling mode, is eight body feet or more in width
2 or twenty or more square feet, and which is built on a permanent chassis and
3 designed to be used as a dwelling with or without a permanent foundation when
4 connected to the required utilities, and includes the plumbing, heating, air-
5 conditioning, and electrical systems contained therein; except that such term shall
6 include any structure which meets all the requirements of this paragraph except the
7 size requirements and with respect to which the manufacturer voluntarily files a
8 certification required by the United States Secretary of Housing and Urban
9 Development and complies with the standards established under Title 42, United
10 States Code.

11 (38) “Manufactured home transaction” means a secured transaction:

12 (A) that creates a purchase money security interest in a manufactured
13 home; or

14 (B) in which a manufactured home is the primary collateral..

15 (39) “Mortgage” means a consensual interest in real property, including
16 fixtures, created by a real property mortgage, a trust deed on real property, or the
17 like.

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

20 (41)(A) “New value” means:

21 (i) money;

22 (ii) money's worth in property, services, or new credit; or

1 (iii) release by a transferee of an interest in property previously
2 transferred to the transferee.

3 (B) The term does not include an obligation substituted for another
4 obligation.

5 (42)(A) “Obligor means a person that, with respect to an obligation
6 secured by a security interest in or ~~a statutory~~ an agricultural lien on the collateral:

7 (i) owes payment or other performance of the obligation;

8 (ii) has provided property other than the collateral to secure
9 payment or other performance of the obligation; or

10 (iii) is otherwise accountable in whole or in part for payment or
11 other performance of the obligation.

12 (B) The term does not include an issuer or a nominated person
13 under a letter of credit.

14 (43) “Original debtor means a person that, as debtor, entered into a
15 security agreement to which a new debtor has become bound under Section
16 9-203(c).

17 **~~Alternative A~~**

18 ~~(41) “Public finance transaction means a secured transaction in which~~
19 ~~the debtor, the obligor, the secured party, the account debtor or other person~~
20 ~~obligated on collateral, the assignor or assignee of a secured obligation, or the~~
21 ~~assignor or assignee of a security interest is a State or a governmental unit of a~~
22 ~~State.~~

Alternative B

1
2 ~~(41) “Public finance transaction means a secured transaction in which~~
3 ~~the collateral directly or indirectly supports [the issuer’s] obligations on securities~~
4 ~~[and] [if] the issuer is a State or a governmental unit of a State.~~

5 (44) “Public finance transaction means [to come].

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

11 (46) “Record means information that is inscribed on a tangible
12 medium or that is stored in an electronic or other medium and is retrievable in
13 perceivable form.

14 ~~[(44) “Registered agent means a registered agent of a debtor~~
15 ~~designated under Section 9-525.]~~

16 (47) “Registered entity means an organization organized under the law
17 of a State or the United States and as to which the State or the United States
18 maintains a public record showing the organization to have been organized.

19 (48) “Rule means a rule adopted pursuant to Section 9-528.

20 (49) “Secondary obligor means an obligor any portion of whose
21 obligation is secondary.

22 (50) “Secured party means:

1 (A) a person in whose favor ~~that holds~~ a security interest ~~or a~~
2 statutory lien is created or provided for under a security agreement, whether or not
3 any obligation to be secured is outstanding; ~~The term includes:~~

4 (B) a person that holds an agricultural lien;

5 (C) a consignor;

6 (D) a person to which accounts, chattel paper, or payment
7 intangibles have been sold; and

8 (E) if a security interest [or statutory agricultural lien] is created or
9 provided for in favor of a trustee, indenture trustee, agent, collateral agent, or other
10 representative, the representative.

11 ~~[(49) “Secured party of record means a person stated to be the secured~~
12 ~~party or a representative of the secured party in a financing statement that has been~~
13 ~~filed with the filing office.]~~

14 (51) “Security agreement means an agreement that creates or provides
15 for a security interest.

16 ~~(51) “State means:~~

17 ~~(A) a State of the United States;~~

18 ~~(B) the District of Columbia;~~

19 ~~(C) the Commonwealth of Puerto Rico;~~

20 ~~(D) the United States Virgin Islands; [and] [or]~~

21 ~~(E) any territory or insular possession subject to the jurisdiction of~~
22 ~~the United States.~~

1 (52) “State means a State of the United States, the District of
2 Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular
3 possession subject to the jurisdiction of the United States.

4 ~~(52) “State of organization, with respect to a registered entity, means
5 the jurisdiction under whose law the entity is organized.~~

6 ~~(53)(A) “Statutory lien means an interest in personal property:~~

7 ~~(i) which secures payment or performance of an obligation;~~

8 ~~(ii) which is created by statute [in favor of a person that in the
9 ordinary course of its business furnishes goods or services]; and~~

10 ~~(iii) the effectiveness of which does not depend on the person’s
11 possession of the personal property.~~

12 ~~(B) The term does not include a security interest.~~

13 (53) “Support obligation means a secondary obligation or letter-of-
14 credit ~~rights~~ right that ~~support~~ supports the payment or performance of an account,
15 chattel paper, general intangible, document, [insurance policy,] instrument, or
16 investment property.

17 (54) “Tangible chattel paper means chattel paper evidenced by a
18 written record or records.

19 (55) “Transmitting utility means a person primarily engaged in the
20 business of:

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

22 (B) transmitting electric or electronic communications;

1 (C) transmitting goods by pipeline or sewer; or
2 (D) transmitting or producing and transmitting electricity, steam,
3 gas, or water.

4 (b) Other definitions applying to this article and the sections in which they
5 appear are:

6	“Account	Section 9-103.
7	“Applicant	Section 5-102.
8	“Attach	Section 9-203.
9	“Becomes Bound	Section 9-203.
10	“Beneficiary	Section 5-102.
11	“Cash proceeds	Section 9-313.
12	“Commodity account	Section 9-107.
13	“Commodity contract	Section 9-107.
14	“Commodity customer	Section 9-107.
15	“Commodity intermediary	Section 9-107.
16	“Construction mortgage	Section 9-331.
17	“Consumer goods	Section 9-106.
18	“Control (deposit account)	Section 9-109.
19	“Control (investment property)	Section 9-108.
20	“Control (letter-of-credit right)	Section 9-110.
21	“Crops	Section 9-106.
22	“Equipment	Section 9-106.

1	“Farm products	Section 9-106.
2	“General intangibles	Section 9-103.
3	“Inventory	Section 9-106.
4	“Investment property	Section 9-107.
5	“Issuer	Section 5-102.
6	“Livestock	Section 9-106.
7	“Nominated Person	Section 5-102.
8	“Noncash proceeds	Section 9-313.
9	“Payment intangible	Section 9-103.
10	“Proceeds	Section 9-313.
11	[“Production money crops	Section 9-105.]
12	[“Production money obligation	Section 9-105.]
13	[“Production money security interest	Section 9-105.]
14	[Production of crops	Section 9-105.]
15	“Purchase money security interest	Section 9-104.
16	“Purchase money collateral	Section 9-104.
17	“Purchase money obligation	Section 9-104.
18	“Request for an accounting	Section 9-209.
19	“Request regarding a list of collateral	Section 9-209.
20	“Request regarding a statement of	
21	account	Section 9-209.
22	<u>“Secured party of record</u>	<u>Section 9-509A.</u>

1	“Transfer statement	Section 9-617.
2	(c) The following definitions in other articles apply to this article:	
3	<u>“Applicant</u>	<u>Section 5-102.</u>
4	<u>“Beneficiary</u>	<u>Section 5-102.</u>
5	“Broker	Section 8-102.
6	“Certificated security	Section 8-102.
7	“Check	Section 3-104.
8	“Clearing corporation	Section 8-102.
9	“Contract for sale	Section 2-106.
10	“Customer	Section 4-104.
11	“Delivery	Section 8-301.
12	“Entitlement holder	Section 8-102.
13	“Financial asset	Section 8-102.
14	“Holder in due course	Section 3-302.
15	“Issuer	Section 5-102.
16	“Lease	Section 2A-103.
17	“Lease agreement	Section 2A-103.
18	“Lease contract	Section 2A-103.
19	“Leasehold interest	Section 2A-103.
20	“Lessee	Section 2A-103.
21	“Lessee in ordinary course of business	Section 2A-103.
22	“Lessor	Section 2A-103.

1	“Lessor’s residual interest	Section 2A-103.
2	“Letter of credit	Section 5-102.
3	“Negotiable instrument	Section 3-104.
4	“Nominated person	Section 5-102.
5	“Note	Section 3-104.
6	“Proceeds of a letter of credit	Section 5-114.
7	“Prove	Section 3-103.
8	“Sale	Section 2-106.
9	“Securities intermediary	Section 8-102.
10	“Security	Section 8-102.
11	“Security certificate	Section 8-102.
12	“Security entitlement	Section 8-102.
13	“Uncertificated security	Section 8-102.

14 (d) Article 1 contains general definitions and principles of construction and
15 interpretation applicable throughout this article.

16 *Legislative Note: States that do not enact Sections 9-105 and 9-321 should delete*
17 *the bracketed definitions in subsection (b).*

2 **Changes from Prior Draft:**

3 A. The changes to the definition of “chattel paper” and the new
4 definitions of “intangible chattel paper” and “tangible chattel paper” are necessary
5 to accommodate the new provision providing for perfection of a security interest in
6 intangible chattel paper by “control.” See new Section 9-110A. Revised Section 9-
7 327 now provides for priority of security interests in intangible chattel paper over
8 which the secured party has control as well as in tangible chattel paper of which the
9 secured party has possession.

10 B. The defined term “statutory lien” has been deleted. The definition of
11 “agricultural lien” has been adjusted to take account of the deletion and has been
12 refined in accordance with the suggestions of interested persons.

13 C. The term “farming operation,” which appears in the definitions of
14 “agricultural lien” and “farm products,” has been defined. The definition derives
15 from the definition of “farm products” in the prior draft.

16 **SECTION 9-103. DEFINITIONS: “ACCOUNT”; “GENERAL**
17 **INTANGIBLES”; “PAYMENT INTANGIBLE.”**

18 (a)(1) “Account” means a right to payment, whether or not earned by
19 performance:

20 (A) for property^[,] other than money^[,] which has been or is to be
21 sold, leased, licensed, assigned, or otherwise disposed of;

22 (B) for services rendered or to be rendered;

23 (C) for a policy of insurance issued or to be issued;

24 (D) for a suretyship obligation incurred or to be incurred;

25 (E) for energy provided or to be provided;

26 (F) arising out of the use of a credit or charge card or information
27 contained on or for use with the card; or

1 (G) for the use or hire of a vessel under a charter or other contract.

2 (2) The term does not include a letter-of-credit right or a right to
3 payment evidenced by an instrument or chattel paper[,] ~~[or] letter-of-credit rights [,~~
4 ~~or a deposit account].~~

5 (b) “General intangible means any personal property other than goods,
6 accounts, chattel paper, commercial tort claims, documents, instruments,
7 investment property, letters of credit, deposit accounts, and money. The term
8 includes a payment intangible.

9 (c) “Payment intangible means a general intangible under which the
10 account debtor's principal obligation is to pay money.

11 **SECTION 9-104. DEFINITIONS: “PURCHASE MONEY SECURITY**
12 **INTEREST”;** “PURCHASE MONEY COLLATERAL”; PURCHASE
13 **MONEY OBLIGATION”; APPLICATION OF PAYMENTS; BURDEN OF**
14 **ESTABLISHING PURCHASE MONEY SECURITY INTEREST.**

15 (a) A security interest in goods[, including fixtures,] is a “purchase money
16 security interest :

17 (1) to the extent that the collateral (“purchase money collateral) secures
18 an obligation (“purchase money obligation) of incurred by an obligor incurred for
19 ~~as~~ the price of the collateral or for value given to enable the debtor to acquire rights
20 in the collateral (~~“purchase money obligation~~) if the value is in fact so used; and

1 (d) In a consumer goods secured transaction, if the extent to which a
2 security interest is a purchase money security interest depends on the application of
3 a payment to a particular obligation:

4 (1) [cite any applicable statute of a State] governs application of the
5 payment to the extent applicable; and

6 (2) to the extent the statute is not applicable, the payment must be
7 applied to obligations secured by purchase money security interests in the order in
8 which those obligations were incurred.

9 ~~(2) This subsection may not be varied by agreement [except to the extent~~
10 ~~that the agreement relates to the application of a payment to interest or other~~
11 ~~finance charges].~~

12 **Alternative B**

13 (d)(1) In a consumer goods secured transaction, if the extent to which a
14 security interest is a purchase money security interest depends on the application of
15 a payment to a particular obligation, the payment must be applied to obligations
16 secured by purchase money security interests in the order in which those obligations
17 were incurred.

18 **[End of Alternatives]**

19 ~~(e 2) This subsection~~ Subsection (d) may not be varied by agreement
20 [except to the extent that the agreement relates to the application of a payment to
21 interest or other finance charges].

1 (f) A purchase money security interest does not lose its status as such
2 even if:

3 (1) the purchase money collateral also secures an obligation that is not a
4 purchase money obligation;

5 (2) collateral that is not purchase money collateral also secures the
6 purchase money obligation; or

7 (3) the purchase money obligation has been renewed, refinanced,
8 consolidated, or restructured.

9 (g) A secured party claiming a purchase money security interest has the
10 burden of establishing [whether and] the extent to which the security interest is a
11 purchase money security interest [if either of the following is placed in issue:

12 (1) the status of a security interest as a purchase money security interest;

13 or

14 (2) the extent to which it is a purchase money security interest].

15 *Legislative Note: States that have an applicable statute dealing with allocation of*
16 *payments should enact Alternative A of subsection (d). Other States should enact*
17 *Alternative B.*

1 ***[MODEL SECTION 9-105 9-104A. DEFINITIONS: “PRODUCTION***
2 ***MONEY SECURITY INTEREST”***; ***“PRODUCTION MONEY CROPS”***;
3 ***“PRODUCTION MONEY OBLIGATION”***; ***”PRODUCTION OF CROPS”***;
4 ***BURDEN OF ESTABLISHING PRODUCTION MONEY SECURITY***
5 ***INTEREST.***

6 (a) *A security interest [in crops] is a “production money security interest”*
7 *to the extent that the crops (“production money crops”) secure an obligation*
8 *(“production money obligation”) of ~~incurred by an obligor~~ incurred for new value*
9 *given to enable the debtor to produce the production money crops (“production*
10 *~~money obligation”)~~ if the value is in fact used for the production of the production*
11 *money crops.*

12 (b) *The “production of crops” includes tilling and otherwise preparing*
13 *land for growing, planting, cultivating, fertilizing, protecting from damage or*
14 *disease, irrigating, harvesting, and gathering crops.*

15 (c) *If the extent to which a security interest is a production money security*
16 *interest depends on the application of a payment to a particular obligation, the*
17 *payment must be applied:*

18 (1) *in accordance with any reasonable method of application to which*
19 *the parties agree;*

20 (2) *in the absence of the parties' agreement to a reasonable method, in*
21 *accordance with any intention of the obligor manifested at or before the time of*
22 *payment; or*

1 (3) in the absence of an agreement to a reasonable method and a timely
2 manifestation of the obligor's intention, in the following order:

3 (A) ~~first~~, to obligations that are not secured; and

4 (B) ~~then~~, if more than one obligation is secured, to obligations
5 secured by production money security interests in the order in which those
6 obligations were incurred.

7 (d) A production money security interest does not lose its status as such
8 even if:

9 (1) the production money ~~collateral~~ crops also secure ~~secures~~ an
10 obligation that is not a production money obligation;

11 (2) collateral that is not production money ~~collateral~~ crops also secures
12 the production money obligation; or

13 (3) the production money obligation has been renewed, refinanced, or
14 restructured.

15 (e) A secured party claiming a production money security interest has the
16 burden of establishing [whether and] the extent to which the security interest is a
17 production money security interest [if either of the following is placed in issue:

18 (1) the status of a security interest as a production money security
19 interest; or

20 (2) the extent to which it is a production money security interest].

21 *Legislative Note: This section is optional. States that do not enact this section also*
22 *should not enact Section 9-320A.*

1
2 1. *Source.* *New.*

3 2. ***Production Money Priority; “Production Money Security Interest.”***

4 *There appears to be a general consensus that the former rule affording special*
5 *priority to those who provide secured credit that enables a debtor to produce crops,*
6 *found in former Section 9-312(2), is not workable. However, after years of*
7 *discussion, no consensus concerning the rule has arisen among those who engage*
8 *in agricultural financing. The issue remains controversial, and opinions differ*
9 *strongly over whether to replace the rule with one that affords greater protection to*
10 *providers of production inputs or whether to eliminate the rule without replacing it.*

11 *Model Section 9-320A contains a revised production money priority rule.*
12 *That section is a model, not uniform, provision. The sponsors of the UCC have*
13 *taken no position as to whether it should be enacted, instead leaving the matter for*
14 *state legislatures to consider if they are so inclined. This position reflects the likely*
15 *division of views among state legislatures as to the desirability of the rule. In*
16 *conjunction with the new priority rule, this section—also a model section—provides*
17 *a definition of “production money security interest.” It is patterned closely on*
18 *Section 9-104, which defines “purchase money security interest.” Subsection (b)*
19 *makes clear that a security interest can obtain production-money status only to the*
20 *extent that it secures value that actually can be traced to the direct production of*
21 *crops. To the extent that a security interest secures indirect costs of production,*
22 *such as general living expenses, the security interest is not entitled to production-*
23 *money treatment.*

24 **SECTION 9-105.**

25 [deleted]

26 **SECTION 9-106. CLASSIFICATION OF GOODS: “CONSUMER**
27 **GOODS”; “EQUIPMENT”; “FARM PRODUCTS”; “INVENTORY.”**

28 (a) “Consumer goods means goods that are used or bought for use
29 primarily for personal, family, or household purposes.

30 (b) “Equipment means goods ~~that are used or bought for use primarily in~~
31 ~~business, including farming or a profession, or by a debtor that is a nonprofit~~

1 organization or a governmental subdivision or agency. The term includes goods
2 other than inventory, farm products, or consumer goods.

3 (c) (1) ~~Goods are “farm products” if: “Farm products” means goods:~~

4 ~~(A B) the goods that are:~~

5 (i) crops grown, growing, or to be grown, including crops
6 produced on trees, vines, and bushes;

7 (ii) livestock, born or unborn;

8 (iii) supplies used or produced in a farming, ~~livestock, or~~
9 ~~aquacultural~~ operation; or

10 (iv) products of crops or livestock in their unmanufactured
11 states; and

12 ~~(B A) with respect to which the debtor is engaged in a farming~~
13 ~~operation raising, cultivating, propagating, fattening, grazing, or other farming,~~
14 ~~livestock, or aquacultural operations; and~~

15 ~~(2) The term does not include equipment or inventory.~~

16 ~~(2 3) For purposes of paragraph (1), the terms “crops” and “livestock~~
17 ~~include aquatic goods produced in aquacultural operations.~~

18 (d)(1) “Inventory” means goods that ~~are~~:

19 (A) are leased by a person [as lessor];

20 (B) are held by a person for sale or lease or to be furnished under
21 contracts of service;

22 (C) are furnished by a person under contracts of service; or

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

3 (2) [The term does not include ~~equipment~~ farm products.]

4 **SECTION 9-107. DEFINITIONS: “COMMODITY ACCOUNT”;**
5 **“COMMODITY CONTRACT”;** **“COMMODITY CUSTOMER”;**
6 **“COMMODITY INTERMEDIARY”;** **“INVESTMENT PROPERTY.”**

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

9 (b) “Commodity contract means a commodity futures contract, an option
10 on a commodity futures contract, a commodity option, or another contract that, in
11 each case, is:

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

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

18 (c) “Commodity customer means a person for which a commodity
19 intermediary carries a commodity contract on its books.

20 (d) “Commodity intermediary means:

1 (1) a person that is registered as a futures commission merchant under
2 the federal commodities laws; or

3 (2) a person that in the ordinary course of its business provides clearance
4 or settlement services for a board of trade that has been designated as a contract
5 market pursuant to the federal commodities laws.

6 (e) “Investment property means a security, whether certificated or
7 uncertificated, security entitlement, securities account, commodity contract, or
8 commodity account.

9 **SECTION 9-108. CONTROL OVER INVESTMENT PROPERTY.**

10 (a) A person has control of a certificated security, uncertificated security, or
11 security entitlement as provided in Section 8-106.

12 (b) A secured party has control over a commodity contract if:

13 (1) the secured party is the commodity intermediary with which the
14 commodity contract is carried; or

15 (2) the commodity customer, secured party, and commodity
16 intermediary have agreed that the commodity intermediary will apply any value
17 distributed on account of the commodity contract as directed by the secured party
18 without further consent by the commodity customer.

19 (c) A secured party that has control over all security entitlements or
20 commodity contracts carried in a securities account or commodity account has
21 control over the securities account or commodity account.

1 Reporters' Comments

2 1. **Source.** Former Section 9-115(e).

3 2. **“Control” under Article 8.** For a discussion of this issue, see the
4 comments to Section 8-106 (in the Appendix).

5 **SECTION 9-109. CONTROL OVER DEPOSIT ACCOUNT.**

6 (a) A secured party has control over a deposit account if:

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

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

13 (3) the secured party becomes the bank's customer with respect to the
14 deposit account.

15 (b) A secured party that has satisfied the requirements of subsection (a) has
16 control even if the debtor retains the right to direct the disposition of funds from the
17 deposit account.

18 **SECTION 9-110. CONTROL OVER LETTER-OF-CREDIT RIGHTS.** A

19 secured party has control over letter-of-credit rights to the extent of any right to
20 payment or performance by or proceeds received from the issuer or any nominated
21 person if the issuer or nominated person has consented to an assignment of

1 proceeds of the letter of credit under Section 5-114(c) or otherwise applicable law
2 or practice.

3 **SECTION 9-110A. CONTROL OVER INTANGIBLE CHATTEL**

4 **PAPER.**

5 (a) A secured party has control over intangible chattel paper if:

6 (1) all copies of the record or records evidencing the chattel paper
7 permanently identify the secured party as the assignee of the chattel paper; or

8 (2) the following conditions are met:

9 (A) a single copy of the record or records evidencing the chattel
10 paper indicates that it is the only copy in which a security interest may be perfected
11 by control;

12 (B) the copy of the record or records is communicated to the secured
13 party; and

14 (C) either:

15 (i) the copy cannot be duplicated except in a manner that
16 identifies the duplicate as a copy other than the copy in which a security interest
17 may be perfected by control; or

18 (ii) upon communication of the copy to the secured party, the
19 copy permanently identifies the secured party as the assignee of the chattel paper.

20 (b) A copy of a record or records evidencing intangible chattel paper
21 permanently identifies a secured party as the assignee of the chattel paper if:

1 adequate to describe certificated or uncertificated securities. Subsection (b)(3) also
2 eliminates the need for the words “by those terms” in subsection (d).

3 B. At the November, 1997, meeting, the Drafting Committee decided
4 that a description such as “all debtor’s jewelry” would suffice for purposes of a
5 security agreement, but that “all debtor’s consumer goods” would not. Does
6 subsection (e) adequately reflect the Drafting Committee’s intention?

7 [SUBPART 2. APPLICABILITY OF ARTICLE]

8 **SECTION 9-112. SCOPE.**

9 (a) Except as otherwise provided in subsections (c) and (d), ~~subsection (c)~~;
10 this article applies to:

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

13 (2) an agricultural ~~a statutory~~ lien;

14 (3) a sale of an account, chattel paper, or payment intangible; and

15 (4) a consignment.

16 (b) The application of this article to a security interest in a secured
17 obligation is not affected by the fact that the obligation is itself secured by a
18 transaction or interest to which this article does not apply.

19 (c) This article does not apply to the extent that:

20 (1) a statute, regulation, or treaty of the United States preempts this
21 article;

1 (2) another statute of this State [expressly] governs the creation,
2 perfection, priority, or enforcement of a security interest created by this State or a
3 governmental unit of this State;

4 (3) a statute of another State, a foreign country, ~~nation~~; or a
5 governmental unit of another State or a foreign country, ~~nation~~, other than a statute
6 generally applicable to security interests, [expressly] governs creation, perfection,
7 priority, or enforcement of a security interest created by the State, ~~nation~~, country,
8 or governmental unit.

9 (d) This article does not apply to:

10 (1) a landlord's lien[, other than an agricultural ~~a statutory~~ lien];

11 (2) a lien, ~~other than a statutory lien~~, given by statute or other rule of law
12 for services or materials, except as provided in Section 9-330 with respect to
13 priority of the lien;

14 (3) a transfer of a claim for wages, salary, or other compensation of an
15 employee;

16 (4) a sale of accounts, chattel paper, or payment intangibles as part of a
17 sale of the business out of which they arose;

18 (5) an assignment of accounts, chattel paper, or payment intangibles
19 which is for the purpose of collection only;

20 (6) an assignment of a right to payment under a contract to an assignee
21 that is also obliged to perform under the contract;

1 (7) an assignment of a single account or payment intangible to an
2 assignee in whole or partial satisfaction of a preexisting indebtedness;

3 (8) a transfer of an interest in or claim under ~~any~~ a policy of insurance,
4 except:

5 (A) ~~a transfer by a health-care provider of a right to payment arising~~
6 ~~out the furnishing of health-care goods or services; and~~

7 (B) as provided in Sections 9-313 and 9-319 with respect to
8 proceeds and priorities in proceeds;

9 (9) a right represented by a judgment, other than a judgment taken on a
10 right to payment that was collateral;

11 (10) a right of recoupment or set-off, except as provided in Section
12 9-337 with respect to the effectiveness of rights of recoupment or set-off against
13 deposit accounts and in Section 9-404(a) [and (b)] with respect to defenses or
14 claims of an account debtor;

15 (11) the creation or transfer of an interest in or lien on real property,
16 including a lease or rents thereunder, except to the extent that provision is made for
17 fixtures in Section 9-331;

18 (12) a transfer of any claim arising in tort, except:

19 (A) a transfer of a commercial tort claim; [and]

20 (B) as provided in Sections 9-313 ~~(a)(5)~~ and 9-319 with respect to
21 proceeds and priorities in proceeds[; or] [and]

1 (C) a transfer of a liquidated and undisputed claim that is generally
2 assignable under applicable law; or]

3 (13) a transfer of an interest in a deposit account in a consumer secured
4 transaction, except as provided in Sections 9-313 and 9-319 with respect to
5 proceeds and priorities in proceeds.

6 Reporters' Comments

7 **Changes from Prior Draft:**

8 A. Deletion of the brackets in subsection (d)(1) takes account of the
9 revised definition of "agricultural lien" in Section 9-102, which makes clear that the
10 term includes certain statutory landlord's liens.

11 B. Deletion of subsection (d)(8)(A). See Discussion Question A.

12 **Discussion Questions:**

13 A. At a fairly early stage, the Article 9 draft added bracketed language
14 carving out healthcare receivables from the general exclusion for insurance. We
15 hoped to receive from the Reporters' task force on health-care receivables some
16 suggestions for how to define "healthcare provider" and "healthcare goods or
17 services," and some guidance on crafting any special rules that might be needed
18 (e.g., rules governing the obligation of an insurer that is an account debtor). Having
19 detected little, if any, support for retaining the carve-out, we deleted it. Should the
20 bracketed language be restored?

21 B. Does the draft sufficiently make clear that security interests in
22 structured settlements can serve as original collateral under Article 9?

23 **SECTION 9-113.**

24 [deleted]

25 **SECTION 9-114.**

26 [deleted]

1 2. **Status.** The Article 2 Drafting Committee has yet to determine whether
2 any rights arising under revised Article 2 will be characterized as security interests
3 and, if so, which ones. Once that determination is made, the Article 9 Drafting
4 Committee will consider how to address those security interests, and any security
5 interests arising under revised Article 2A, in this Article. In the meanwhile,
6 inasmuch as revised Article 9 is likely to be available for enactment before revised
7 Articles 2 and 2A, the Reporters will prepare for the Drafting Committee’s
8 consideration amendments that will improve the coordination between existing
9 Articles 2 and 2A.

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PART 2
VALIDITY OF SECURITY AGREEMENT;
ATTACHMENT OF SECURITY INTEREST;
RIGHTS OF PARTIES TO SECURITY AGREEMENT

[SUBPART 1. VALIDITY AND ATTACHMENT]

SECTION 9-201. GENERAL EFFECTIVENESS OF SECURITY AGREEMENT.

(a) Except as otherwise provided in [the Uniform Commercial Code], a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) Nothing in this article:

(1) validates any charge or practice illegal under any statute or regulation governing usury, small loans, retail installment sales, or the like; or

(2) extends the application of the statute or regulation to a transaction not otherwise subject to it.

[(c) A transaction subject to this article is also subject to any applicable law which establishes a different rule for consumers.

(d) With respect to [the Uniform Commercial Code], failure to comply with the laws referred to in subsection (c) has only the effect specified therein.]

SECTION 9-202. TITLE TO COLLATERAL IMMATERIAL. Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, or payment intangibles, the provisions of this article with regard to rights,

1 obligations, and remedies apply whether title to collateral is in the secured party or
2 in the debtor.

3 **SECTION 9-203. ATTACHMENT AND ENFORCEABILITY OF**
4 **SECURITY INTEREST; PROCEEDS; SUPPORT OBLIGATIONS;**
5 **FORMAL REQUISITES.**

6 (a) A security interest is created in, and attaches to, collateral when it
7 becomes enforceable against the debtor with respect to the collateral, unless an
8 explicit agreement expressly postpones the time of creation or attachment.

9 (b) Except as otherwise provided in subsections (c), (d), and (e), and
10 Section 4-210 on the security interest of a collecting bank, Section 5-118 [on the
11 security interest of a letter of credit issuer or nominated person], Section 9-116 [on
12 a security interest arising under Article 2 or 2A], and Section 9-206 [on security
13 interests in investment property], ~~Section 9-116 [on a security interest arising under~~
14 ~~Article 2 or 2A]~~, a security interest is enforceable against the debtor and third
15 parties with respect to the collateral only if :

16 (1) value has been given; and

17 (2) the debtor has rights in the collateral or the power to transfer rights
18 in the collateral to a secured party; and

19 (3) one of the following conditions is met:

1 (A) the debtor has authenticated a security agreement that provides a
2 description of the collateral and, if the security interest covers timber to be cut, a
3 description of the land concerned;

4 (B) the collateral is in the possession of the secured party under
5 Section 9-311 pursuant to the debtor's security agreement; ~~or~~

6 (C) the collateral is a certificated security and the security certificate
7 has been delivered to the secured party under Section 8-301 pursuant to the debtor's
8 security agreement; or

9 (D) ~~€~~ the collateral is investment property, a deposit account, or a
10 letter-of-credit ~~rights~~ right, and the secured party has control pursuant to the
11 debtor's security agreement.

12 (c) A person becomes bound as debtor by a security agreement entered into
13 by another person if, by operation of other law or by contract:

14 (1) the security agreement becomes effective to create a security interest
15 in the person's property; or

16 (2) the person:

17 (A) becomes generally obligated for the obligations of the other
18 person, including the obligation secured under the security agreement; and

19 (B) acquires or succeeds to all or substantially all of the assets of the
20 other person.

21 (d) If a new debtor becomes bound as debtor by a security agreement
22 entered into by another person:

1 (1) the agreement satisfies the requirements of subsection ~~(a)(1)~~ (b)(3)
2 with respect to existing or after-acquired property of the new debtor to the extent
3 the property is described in the agreement; and

4 (2) another agreement is not necessary to make a security interest in the
5 property enforceable.

6 (e) [Unless otherwise agreed; ~~the~~] [~~The~~] attachment of a security interest
7 ~~in~~:

8 (1) the attachment of a security interest in collateral gives the secured
9 party the rights to proceeds provided by Section 9-313; ~~(2) collateral~~ and is also
10 attachment of a security interest in support obligation with respect to the collateral;

11 ~~(2)~~ (3) the attachment of a security interest in a securities account is also
12 attachment of a security interest in security entitlements carried in the securities
13 account;

14 ~~(3)~~ (4) the attachment of a security interest in a commodity account is also
15 attachment of a security interest in all commodity contracts carried in the
16 commodity account; and

17 ~~(4)~~ (5) the attachment of a security interest in a right to payment or
18 performance secured by a [~~mortgage on real property~~] [~~lien on~~ personal or real
19 property] is also attachment of a security interest in the [~~mortgage~~] [~~lien~~].

2 **Change from Prior Draft:**

3 A. For clarity, as marked. Note also that subsections (a) and (b) have been
4 reordered, as have the elements of attachment in new subsection (b).

5 B. Concerning new subsection (b)(3)(C), see Section 9-311, Comment 2.

6 C. Subsection (e)(4) has been revised to adopt the “collateral follows the
7 debt rule with respect to all collateral. See also Section 9-308(g), which contains
8 an analogous rule regarding perfection.

9 1. **Source.** Former Sections 9-203 and 9-115(2), (6).

10 2. **Requirement for Agreement.** Subsection (b)(3)(B) makes clear that the
11 secured party’s possession must be obtained pursuant to the debtor’s security
12 agreement. “Pursuant to the debtor’s security agreement” in this subsection refers
13 to the debtor’s agreement to the secured party’s possession for the purpose of
14 creating a security interest. In the unlikely event that possession is obtained without
15 the debtor’s security agreement, it would not suffice as a substitute for an
16 authenticated security agreement. However, once the security interest has become
17 enforceable and has attached, it is not impaired by the fact that the secured party’s
18 possession is maintained without the agreement of a subsequent debtor (e.g., a
19 transferee). What constitutes possession, as contemplated by Section 9-311, also is
20 possession for purposes of subsection (b), even though it may not constitute
21 possession “pursuant to the debtor’s security agreement” and consequently might
22 not serve as a substitute for an authenticated security agreement under subsection
23 (b).

24 Subsection (b)(3)(D) provides that control of investment property, a deposit
25 account, or letter-of-credit rights pursuant to the debtor’s security agreement is
26 sufficient as a substitute for an authenticated security agreement.

27 **SECTION 9-204. AFTER-ACQUIRED PROPERTY; FUTURE**

28 **ADVANCES.**

29 (a) Except as otherwise provided in subsection (b), a security agreement
30 may create or provide for a security interest in after-acquired collateral.

1 (b) A security interest does not attach under an after-acquired property
2 clause to:

3 (1) consumer goods, other than an accession when given as additional
4 security, unless the debtor acquires rights in them within 10 days after the secured
5 party gives value; or

6 (2) a commercial tort claim.

7 (c) A security agreement may provide that collateral secures, or that
8 accounts, chattel paper, or payment intangibles are sold in connection with, future
9 advances or other value, whether or not the advances or value are given pursuant to
10 commitment.

11 **SECTION 9-205. USE OR DISPOSITION OF COLLATERAL**
12 **WITHOUT ACCOUNTING PERMISSIBLE.**

13 (a) A security interest is not invalid or fraudulent against creditors solely
14 because:

15 (1) the debtor has the right or ability to:

16 (A) use, commingle, or dispose of all or part of the collateral,
17 including returned or repossessed goods;

18 (B) collect, compromise, enforce, or otherwise deal with collateral;

19 (C) accept the return of collateral or make repossessions; or

20 (D) use, commingle, or dispose of proceeds; or

1 (2) the secured party fails to require the debtor to account for proceeds
2 or replace collateral.

3 (b) This section does not relax the requirements of possession for
4 attachment, perfection, or enforcement of a security interest which depend upon
5 possession of the collateral by the secured party.

6 **SECTION 9-206. SECURITY INTEREST ARISING IN PURCHASE OR**
7 **DELIVERY OF FINANCIAL ASSET.**

8 (a) ~~(1)~~ A security interest in favor of a securities intermediary attaches to a
9 person's security entitlement if:

10 (1) ~~A~~ the person buys a financial asset through a securities intermediary
11 in a transaction in which the person is obligated to pay the purchase price to the
12 securities intermediary at the time of the purchase; and

13 (2) ~~B~~ the securities intermediary credits the financial asset to the buyer's
14 securities account before the buyer pays the securities intermediary.

15 (b) ~~2~~ The security interest described in subsection (a) secures the person's
16 obligation to pay for the financial asset.

17 (c) ~~b~~ ~~(1)~~ A security interest in favor of a person that delivers a certificated
18 security or other financial asset represented by a writing attaches to the security or
19 other financial asset if:

20 (1) ~~A~~ the security or other financial asset is:

1 (A i) in the ordinary course of business transferred by delivery with
2 any necessary indorsement or assignment; and

3 (B ii) delivered under an agreement between persons in the business
4 of dealing with such securities or financial assets; and

5 (2 B) the agreement calls for [delivery versus payment] [delivery
6 against payment].

7 (d 2) The security interest described in subsection (c) secures the person's
8 obligation to make payment to the seller.

9 [SUBPART 2. RIGHTS AND DUTIES]

10 **SECTION 9-207. RIGHTS AND DUTIES OF SECURED PARTY**
11 **HAVING IF COLLATERAL IS IN SECURED PARTY'S POSSESSION OF**
12 **OR CONTROL OVER COLLATERAL.**

13 (a) (1) A secured party shall use reasonable care in the custody and
14 preservation of collateral in the secured party's possession if the secured party:

15 (1 A) is not a buyer of accounts, chattel paper, or payment intangibles
16 [or a consignor] a security interest secures an obligation; or

17 (2 B) is a buyer of accounts, chattel paper, or payment intangibles which
18 is entitled by agreement:

19 (A i) to charge back uncollected collateral; or

1 (B ii) otherwise to full or limited recourse against the debtor or a
2 secondary obligor based on the nonpayment or other default of an account debtor or
3 other obligor on the collateral.

4 (b 2) In the case of an instrument or chattel paper, reasonable care under
5 subsection (a) includes taking necessary steps to preserve rights against prior parties
6 unless otherwise agreed.

7 (c b) [~~Unless otherwise agreed, if~~][If] a secured party has possession of
8 security interest secures an obligation and collateral is in the secured party's
9 possession:

10 (1 A) reasonable expenses, including the cost of any insurance and
11 payment of taxes or other charges, incurred in the custody, preservation, use, or
12 operation of the collateral are chargeable to the debtor and are secured by the
13 collateral;

14 (2 B) the risk of accidental loss or damage is on the debtor to the extent
15 of a deficiency in any effective insurance coverage;

16 (3 E) the secured party shall keep the collateral identifiable, but fungible
17 collateral may be commingled; and

18 (4) the secured party may use or operate the collateral:

19 _____ (A) for the purpose of preserving the collateral or its value;

20 _____ (B) as permitted by an order of a court of appropriate jurisdiction;

21 or

1 (C) except in the case of consumer goods, in the manner and to the
2 extent agreed by the debtor.

3 ~~(d 3) Unless otherwise agreed, if [If] a secured party has possession of or~~
4 ~~control over security interest secures an obligation and collateral, is in the secured~~
5 ~~party's possession the secured party:~~

6 ~~(1 A) may hold as additional security any increase or profits, except~~
7 ~~money, received from the collateral;~~

8 ~~(2 B) shall apply money received under paragraph (3)(A) to reduce the~~
9 ~~secured obligation, unless remitted to the debtor;~~

10 ~~(C) shall keep the collateral identifiable, but fungible collateral may be~~
11 ~~commingled; and~~

12 ~~(3 D) may create a security interest in the collateral.~~

13 ~~(c) If a security interest secures an obligation, the secured party may use or~~
14 ~~operate collateral:~~

15 ~~(1) for the purpose of preserving the collateral or its value;~~

16 ~~(2) as permitted by an order of a court of appropriate jurisdiction~~

17 ~~or~~

18 ~~(3) except in the case of consumer goods, in the manner and to the~~
19 ~~extent agreed by the debtor.~~

20 (e) Subsections (c) and (d) do not apply if the secured party is a buyer of
21 accounts, chattel paper, or payment intangibles [or a consignor].

2 **Changes from Prior Draft:**

3 A. The changes to subsection (a), together with the changes to the
4 definition of “secured party” in Section 9-102, make it clear that a secured party has
5 the specified duties whether or not a secured obligation is outstanding.

6 B. The rights specified in paragraph (d) are made applicable to secured
7 parties having control over collateral as well as to those in possession of collateral.
8 Important among these rights is the secured party’s right to grant a security interest
9 in (i.e., to “repledge”) collateral. This right is equally as important when the
10 secured party has control over collateral (see Sections 9-108, 9-109, 9-110, and 9-
11 110A), as when the secured party has possession of collateral. Consider the
12 following example:

13 *Example.* Debtor grants Alpha Bank a security interest in a security
14 entitlement that includes 1000 shares of XYZ Co. stock that Debtor holds
15 through an account with Able & Co. Alpha does not have an account with
16 Able. Alpha uses Beta Bank as its securities custodian. Debtor instructs
17 Able to transfer the shares to Beta, for the account of Alpha, and Able does
18 so. Beta then credits Alpha’s account. Alpha has control of the 1000 shares
19 under Section 8-106(d). Although Debtor remains the beneficial owner of
20 the securities entitlement as between Debtor and Alpha, Beta has agreed to
21 act on Alpha’s entitlement orders because, as between Beta and Alpha,
22 Alpha has become the entitlement holder. (These are the facts of Example
23 3, Section 8-106, Comment 4.)

24 Next, Alpha grants Gamma Bank a security interest in the security
25 entitlement that includes the 1000 shares of XYZ Co. stock. In order to
26 afford Gamma control over the entitlement, Alpha instructs Beta to transfer
27 the stock to Gamma’s custodian, Delta Bank, which credits Gamma’s
28 account for the 1000 shares.

29 At this point Gamma holds its securities entitlement for its benefit as
30 well as that of its debtor, Alpha. Alpha’s derivative rights also are for the
31 benefit of Debtor. In many situations and at any particular point in time,
32 however, it would be impossible for Debtor or Alpha to “trace” Alpha’s
33 “repledge” to any particular securities entitlement or financial asset of
34 Gamma or anyone else. This should have no adverse consequences for
35 Alpha’s claim against Debtor. For example, in the event of Debtor’s
36 bankruptcy and its inability to “trace” any financial assets to any particular
37 securities entitlement or financial asset, Debtor’s estate would have no
38 property interest. It would retain, of course, a right to redemption from

1 Alpha upon satisfaction of the secured obligation. Alpha would not have
2 received a transfer vulnerable to any claims of Debtor’s creditors;
3 consequently, Bankruptcy Code Section 544(a) would impose no risks on
4 Alpha. If the financial assets were to find their way back to Alpha’s
5 securities account with Beta, Alpha would again have a perfected (by
6 control) security interest (this assumes tracing would be possible). That
7 security interest would not be vulnerable as a preference under Bankruptcy
8 Code Section 547 because, simultaneously with Alpha’s obtaining control
9 (perfection), Debtor would have received its indirect interest in the financial
10 assets in Alpha’s account, which Alpha would hold for its and Debtor’s
11 benefit. See Bankruptcy Code Section 547(c)(1).

12 Were Debtor concerned about Alpha’s credit in the foregoing repledge example,
13 Debtor could insist that Gamma agree that it would hold the financial assets in its
14 account with Delta for the benefit of Debtor as well as itself and Alpha.
15 Alternatively, and more plausibly, Debtor could open a securities account with
16 Alpha (assuming Alpha could act as a securities intermediary). In that situation,
17 Alpha would have control over Debtor’s security entitlement without further action.
18 See Section 8-106((e)).

19 **Discussion Question:** See comment 2.

20 1. **Source.** Former Section 9-207.

21 2. **Agricultural Liens.** The revised definitions of “collateral”, “debtor,”
22 and “secured party” in Section 9-102 would make this section applicable to
23 collateral subject to an agricultural lien if the collateral is in the agricultural
24 lienholder’s possession. The Drafting Committee has not yet considered whether
25 that result is appropriate.

26 * * *

27 4. **“Repledges.”** Subsection (d)(3) eliminates the qualification in former
28 Section 9-207 that the terms of a “repledge” may not “impair a debtors’ “right to
29 redeem collateral. The change is for clarification only.

30 There is no basis on which to draw from subsection (d)(3) any inference
31 concerning the debtor’s right to redeem the collateral. The debtor enjoys that right
32 under Section 9-621, and this section need not address it. For example, if the
33 collateral is a negotiable note that the secured party (SP-1) repledges to SP-2,
34 nothing in this section suggests that the debtor (D) does not retain the right to
35 redeem the note upon payment to SP-1 of all obligations secured by the note. But,
36 as explained below, the debtor’s unimpaired right to redeem as against the debtor’s

1 original secured party nevertheless may not be enforceable as against the new
2 secured party.

3 In resolving questions that arise from the creation of a security interest by
4 SP-1, one must take care to distinguish D's rights against SP-1 from D's rights
5 against SP-2. Once D discharges the secured obligation, under Section 9-621 or
6 otherwise, D becomes entitled to the note; SP-1 has no legal basis upon which to
7 withhold it. If, as a practical matter, SP-1 is unable to return the note because SP-2
8 holds it as collateral for SP-1's unpaid debt, then SP-1 is liable to D under the law
9 of conversion.

10 Whether SP-2 would be liable to D depends on the priority of SP-2's
11 security interest. Normally, the *nemo dat* principle will apply, and SP-2's security
12 interest, which is a security interest in SP-1's security interest, will be defeated if
13 the debtor discharges its secured obligations under Section 9-621 or otherwise. If
14 so, and if SP-2 fails to deliver the note to D, then D will have a right to replevy the
15 note from SP-2 or recover damages from SP-2 in conversion. In some
16 circumstances, however, SP-2's security interest will survive discharge of SP-1's
17 security interest. This will be the case, for example, if SP-2 is a holder in due
18 course. See Sections 9-328, 3-306. Under these circumstances, D has no right to
19 recover the note or recover damages from SP-2. Nevertheless, D will have a
20 damage claim against SP-1.

21 This section does not change existing law in this regard, but rather
22 eliminates a possible ambiguity. Former Section 9-207(2)(e) permits the secured
23 party to "repledge the collateral upon terms that do not impair the debtor's right to
24 redeem it. This language could be read to override the rule of Section 9-328,
25 under which a qualifying SP-2 takes its security interest free of D's interest in the
26 collateral. This language also could be read to prohibit SP-1 from creating a
27 security interest to secure a debt owed to SP-2 that is larger than the debt owed by
28 D to SP-1. Both readings are erroneous. Subsection (d)(3) makes clear that
29 nothing in this Article, including subsection (a), prohibits or restricts a secured
30 party from creating, as a debtor, a security interest in collateral in which it holds a
31 security interest. Subsection (d)(3) does not, by negative implication, prohibit or
32 render ineffective a security interest created by a secured party in collateral that is
33 not in the secured party's possession.

34 **SECTION 9-208. ADDITIONAL DUTIES OF SECURED PARTY**
35 **HAVING CONTROL OVER COLLATERAL.**

36 (a) This section applies if:

1 (1) there is no outstanding secured obligation; and

2 (2) the secured party has no commitment to make advances, incur
3 obligations, or otherwise give value;

4 (b) ~~soon as reasonably practicable, but not more than [three business] [six]~~
5 ~~days;~~ Within 10 days after receiving an authenticated demand by the debtor a
6 ~~secured party that has control over:~~

7 (1) a secured party that has control over investment property under
8 Section 8-106(d)(2) or 9-108(b) shall send the securities intermediary or
9 commodity intermediary with which the security entitlement or commodity contract
10 is maintained an authenticated record that releases the securities intermediary or
11 commodity intermediary from any further obligation to comply with entitlement
12 orders or directions originated by the secured party;

13 (2) a secured party that has control over a deposit account under Section
14 9-109(a)(2) shall send the bank with which the deposit account is maintained an
15 authenticated statement that releases the bank from any further obligation to comply
16 with instructions originated by the secured party;

17 [(3) a secured party that has control over a deposit account under
18 Section 9-109(a)(3) shall:

19 (A) pay the debtor the balance on deposit in the deposit account; or

20 (B) transfer the balance on deposit into a deposit account in the
21 debtor's name;] and

1 (4) a secured party that has control over letter-of-credit rights under
2 Section 9-110 shall send to each person that has an unfulfilled obligation to pay or
3 deliver proceeds of the letter of credit to the secured party an authenticated release
4 from any further obligation to pay or deliver proceeds of the letter of credit to the
5 secured party.

6 **SECTION 9-208A. DUTIES OF SECURED PARTY IF ACCOUNT**
7 **DEBTOR HAS BEEN NOTIFIED OF ASSIGNMENT.**

8 (a) Except as otherwise provided in subsection (c), this section applies if:

9 (1) there is no outstanding secured obligation; and

10 (2) the secured party has no commitment to make advances, incur
11 obligations, or otherwise give value.

12 (b) ~~As soon as reasonably practicable, but not more than [three business]~~
13 ~~[six] days;~~ Within 10 days after the secured party receives an authenticated demand
14 by the debtor, the secured party shall send to an account debtor that has received
15 notification of an assignment to the secured party as assignee under Section
16 9-404(e) an authenticated record that releases the account debtor from any further
17 obligation to the secured party.

18 (c) This section does not apply to an assignment constituting the sale of an
19 account, chattel paper, or payment intangible.

1 **SECTION 9-209. REQUEST FOR ACCOUNTING; REQUEST**
2 **REGARDING LIST OF COLLATERAL OR STATEMENT OF ACCOUNT.**

3 (a) In this section:

4 (1) “Request means a record of a type described in paragraphs (2), (3),
5 or (4).

6 (2) ~~†~~ “Request for an accounting means a record authenticated by a
7 debtor requesting that the recipient provide an accounting of the unpaid obligations
8 secured by collateral and reasonably identifying the transaction or relationship that
9 is the subject of the request.

10 (3) ~~2~~ “Request regarding a list of collateral means a record
11 authenticated by a debtor requesting that the recipient approve or correct a list of
12 what the debtor believes to be the collateral securing an obligation and reasonably
13 identifying the transaction or relationship that is the subject of the request.

14 (4) ~~3~~ “Request regarding a statement of account means a record
15 authenticated by a debtor requesting that the recipient approve or correct a
16 statement indicating what the debtor believes to be the aggregate amount of unpaid
17 obligations secured by collateral as of a specified date and reasonably identifying
18 the transaction or relationship that is the subject of the request.

19 ~~(4) “Request means a record of a type described in paragraphs (1), (2),~~
20 ~~or (3).~~

21 (b) ~~†~~ Subject to subsections (c), (d), and (e), a secured party shall comply
22 with a request within two weeks after receipt by authenticating and sending to the

1 debtor a correction or approval or an accounting, as applicable. ~~(2)~~ This subsection
2 does not apply to a secured party that is a buyer of accounts, chattel paper, or
3 payment intangibles.

4 (c) A secured party that claims a security interest in all of a particular type
5 of collateral owned by the debtor may comply with a request regarding a list of
6 collateral by sending to the debtor an authenticated statement to that effect within
7 two weeks after receipt.

8 (d) ~~(1)~~ This subsection applies to a A person that: ~~(A)~~ receives a request
9 regarding a list of collateral, ~~(B)~~ claims no interest in the collateral when it
10 receives the request, ~~(C)~~ claimed an interest in the collateral at an earlier time:
11 ~~(2)~~ The person shall comply with the request within two weeks after receipt by
12 sending to the debtor an authenticated [record] [statement]:

13 (1) ~~(A)~~ disclaiming any interest in the collateral; and

14 (2) ~~(B)~~ if known to the recipient, containing the name and mailing
15 address of any assignee of or successor to the recipient's security interest in the
16 collateral.

17 (e) ~~(1)~~ This subsection applies to a A person that: ~~(A)~~ receives a request for
18 an accounting or a request regarding a statement of account, ~~(B)~~ claims no interest
19 in the obligations when it receives the request, ~~(C)~~ claimed an interest in the
20 obligations at an earlier time: ~~(2)~~ The person shall comply with the request within
21 two weeks after receipt by sending to the debtor an authenticated [record]
22 [statement]:

1 (1) ~~(A)~~ disclaiming any interest in the obligations; and
2 (2) ~~(B)~~ if known to the recipient, containing the name and mailing
3 address of any assignee of or successor to the recipient's interest in the obligations.

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

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PART 3

PERFECTION AND PRIORITY OF SECURITY INTERESTS

[SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY]

SECTION 9-301. LAW GOVERNING PERFECTION AND PRIORITY

OF SECURITY INTERESTS. Except as otherwise provided in Sections 9-303 through 9-305, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest.

(3) While goods, chattel paper, instruments, money, or negotiable documents are located in a jurisdiction, the local law of that jurisdiction governs the effect of perfection or nonperfection and the priority of a nonpossessory security interest.

(4) While goods are located in a jurisdiction, the local law of that jurisdiction governs perfection of a security interest in the goods by filing a fixture filing.

1 2. **Agricultural Liens.** This section provides choice-of-law rules for
2 agricultural liens. It provides that perfection and priority are governed by the law of
3 the jurisdiction where the collateral is located. Other choice-of-law rules, including
4 Section 1-105, will determine the law governing other matters, such as remedies on
5 default. Nonuniformity in the law governing agricultural liens and in non-UCC
6 choice-of-law rules may engender some confusion in this area. Nevertheless, this
7 section's approach seems generally consistent with current law applicable to
8 agricultural liens.

9 **SECTION 9-303. LAW GOVERNING PERFECTION AND PRIORITY**
10 **OF SECURITY INTERESTS IN GOODS COVERED BY A CERTIFICATE**
11 **OF TITLE.**

12 (a) Goods become covered by a certificate of title when a valid application
13 for the certificate of title and the applicable fee are delivered to the appropriate
14 authority.

15 (b) ~~(1)~~ The local law of the jurisdiction under whose certificate of title the
16 goods are covered governs perfection, the effect of perfection or nonperfection, and
17 the priority of a security interest in goods covered by a certificate of title from the
18 time the goods become covered by the certificate until the earlier of the time the
19 certificate becomes ineffective under the law of that jurisdiction or the time the
20 goods become covered subsequently by a certificate of title from another
21 jurisdiction. ~~(2)~~ After that time, the goods are not covered by the certificate of title.

22 (c) This section applies to goods covered by a certificate of title even if
23 there is no other relationship between the jurisdiction under whose certificate of
24 title the goods are covered and the goods or the debtor.

1 **SECTION 9-304A. LAW GOVERNING PERFECTION AND PRIORITY**
2 **OF SECURITY INTERESTS IN LETTER-OF-CREDIT RIGHTS.**

3 (a) Subject to subsection (c), the local law of the issuer's jurisdiction or a
4 nominated person's jurisdiction governs perfection, the effect of perfection or
5 nonperfection, and the priority of a security interest in a letter-of-credit rights right
6 if the issuer's or nominated person's jurisdiction is a State.

7 (b) The local law of an issuer's jurisdiction or nominated person's
8 jurisdiction is the local law of the jurisdiction governing its liability with respect to
9 the letter-of-credit rights right as [~~specified~~] [~~provided~~] in Section 5-116.

10 (c) This section does not apply to a security interest that is perfected only
11 under Section 9-308(d).

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

14 (a) Except as otherwise provided in subsection (b), the following rules
15 apply:

16 (1) While a security certificate is located in a jurisdiction, the local law
17 of that jurisdiction governs perfection, the effect of perfection or nonperfection, and
18 the priority of a security interest in the certificated security represented thereby.

19 (2) The local law of the issuer's jurisdiction as specified in Section
20 8-110(d) governs perfection, the effect of perfection or nonperfection, and the
21 priority of a security interest in an uncertificated security.

1 (3) The local law of the securities intermediary's jurisdiction as
2 specified in Section 8-110(e) governs perfection, the effect of perfection or
3 nonperfection, and the priority of a security interest in a security entitlement or
4 securities account.

5 (4) ~~(A)~~ The local law of the commodity intermediary's jurisdiction
6 governs perfection, the effect of perfection or nonperfection, and the priority of a
7 security interest in a commodity contract or commodity account.

8 (5) ~~(B)~~ The following rules determine a commodity intermediary's
9 jurisdiction for purposes of ~~this~~ paragraph 4 and Section 9-314:

10 (A i) If an agreement between the commodity intermediary and
11 commodity customer expressly ~~specifies~~ provides the commodity intermediary's
12 jurisdiction for purposes of this part, this article, or [the Uniform Commercial
13 Code], that jurisdiction is the commodity intermediary's jurisdiction.

14 (B) If subparagraph (A) does not apply and an agreement between
15 the commodity intermediary and commodity customer expressly provides that it is
16 governed by the law of a particular jurisdiction, that jurisdiction is the commodity
17 intermediary's jurisdiction.

18 (C ii) If ~~paragraph (1)~~ neither subparagraph (A) nor subparagraph
19 (B) applies ~~does not apply~~ and an agreement between the commodity intermediary
20 and commodity customer expressly ~~specifies~~ provides that the commodity account
21 is maintained at an office in a particular jurisdiction, that jurisdiction is the
22 commodity intermediary's jurisdiction.

1 B. Should subsection (b) be revised to provide that the jurisdiction in
2 which the debtor is located governs perfection by filing but does not govern
3 automatic perfection of security interests granted by a securities intermediary or
4 commodity intermediary (i.e., by deleting paragraphs (2) and (3))?

5 **SECTION 9-306.**

6 [deleted]

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

8 (a) In this section, a “place of business is a place where a debtor conducts
9 its affairs.

10 (b) a) ~~(1)~~ Except as otherwise provided in this section, the following rules
11 determine a debtor’s location:

12 (1 A) An individual debtor is located at the individual’s residence.

13 (2 B) Any other debtor having only one place of business is located at
14 its place of business.

15 (3 C) Any other debtor having more than one place of business is
16 located at its chief executive office.

17 (c) (2) (A) Paragraph (1) Subsection (b) applies only if a debtor’s
18 residence, place of business, or chief executive office, as applicable, is located
19 either in a State or in a jurisdiction, other than a State, whose law requires
20 information concerning the [possible] existence of a security interest to be made
21 publicly available as a condition or result of the security interest’s obtaining priority

1 over the rights of a lien creditor with respect to the collateral. ~~(B)~~ If ~~paragraph (1)~~
2 subsection (b) does not apply, the debtor is located in [the District of Columbia].

3 ~~(3) A place where a debtor conducts its affairs is a “place of business” for~~
4 ~~purposes of this subsection.~~

5 ~~(d)~~ (b) A registered entity that is organized under the law of a State is located
6 in its State jurisdiction of organization.

7 ~~(e)~~ Except as otherwise provided in subsection ~~(h)~~ (f), a registered entity
8 that is organized under the law of the United States and a branch or agency of a
9 bank that is not organized under the law of the United States or a State are located:

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

12 (2) in the State that the registered entity designates, if the law of the
13 United States authorizes the registered entity to designate its State of location; ~~for~~
14 ~~and~~

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

17 ~~(f)~~ (d) A registered entity continues to be located in the jurisdiction specified
18 by subsection ~~(b)~~ ~~or (c)~~ (d) or (e) notwithstanding the suspension, revocation,
19 forfeiture, or lapse of the registered entity’s registration or the ~~involuntary~~
20 dissolution of the registered entity.

21 ~~(g)~~ (e) The United States is located in the District of Columbia.

1 when it becomes effective if the applicable requirements are satisfied before the
2 statutory lien becomes effective.

3 (c) A security interest or ~~statutory~~ agricultural lien is perfected continuously
4 if it is originally perfected in one manner under this article and is later perfected in
5 another manner under this article, without an intermediate period when it was
6 unperfected.

7 (d) Perfection of a security interest in: ~~(1) collateral an account, chattel~~
8 ~~paper, document, instrument, [insurance policy,] general intangible, or security also~~
9 perfects a security interest in a support obligation for the collateral.

10 (e ~~2~~) Perfection of a security interest in a securities account also perfects a
11 security interest in all security entitlements carried in the securities account;

12 (f ~~3~~) Perfection of a security interest in a commodity account also perfects a
13 security interest in all commodity contracts carried in the commodity account, ~~and~~

14 (g ~~4~~) Perfection of a security interest in a right to payment or performance
15 also perfects a security interest in a ~~[mortgage on real property]~~ [lien on personal or
16 real property] securing the right, notwithstanding other law to the contrary.

17 *Legislative Note: To avoid confusion, any statute conflicting with subsection (g)*
18 *should be made expressly subject to that subsection.*

19 **SECTION 9-308A. SECURITY INTEREST PERFECTED UPON**
20 **ATTACHMENT.** The following security interests are perfected when they attach:

- 1 (1) a purchase money security interest in consumer goods except as
2 otherwise provided in Section ~~9-309A(c)~~ 9-309A(d) with respect to consumer
3 goods that are subject to a statute or treaty described in Section 9-309A(a);
- 4 (2) an assignment of accounts or payment intangibles which does not by
5 itself or in conjunction with other assignments to the same assignee transfer a
6 significant part of the assignor's outstanding accounts or payment intangibles;
- 7 (3) a sale of a payment intangible;
- 8 (4) a security interest of a collecting bank arising under Section 4-210;
- 9 (5) a security interest arising in the purchase or delivery of a financial asset
10 under Section 9-206;
- 11 (6) a security interest in investment property created by a broker or
12 securities intermediary;
- 13 (7) a security interest in a commodity contract or a commodity account
14 created by a commodity intermediary;
- 15 (8) an assignment for the benefit of all the creditors of the transferor; and
16 subsequent transfers by the assignee thereunder;
- 17 (9) a security interest created by an assignment of a beneficial interest in a
18 trust unless the beneficial interest constitutes investment property;
- 19 (10) a security interest created by an assignment of a beneficial interest in a
20 decedent's estate; and
- 21 (11) a security interest arising under Article 2 or 2A.

2 **Discussion Questions:**

3 A. Should paragraph (9) be deleted, with the consequence that filing would
4 be required to perfect a security interest in a beneficial interest in a trust?

5 B. The investment property task force has recommended inclusion of the
6 "filing . . . has no effect" phraseology found in former Section 9-115(c) and (d).
7 See comment 5. We continue to be of the view that this language is unnecessary.
8 However, we do see some merit in adding a statement in the comments to Section
9 9-324 to the effect that the priority rules in that section operate without regard to
10 whether a financing statement was filed with respect to one or more conflicting
11 security interests.

12 * * *

13 **5. Investment Property.** Paragraphs (5) replaces the last clause of each
14 subsection of former Section 9-116. Paragraphs (6) and (7) replace former Section
15 9-115(4)(c) and (d). The last two indicated that, with respect to certain security
16 interests created by a securities intermediary or commodity intermediary, "[t]he
17 filing of a financing statement . . . has no effect for purposes of perfection or
18 priority with respect to that security interest. No change in meaning is intended by
19 the deletion of the quoted phrase.

20 **SECTION 9-309. WHEN FILING REQUIRED TO PERFECT**

21 **SECURITY INTEREST OR STATUTORY AGRICULTURAL LIEN;**

22 **SECURITY INTERESTS AND STATUTORY AGRICULTURAL LIENS TO**

23 **WHICH FILING PROVISIONS DO NOT APPLY.**

24 (a) Except as otherwise provided in ~~subsection (b)~~, subsections (b) and (c),
25 a financing statement must be filed to perfect all security interests and agricultural
26 statutory liens.

27 (b) The filing of a financing statement is not necessary to perfect a security
28 interest:

- 1 (1) in a support obligation under Section 9-308(d);
2 (2) that is perfected when it attaches (Section 9-308A);
3 (3) in property subject to a statute, regulation, or treaty described in
4 Section 9-309A(a);
5 (4) in instruments, certificated securities, or documents perfected
6 without filing or possession under Section ~~9-310(d) or (e)~~; 9-310(e) or (f);
7 (5) in collateral in the secured party's possession under Section 9-311;
8 (6) in investment property, a deposit account, or a letter-of-credit right
9 rights which is perfected without filing under Section 9-312;
10 (7) in ~~or statutory lien on~~ proceeds under Section ~~9-313(e)~~; 9-313(f); or
11 (8) perfected under Section 9-314. ~~(a), (c), or (d)~~.

12 (c) The filing of a financing statement is not necessary to perfect an
13 agricultural lien on proceeds under Section 9-313(f).

14 (~~d~~ e) If a secured party assigns a perfected security interest or agricultural
15 lien, a filing under this article is not required to continue the perfected status of the
16 security interest against creditors of and transferees from the original debtor.

17 **SECTION 9-309A. PERFECTION OF SECURITY INTERESTS IN**
18 **PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND**
19 **TREATIES.**

1 (a) Except as otherwise provided in subsection (b), the filing of a financing
2 statement is not necessary or effective to perfect a security interest in property
3 subject to:

4 (1) a statute, regulation, or treaty of the United States whose
5 requirements for a security interest's obtaining priority over the rights of a lien
6 creditor with respect to the property preempt Section 9-309(a); [or]

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

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

15 (b) During any period in which collateral is inventory held for sale or lease
16 by a person or leased by that person as lessor and that person is in the business of
17 selling or leasing goods of that kind, subsection[s] (a)(2) [does] [and ~~(a)(3)~~ (3) do]
18 not apply to a security interest in that collateral created by that person as debtor.

19 (c) ~~(1)~~ Compliance with the requirements prescribed by a statute,
20 regulation, or treaty described in subsection (a) for obtaining priority over the rights
21 of a lien creditor is equivalent to the filing of a financing statement under this
22 article.

1 ~~(d 2)~~ Except as otherwise provided in Sections 9-311 and 9-314(c)[, (d),
2 and (e)] for goods covered by a certificate of title, a security interest in property
3 subject to a statute, regulation, or treaty described in subsection (a) may be
4 perfected only by compliance with those requirements, and a security interest so
5 perfected remains perfected notwithstanding a change in the use or transfer of
6 possession of the collateral.

7 ~~(e 3)~~ Except as otherwise provided in Section 9-314(c), [(d), and (e),]
8 duration and renewal of perfection of a security interest perfected by compliance
9 with the requirements prescribed by ~~the~~ a statute, regulation, or treaty described in
10 subsection (a) are governed by the statute, regulation, or treaty. In other respects
11 the security interest is subject to this article.

12 **SECTION 9-310. PERFECTION OF SECURITY INTERESTS IN**
13 **INSTRUMENTS, CHATTEL PAPER, INVESTMENT PROPERTY,**
14 **DOCUMENTS, MONEY, DEPOSIT ACCOUNTS, LETTER-OF-CREDIT**
15 **RIGHTS, AND GOODS COVERED BY DOCUMENTS; PERFECTION BY**
16 **PERMISSIVE FILING; TEMPORARY PERFECTION WITHOUT FILING**
17 **OR TRANSFER OF POSSESSION.**

18 ~~(a 1)~~ A security interest in instruments, chattel paper, investment
19 property, or negotiable documents may be perfected by filing.

20 ~~(b 2)~~ Except as otherwise provided in Section 9-313(e) for [cash]
21 proceeds; , a security interest in:

1 (1) ~~(A)~~ a security interest in money may be perfected only by the
2 secured party's taking possession under Section 9-311;

3 (2) ~~(B)~~ a security interest in a deposit account may be perfected only by
4 control under Section 9-312; and

5 (3) ~~(C)~~ a security interest in a letter-of-credit right ~~rights~~ may be
6 perfected only by control under Section 9-312, except as otherwise provided in
7 Section 9-308(d).

8 (c) ~~(b)~~ While goods are in the possession of a bailee that has issued a
9 negotiable document under Section 7-104(1) [or federal law] covering the goods:

10 (1) a security interest in the goods is perfected by perfecting a security
11 interest in the document; and

12 (2) any security interest in the goods otherwise perfected during the
13 period is subordinate to the security interest perfected in the document.

14 (d) ~~(c)~~ A security interest in goods in the possession of a bailee that has
15 issued a non-negotiable document under Section 7-104(2) [or federal law] covering
16 the goods is perfected by:

17 (1) issuance of a document in the name of the secured party;

18 (2) the bailee's receipt of notification of the secured party's interest; or

19 (3) filing as to the goods.

20 (e) ~~(d)~~ A security interest in instruments, certificated securities, or negotiable
21 documents is perfected without filing or the taking of possession for a period of 20

1 days from the time it attaches to the extent that it arises for new value given under
2 an authenticated security agreement.

3 (f e) A security interest remains perfected for 20 days without filing if a
4 secured party having a perfected security interest in an instrument, a certificated
5 security, a negotiable document, or goods in possession of a bailee other than one
6 that has issued a negotiable document for the goods:

7 (1) makes available to the debtor the goods or documents representing
8 the goods for the purpose of:

9 (A) ultimate sale or exchange; or

10 (B) loading, unloading, storing, shipping, transshipping,
11 manufacturing, processing, or otherwise dealing with them in a manner preliminary
12 to their sale or exchange, but priority among conflicting security interests in the
13 goods is subject to Section 9-322; or

14 (2) delivers the instrument or certificated security to the debtor for the
15 purpose of:

16 (A) ultimate sale or exchange; or

17 (B) presentation, collection, enforcement, renewal, or registration of
18 transfer.

19 (g f) After the 20-day period specified in subsection (e d) [or] [and] (f e)
20 expires, perfection depends upon compliance with this article.

1 **SECTION 9-311. WHEN POSSESSION BY SECURED PARTY**
2 **PERFECTS SECURITY INTEREST WITHOUT FILING.**

3 (a) Except as otherwise provided in subsection (b), a security interest in
4 goods, instruments, money, negotiable documents, or tangible chattel paper may be
5 perfected by the secured party's taking possession of the collateral. A security
6 interest in certificated securities may be perfected by delivery of the security
7 certificates under Section 8-301 to the secured party ~~party's taking possession of the~~
8 ~~security certificates.~~

9 (b) A security interest in goods covered by a certificate of title issued by
10 this State may be perfected by the secured party's taking possession of the collateral
11 only in the circumstances described in Section 9-314(e). ~~9-314(e).~~

12 (c) ~~(1) This subsection applies~~ With respect to collateral other than
13 certificated securities and goods covered by a document, ~~(2) A~~ a secured party
14 acquires possession of collateral in the possession of a person other than the debtor,
15 the secured party, or a lessee of the collateral from the debtor in the ordinary course
16 of the debtor's business, when:

17 (1) ~~(A)~~ the person in possession ~~signs~~ [authenticates] a record
18 acknowledging] [agrees] that it holds possession of the collateral for the secured
19 party's benefit; [or]

20 (2) ~~(B)~~ the person takes possession of the collateral after having
21 [authenticated a record acknowledging] [agreed] that it will hold possession of
22 collateral for the secured party's benefit; [or]

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Changes from Prior Draft:

A. Revisions to subsection (c) reflect two alternatives intended to address the concerns expressed by mortgage warehouse lenders. These lenders typically send mortgage notes to prospective purchasers under cover of letters advising the prospective purchasers that the lenders hold security interests in the notes. This notification to the prospective purchaser (a bailee) is sufficient to maintain perfection by possession under former 9-305. These lenders have expressed the view that requiring them to obtain authenticated acknowledgments from each prospective purchaser would be unduly burdensome and disruptive of their established practices. New subsection (c)(3) reflects suggestions made by the mortgage warehouse lenders. Under this approach, when a secured party in possession itself delivers the collateral to a bailee, instructions to the bailee would be sufficient to maintain perfection by possession; an acknowledgment would not be necessary. In the alternative, the requirement of an authenticated acknowledgment in subsections (c)(1) and (2) could be replaced by a less stringent requirement that the a person (bailee) agree to hold possession for the benefit of the secured party.

B. See Comment 2.

1. **Source.** Former Sections 9-305; 9-115(6).

2. **Certificated Securities.** The second sentence of subsection (a) reflects the traditional rule for perfection of a security interest in certificated securities. Compare Sections 9-115(4)(a), 8-106(a), 9-115(6) (1994 Official Text); Sections 8-321, 8-313(1)(a) (1978 Official Text); Section 9-305 (1972 Official Text). It has been modified in this draft to refer to “delivery under Section 8-301, which provides that a person other than a secured party that holds possession for the secured party’s benefit must be a person other than a securities intermediary. Corresponding changes appear in subsection (d) and Section 9-203(b). The official comments should explain that subsection (e) applies to a person in possession of security certificates or holding security certificates for the secured party under Section 8-301.

SECTION 9-312. PERFECTION BY CONTROL.

(a) A security interest in investment property, a deposit account, ~~or~~ letter-of-credit ~~rights~~ right, or intangible chattel paper may be perfected by control of the collateral under Section 9-108, 9-109, ~~or~~ 9-110, or 9-110A.

1 (b) A security interest is perfected by control from the time the secured
2 party obtains control [~~without a relation back~~] and continues only while control is
3 retained[, unless otherwise provided in this article].

4 ~~(c) A security interest may be otherwise perfected as provided in this article~~
5 ~~before or after the period of control by the secured party.~~

6 Reporters' Comments

7 1. **Source.** New.

8 2. **Control.** This section provides for perfection by control with respect to
9 letter-of-credit rights, deposit accounts, intangible chattel paper, and investment
10 property. The reference to “without a relation back” has been deleted at the
11 suggestion of the investment property task force.

12 SECTION 9-313. “PROCEEDS”; SECURED PARTY'S RIGHTS ON 13 DISPOSITION OF COLLATERAL AND IN PROCEEDS.

14 (a) “Proceeds” means the following property:

15 (1) whatever is acquired upon the sale, lease, license, exchange, or other
16 disposition of collateral;

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

18 (3) rights arising out of collateral;

19 (4) to the extent of the value of collateral, claims arising out of the loss
20 or nonconformity of, defects in, or damage to the collateral; and

21 (5) to the extent of the value of collateral and to the extent payable to the
22 debtor or the secured party, insurance payable by reason of the loss or
23 nonconformity of, defects in, or damage to the collateral.

1 (b) “Cash proceeds means money checks, deposit accounts, and the like.
2 “Noncash proceeds means all other proceeds.

3 (c) ~~(1)~~ Except as otherwise provided in this article, a security interest [or
4 agricultural lien]:

5 (1 ~~A~~) continues in collateral notwithstanding sale, lease, license,
6 exchange, or other disposition thereof unless the secured party authorized the
7 disposition free of the security interest [or agricultural lien] [in the security
8 agreement or otherwise]; and

9 (2 ~~B~~) attaches to any identifiable proceeds.

10 [(d) ~~(2)~~ Other law determines whether an agricultural ~~a statutory~~ lien
11 continues on collateral notwithstanding disposition or becomes effective as to
12 proceeds.]

13 (e ~~d~~) Proceeds that are commingled with other property are identifiable
14 proceeds:

15 (1) if the proceeds are goods, to the extent provided by Section 9-333;
16 and

17 (2) if the proceeds are not goods, to the extent that the secured party
18 identifies the proceeds by a method of tracing, including application of equitable
19 principles, that is permitted under other law with respect to commingled property of
20 the type involved.

1 ~~(f) (e)~~ ~~(1)~~ A security interest in or a ~~statutory~~ agricultural lien on proceeds
2 is a perfected security interest or ~~statutory~~ agricultural lien if the security interest in
3 or agricultural lien on the original collateral was perfected.

4 ~~(g) (2)~~ A The security interest in or ~~statutory~~ agricultural lien on proceeds
5 ceases to be a perfected security interest or ~~statutory~~ agricultural lien and becomes
6 unperfected on the 21st day after the security interest attaches to the proceeds or the
7 ~~statutory~~ agricultural lien becomes effective as to the proceeds unless:

8 (1) the following conditions are satisfied:

9 (A) ~~(i)~~ a filed financing statement covers the original collateral;

10 (B) ~~(ii)~~ the proceeds are collateral in which a security interest
11 may be perfected by filing in the office in which the financing statement has been
12 filed; and

13 (C) ~~(iii)~~ if the proceeds are acquired with cash proceeds or funds
14 from a deposit account, the description of collateral in the financing statement
15 indicates the type of property constituting the proceeds;

16 (2) ~~(B)~~ the proceeds are identifiable cash proceeds; or

17 (3) ~~(C)~~ the security interest in or ~~statutory~~ agricultural lien on the
18 proceeds is perfected within 20 days after the security interest attaches to the
19 proceeds or the ~~statutory~~ agricultural lien becomes effective as to the proceeds.

20 (h) (f) Except as otherwise provided in subsection ~~(e)~~, (f) or (g), a security
21 interest in or ~~statutory~~ agricultural lien on proceeds may be perfected only by the

1 methods or under the circumstances permitted in this article for original collateral
2 of the same type.

3 (i ~~g~~) If a filed financing statement covers the original collateral, a security
4 interest in or ~~statutory~~ agricultural lien on proceeds which remains perfected under
5 subsection ~~(e)(2)(a)~~ (g)(1) becomes unperfected at the later of:

6 (1) when the effectiveness of the filed financing statement lapses under
7 Section 9-516 or is terminated under Section 9-511; and

8 (2) the 21st day after the security interest attaches to the proceeds or the
9 ~~statutory~~ agricultural lien becomes effective as to the proceeds.

10 Reporters' Comments

11 **Changes from Prior Draft:** The ABA Article 9 Revision Agricultural
12 Financing task force has suggested that agricultural liens should extend to proceeds
13 in the same manner as security interests. The brackets and revisions to subsection
14 (c) reflect this suggestion. Inasmuch as the draft subjects agricultural liens to the
15 Article 9 filing and priority regime, the Drafting Committee may consider this to be
16 a sensible suggestion.

17 **SECTION 9-314. [CONTINUED] PERFECTION OF SECURITY** 18 **INTEREST OR ~~STATUTORY~~ AGRICULTURAL LIEN FOLLOWING** 19 **CHANGE IN APPLICABLE LAW.**

20 (a) ~~(+)~~ A security interest perfected pursuant to the law designated in
21 Section 9-301(1) or Section 9-305(b) or ~~a statutory~~ an agricultural lien perfected
22 pursuant to the law designated in Section 9-302 ~~(+)~~ remains perfected until the
23 earliest of:

1 (1) ~~(D)~~ the time perfection would have ceased under the law of the first
2 jurisdiction.

3 (2) ~~(A)~~ the expiration of four months after a change of the debtor's
4 location to another jurisdiction;

5 (3) ~~(B)~~ the expiration of four months after a transfer of collateral to a
6 debtor located in another jurisdiction; ~~for~~ ~~and~~

7 (4) ~~(C)~~ the expiration of four months after a new debtor located in
8 another jurisdiction becomes bound under Section 9-203(c).

9 (b) ~~(2)~~ If ~~the~~ a security interest or ~~statutory~~ agricultural lien described in
10 subsection (a) becomes perfected under the law of the other jurisdiction before the
11 ~~end of that period~~ earliest event described in that subsection, it continues perfected
12 thereafter. ~~(3)~~ If the security interest does not become perfected under the law of
13 the other jurisdiction before the earliest event, ~~end of that period~~, it becomes
14 unperfected and is deemed never to have been perfected as against a previous or
15 subsequent purchaser of the collateral for value.

16 (c) ~~b~~ A possessory security interest in collateral, other than goods covered
17 by a certificate of title and as-extracted collateral consisting of goods, remains
18 continuously perfected if:

19 (1) the collateral is located in one jurisdiction and subject to a security
20 interest perfected under the law of that jurisdiction;

21 (2) thereafter the collateral is brought into another jurisdiction; and

1 goods become covered by a certificate of title from this jurisdiction remains
2 perfected until the security interest would have become unperfected under the law
3 of the other jurisdiction had the goods not become so covered.

4 (e) ~~(2)~~ A security interest described in subsection (d) becomes unperfected
5 as against a purchaser of the goods for value and is deemed never to have been
6 perfected as against a previous or subsequent purchaser of the collateral for value if
7 the applicable requirements for perfection under Section ~~9-309A(e)~~ 9-309A(d) or
8 9-311 are not satisfied before the earlier of: ~~the time:~~

9 (1) ~~(A)~~ the time the security interest would have become unperfected
10 under the law of the other jurisdiction had the goods not become so covered; ~~{or}~~
11 ~~{and}~~

12 (2) ~~(B)~~ the expiration of four months after the goods had become so
13 covered.

14 **End of Alternatives**

15 (f) ~~(d)~~ ~~(1)~~ A security interest in deposit accounts[, letter-of-credit rights,]
16 [or investment property] perfected under the law of the bank's jurisdiction[, the
17 issuer's jurisdiction, a nominated person's jurisdiction,] [, the securities
18 intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as
19 applicable] remains perfected until the earlier of:

20 (1) ~~(B)~~ the time perfection would have ceased under the law of the first
21 jurisdiction; ~~{or}~~ ~~{and}~~

1 (2) ~~(A)~~ the expiration of four months after a change of the [bank's]
2 [applicable] jurisdiction.

3 (g) ~~(2)~~ If ~~the~~ a security interest described in subsection (f) becomes
4 perfected under the law of the other jurisdiction before the earlier of the time or the
5 end of ~~that~~ the period described in that subsection, it continues perfected thereafter.

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

10 ~~[(h) (e)]~~ ~~(1)~~ A security interest in letter-of-credit rights perfected by
11 control under the law of the issuer's or nominated person's jurisdiction remains
12 perfected until the earlier of:

13 (1) ~~(B)~~ the time perfection would have ceased under the law of the first
14 jurisdiction; or

15 (2) ~~(A)~~ the expiration of four months after a change of the issuer's or
16 nominated person's jurisdiction.

17 (i) ~~(2)~~ If ~~the~~ a security interest described in subsection (h) becomes
18 perfected under the law of the other jurisdiction before the earlier of the time or the
19 end of ~~that~~ the period described in that subsection, it continues perfected thereafter.

20 ~~(3)~~ If the security interest does not become perfected under the law of the other
21 jurisdiction before the earlier of that time or the end of that period, it becomes

1 unperfected and is deemed never to have been perfected as against a previous or
2 subsequent purchaser of the collateral for value.]

3 [(j) (†)(†)] A security interest in investment property perfected under the law
4 of the securities intermediary's jurisdiction or the commodity intermediary's
5 jurisdiction, as applicable, remains perfected until the earlier of:

6 (1) (A) the expiration of four months after a change of the intermediary's
7 jurisdiction; ~~[or] [and]~~

8 (2) (B) the time perfection would have ceased under the law of the first
9 jurisdiction.

10 (k) (2) If ~~the a~~ security interest described in subsection (j) becomes
11 perfected under the law of the other jurisdiction before the earlier of the time or the
12 end of that the period described in that subsection, it continues perfected thereafter.
13 If the security interest does not become perfected under the law or the other
14 jurisdiction before the earlier of that time or the end of that period, it becomes
15 unperfected and is deemed never to have been perfected as against a previous or
16 subsequent purchaser of the collateral for value.]

17 Reporters' Comments

18 **Changes from Prior Draft:** Subsection (a) has been revised to recognize
19 that the jurisdiction in which the debtor is located also governs perfection under
20 Section 9-305(b).

21 [SUBPART 3. PRIORITY]

1 **SECTION 9-315. INTERESTS THAT TAKE PRIORITY OVER AND**
2 **TAKE FREE OF UNPERFECTED SECURITY INTEREST OR**
3 **AGRICULTURAL LIEN.**

4 (a) An unperfected security interest or agricultural lien is subordinate to the
5 rights of:

6 (1) a person entitled to priority under Section 9-319; and

7 (2) a person that becomes a lien creditor before the security interest or
8 agricultural lien is perfected and before a financing statement covering the
9 collateral is filed.

10 ~~(b) An unperfected statutory lien other than an agricultural lien is~~
11 ~~subordinate to the rights of a person entitled to priority under Section 9-319A.~~

12 **(b ~~e~~)** Except as otherwise provided in subsection (e ~~f~~), a buyer of goods,
13 instruments, documents, a security certificate, or chattel paper which is not a
14 secured party takes free of a security interest if the buyer gives value and receives
15 delivery of the collateral without knowledge of the security interest and before it is
16 perfected.

17 **(c ~~d~~)** Except as otherwise provided in subsection (e ~~f~~), a lessee of goods
18 takes free of a security interest if the lessee receives delivery of the collateral
19 without knowledge of the security interest and before it is perfected.

20 **(d ~~e~~)** A buyer of accounts, general intangibles, or investment property₂ other
21 than a security certificate₂ which is not a secured party takes free of a security

1 interest if the buyer gives value without knowledge of the security interest and
2 before it is perfected.

3 (e f) Except as otherwise provided in Sections 9-316 and 9-317, if a person
4 files a financing statement with respect to a purchase money security interest before
5 or within 20 days after the debtor receives delivery of the collateral, the security
6 interest takes priority over the rights of a buyer, lessee, or lien creditor which arise
7 between the time the security interest attaches and the time of filing.

8 **SECTION 9-315A. RIGHTS AND TITLE OF CONSIGNEE AND**
9 **SELLER OF ACCOUNT OR CHATTEL PAPER WITH RESPECT TO**
10 **CREDITORS AND PURCHASERS.**

11 (a) For purposes of determining the rights of creditors of, and purchasers
12 for value of an account or chattel paper from, a debtor that has sold an account or
13 chattel paper, while the buyer's security interest is unperfected, the debtor has rights
14 and title to the account or chattel paper identical to those the debtor sold.

15 (b) Except as otherwise provided in subsection (c), for purposes of
16 determining the rights of creditors of, and purchasers for value of goods from, a
17 consignee, the consignee has rights and title to the goods identical to those the
18 consignor had or had power to transfer while the goods are in the possession of the
19 consignee.

20 (c) For purposes of determining the rights of a creditor of a consignee, other
21 law determines the rights and title of a consignee while goods are in the consignee's

1 possession if, under this part, a perfected security interest held by the consignor
2 would be senior to the rights of the creditor.

3 **SECTION 9-316. BUYER OF GOODS.**

4 (a) ~~Subject to~~ ~~Except as otherwise provided in~~ subsection ~~(d)~~, (e), a
5 buyer in ordinary course of business [, other than a person buying farm products
6 from a person engaged in farming operations,] takes free of a security interest
7 created by the buyer's seller, even if the security interest is perfected and even if the
8 buyer knows of its existence.

9 (b) ~~(1)~~ ~~Subject to~~ ~~Except as otherwise provided in~~ subsection (e), ~~(d)~~, a
10 buyer of consumer goods takes free of a security interest, even if perfected, if the
11 buyer buys:

- 12 (1) ~~(A)~~ without knowledge of the security interest;
- 13 (2) ~~(B)~~ for value;
- 14 (3) ~~(C)~~ for the buyer's own personal, family, or household purposes; and
- 15 (4) ~~(D)~~ before a person files a financing statement covering the goods.

16 (c) ~~(2)~~ To the extent that it affects the priority of a security interest over a
17 buyer of consumer goods under ~~this section~~, subsection (b), the period of
18 effectiveness of a filing made in the jurisdiction in which the debtor is located is
19 governed by Section 9-314(a) and (b).

20 (d) ~~(c)~~ ~~Subject to~~ ~~Except as otherwise provided in~~ subsection ~~(d)~~, (e) a
21 [A] buyer in ordinary course of business buying oil, gas, or other minerals at the

1 wellhead or minehead or after extraction takes free of an interest arising out of an
2 encumbrance.

3 (~~e~~ ~~d~~) This section does not affect a security interest in goods in the
4 possession of the secured party under Section 9-311.

5 **SECTION 9-317. LESSEE OF GOODS IN ORDINARY COURSE OF**
6 **BUSINESS.** A lessee of goods in ordinary course of business takes the leasehold
7 interest free of a security interest in the goods created by the lessor even if the
8 security interest is perfected and the lessee knows of its existence.

9 **SECTION 9-318. LICENSEE IN ORDINARY COURSE OF BUSINESS.**

10 [To be moved from Article 2B]

11 **SECTION 9-319. PRIORITIES AMONG CONFLICTING SECURITY**
12 **INTERESTS AND AGRICULTURAL LIENS IN SAME COLLATERAL.**

13 (a) Except as otherwise provided in this part, Section 4-210 [with respect to
14 a security interest of a collecting bank], and Section 5-118 [with respect to a
15 security interest of an issuer or nominated person], priority among conflicting
16 security interests and agricultural liens in the same collateral is determined
17 according to the following rules:

18 (1) (~~A~~) Conflicting security interests and agricultural liens rank
19 according to priority in time of filing or perfection. (~~B~~) Priority dates from the
20 earlier of the time:

1 (A) ~~(i)~~ a filing covering the collateral is first made; or
2 (B) ~~(ii)~~ ~~the time~~ the security interest or agricultural lien is first
3 perfected, if there is no period thereafter when there is neither filing nor perfection.

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

7 **~~Alternative A~~**

8 (b) For the purposes of subsection (a), a date of filing or perfection as to
9 collateral is also a date of filing or perfection as to proceeds.

10 **~~Alternative B~~**

11 ~~(b) Except as otherwise provided in [this Article] [the Uniform Commercial~~
12 ~~Code] [Sections 9-322 and 9-325], a security interest in or agricultural lien on~~
13 ~~collateral which has priority over a conflicting security interest or agricultural lien~~
14 ~~also has priority in [identifiable] proceeds of the collateral while the security~~
15 ~~interest or agricultural lien in proceeds is perfected.~~

16 **~~{End of Alternatives}~~**

17 (c) A security interest in collateral which qualifies for priority over a
18 conflicting security interest under Section 9-324, 9-325, 9-326, 9-327, or 9-328 also
19 has priority in:

20 _____ (1) cash proceeds of the collateral; and

21 _____ (2) other proceeds of the collateral if the proceeds are chattel paper,

22 negotiable documents, instruments, investment property, or letter of credit rights.

1 the security interest dates from the time an advance is made to the extent that the
2 security interest secures an advance ~~made~~ that:

3 (1) (A) ~~[other than]~~ ~~[not]~~ is not made pursuant to commitment; and

4 (2) ~~(B)~~ is made while the security interest is temporarily perfected under
5 Section ~~9-310(d) or (e)~~ 9-310(d) or (e) [or is perfected when it attaches under
6 Section 9-308A] and by no other method.

7 (b) ~~(3)~~ Except as otherwise provided in subsection (c), a ~~A~~ security interest
8 is subordinate to the rights of a person that becomes a lien creditor while the
9 security interest is perfected only to the extent that it secures advances made more
10 than 45 days after the person becomes a lien creditor unless the advance is made:

11 (1) ~~(A)~~ without knowledge of the lien; or

12 (2) ~~(B)~~ pursuant to a commitment entered into without knowledge of the
13 lien.

14 (c) ~~(a) (1)~~ Subsections (a) and (b) do not apply ~~applies~~
15 ~~only~~ to a security interest ~~that secures an obligation~~ held by a secured party that is a
16 buyer of accounts, chattel paper, or payment intangibles or a consignor.

17 (d) ~~(b) (1)~~ Except as otherwise provided in subsections (e) and (f), a ~~A~~
18 buyer of goods other than a buyer in ordinary course of business takes free of a
19 security interest to the extent that it secures advances made after the earlier of:

20 (1) ~~(A)~~ the time the secured party acquires knowledge of the buyer's
21 purchase; or

22 (2) ~~(B)~~ 45 days after the purchase.

1 ~~(e) (2) This subsection~~ Subsection (d) does not apply if the advance is
2 made pursuant to a commitment entered into without knowledge of the buyer's
3 purchase and before the expiration of the 45-day period.

4 ~~(f) (3) This subsection~~ Subsection (d) does not affect a security interest in
5 goods in the possession of the secured party under Section 9-311.

6 ~~(g) (c) (1) Except as otherwise provided in subsection (h), a~~ ~~★~~ lessee of
7 goods other than a lessee of goods in ordinary course of business takes the
8 leasehold interest free of a security interest to the extent that it secures advances
9 made after the earlier of:

10 ~~(1) (A)~~ the time the secured party acquires knowledge of the lease; or

11 ~~(2) (B)~~ 45 days after the lease contract becomes enforceable.

12 ~~(h) (2) This subsection~~ Subsection (g) does not apply if the advance is
13 made pursuant to a commitment entered into without knowledge of the lease and
14 before the expiration of the 45-day period.

15 **[MODEL SECTION 9-321 9-320A. PRIORITY OF PRODUCTION MONEY**

16 **SECURITY INTERESTS AND AGRICULTURAL LIENS.**

17 *(a) ~~(1)~~ Except as otherwise provided in subsections (c), subsection (d), and*
18 *(e), if the requirements of subsection (b) are met, a perfected production money*
19 *security interest in production money crops has priority over a conflicting security*
20 *interest in the same crops and, except as otherwise provided in Section 9-325, also*
21 *has priority in their identifiable proceeds.*

1 ~~(2) A production money security interest has priority under this~~
2 ~~subsection only to the extent that the conflicting security interest secures~~
3 ~~obligations incurred more than [] months before the production money secured~~
4 ~~party first gives new value to enable the debtor to produce the crops.~~

5 (b) A production money security interest has priority under subsection (a)
6 if:

7 (1) the production money security interest is perfected by filing when the
8 production money secured party first gives new value to enable the debtor to
9 produce the crops;

10 (2) the production money secured party gives an authenticated
11 notification to the holder of the conflicting security interest not less than 10 or
12 more than 30 days before the production money secured party first gives new value
13 to enable the debtor to produce the crops if the holder had filed a financing
14 statement covering the crops before the date of the filing made by the production
15 money secured party; and

16 (3) the notification states that the production money secured party has
17 or expects to acquire a production money security interest in the debtor's crops and
18 contains a description of the crops.

19 (c) Except as otherwise provided in subsection (e) ~~(d)~~, if more than one
20 security interest qualifies for priority in the same collateral under subsection (a),
21 the security interests rank according to priority in time of filing under Section
22 9-319(a).

1 (d) To the extent that a person holding a perfected security interest in
2 production money crops that are the subject of a production money security interest
3 gives new value to enable the debtor to produce the production money crops and
4 the value is in fact used for the production of the production money crops, the
5 security interests rank according to priority in time of filing under Section 9-
6 319(a).

7 (e) ~~(d)~~ To the extent that a person holds both an agricultural lien and a
8 production money security interest in the same collateral securing the same
9 obligations, the rules of priority applicable to agricultural liens govern priority.]

10 *Legislative Note: This section is optional. States that do not enact this section also*
11 *should not enact Section 9-104A.*

12 *Reporters' Comments*

13 **Changes from Prior Draft:** *New subsection (d) replaces former subsection*
14 *(a)(2). See also Comment 3.*

15 **1. Source.** *New.*

16 **2. Legislative Option.** *This model section replaces the limited priority in*
17 *crops afforded by former Section 9-312(2). As explained in Section 9-104A,*
18 *Comment 2, that priority generally has been thought to be of little value for its*
19 *intended beneficiaries. Neither the Drafting Committee nor the agricultural*
20 *financing community has been able to reach a consensus on the desirability of*
21 *including a special production money priority rule in Article 9. For this reason,*
22 *the rule appears as a model, not a uniform, optional provision for each State to*
23 *consider during the legislative enactment process. The Sponsors of the UCC have*
24 *taken no position on this priority rule.*

25 **3. Priority of Production Money Security Interests and Conflicting**
26 **Security Interests.** *This section attempts to balance the interests of the production*
27 *money secured party with those of a secured party who has previously filed a*
28 *financing statement covering the crops that are to be produced. For example, to*
29 *qualify for priority under this section, the production money secured party must*
30 *notify the earlier-filed secured party prior to extending the production money*

1 *credit. The notification affords the earlier secured party the opportunity to prevent*
2 *subordination by extending the credit itself. Subsection (d) makes this explicit. If*
3 *the holder of a security interest in production money crops which conflicts with a*
4 *production money security interest gives new value for the production of the crops,*
5 *the security interests rank according to priority in time of filing under Section 9-*
6 *319(a).*

7 **4. Multiple Production Money Security Interests.** *In the case of multiple*
8 *production money security interests that qualify for priority under subsection (a),*
9 *the first to file has priority. See subsection (c). Note that only a security interest*
10 *perfected by filing is entitled to production money priority. See subsection (b)(1).*
11 *Consequently, subsection (c) does not adopt the first-to-file-or-perfect formulation.*

12 **5. Holder of Agricultural Lien and Production Money Security Interest.**
13 *Subsection (e) deals with a creditor who holds both an agricultural lien and an*
14 *Article 9 production money security interest in the same collateral. In these cases,*
15 *the priority rules applicable to agricultural liens govern. The creditor can avoid*
16 *this result by waiving its agricultural lien.*

17 **SECTION 9-321.**

18 [deleted]

19 **SECTION 9-322. PRIORITY OF PURCHASE MONEY SECURITY**
20 **INTERESTS.**

21 (a) Subject to subsection (b), and except ~~Except~~ as otherwise provided in
22 subsubsection (g), ~~(e)~~; a perfected purchase money security interest in inventory has
23 priority over a conflicting security interest in the same inventory and, except as
24 otherwise provided in Section 9-325, also has priority in its identifiable cash
25 proceeds to the extent the identifiable cash proceeds are received on or before the
26 delivery of the inventory to a buyer, if:

27 (1) the purchase money security interest is perfected when the debtor
28 receives possession of the inventory;

1 (2) the purchase money secured party gives an authenticated notification
2 to the holder of the conflicting security interest, ~~if the holder had filed a financing~~
3 ~~statement covering the same types of inventory:~~

4 ~~(A) before the date of a filing made by the purchase money secured~~
5 ~~party; or~~

6 ~~(B) if the purchase money security interest is temporarily perfected~~
7 ~~without filing or possession under Section 9-310(e), before the beginning of the~~
8 ~~20-day period thereunder;~~

9 (3) the holder of the conflicting security interest receives the notification
10 no earlier than five years before the debtor receives possession of the inventory; and

11 (4) the notification states that the person giving the notification has or
12 expects to acquire a purchase money security interest in inventory of the debtor and
13 describes the inventory by item or type.

14 (b) Subsections (a)(2) through (4) apply only if the holder of the conflicting
15 security interest had filed a financing statement covering the same types of
16 inventory:

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

19 (2) if the purchase money security interest is temporarily perfected
20 without filing or possession under Section 9-310(f), before the beginning of the
21 20-day period thereunder.

1 (c b) If a purchase money security interest in inventory has priority over a
2 conflicting security interest under subsection (a), a security interest held by the
3 purchase money secured party in chattel paper [or an instrument] constituting
4 proceeds of the inventory has priority over a conflicting security interest in the
5 chattel paper [or instrument] if:

6 (1) the conflicting security interest in the chattel paper [or instrument] is
7 claimed merely as proceeds of inventory subject to a security interest; and

8 (A) the purchase money secured party takes possession of the chattel
9 paper [or instrument] in the ordinary course of its business; and

10 (B) the chattel paper [or instrument] does not indicate that it has
11 been assigned to [an identified assignee] [the person holding the conflicting security
12 interest]; or

13 (2) the purchase money secured party takes possession of the chattel
14 paper [or instrument] in good faith, in the ordinary course of its business, and
15 without knowledge that its security interest violates the rights of the person holding
16 the conflicting security interest.

17 (d e) Subject to subsection (e) and except ~~Except~~ as otherwise provided in
18 subsection (g), ~~(e)~~; a perfected purchase money security interest in livestock that are
19 farm products has priority over a conflicting security interest in the same livestock
20 and, except as otherwise provided in Section 9-325, also has priority in its
21 identifiable proceeds [and identifiable products in their unmanufactured states] if:

1 (1) the purchase money security interest is perfected when the debtor
2 receives possession of the livestock;

3 (2) the purchase money secured party gives an authenticated notification
4 to the holder of the conflicting security interest; ~~if the holder had filed a financing~~
5 ~~statement covering the same types of livestock:~~

6 ~~(A) before the date of a filing made by the purchase money secured~~
7 ~~party; or~~

8 ~~(B) if the purchase money security interest is temporarily perfected~~
9 ~~without filing or possession under Section 9-310(e), before the beginning of the~~
10 ~~20-day period thereunder;~~

11 (3) the holder of the conflicting security interest receives the notification
12 no earlier than six months before the debtor receives possession of the livestock;
13 and

14 (4) the notification states that the person giving the notification has or
15 expects to acquire a purchase money security interest in livestock of the debtor and
16 describes the livestock by item or type.

17 (e) Subsections (d)(2) through (4) apply only if the holder of the conflicting
18 security interest had filed a financing statement covering the same types of
19 livestock:

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

1 (2) if the purchase money security interest is temporarily perfected
2 without filing or possession under Section 9-310(f), before the beginning of the
3 20-day period thereunder.

4 (f ~~d~~) Except as otherwise provided in subsection (g), ~~(e)~~; a purchase money
5 security interest in goods other than inventory or livestock has priority over a
6 conflicting security interest in the same collateral and, except as otherwise provided
7 in Section 9-325, also has priority in its identifiable proceeds if the purchase money
8 security interest is perfected when the debtor receives possession of the collateral or
9 within 20 days thereafter.

10 (g ~~e~~) If more than one security interest qualifies for priority in the same
11 collateral under subsection (a), (d), or (f); ~~(e), or (d)~~:

12 (1) a security interest securing an obligation incurred [by an obligor] as
13 the price of the collateral has priority over a security interest securing an obligation
14 incurred [by an obligor] for value given to enable the debtor to acquire rights in
15 collateral; and

16 (2) in all other cases, Section 9-319(a) applies to the qualifying security
17 interests.

18 Reporters' Comments

19 **Changes from Prior Draft:** See Comments 5 and 6.

20 * * *

21 5. **Purchase Money Security Interests in Livestock.** New subsection (d)
22 provides a purchase money priority rule for farm-products livestock. It is patterned
23 on the purchase money priority rule for inventory found in subsection (a) and
24 includes a requirement that the purchase money secured party notify earlier-filed

1 parties. Two differences between subsections (a) and (d) are noteworthy. First,
2 unlike the purchase money inventory lender, the purchase money livestock lender
3 enjoys priority in *all* proceeds of the collateral. Thus, under subsection (d), the
4 purchase money secured party takes priority in accounts over an earlier-filed
5 accounts financier. Second, at the suggestion of the ABA Article 9 Revision
6 Agricultural Financing task force, in this draft the brackets have been removed in
7 subsection (d) in order to afford priority in products of the collateral (e.g., milk or
8 calves from cows) as well as proceeds. Former Article 9 does not deal with
9 products in any meaningful way.

10 **6. Purchase Money Security Interests in Aquatic Farm Products.**
11 Aquatic goods produced in aquacultural operations (e.g., catfish raised on a catfish
12 farm) are farm products. See Section 9-106(c) (definition of “farm products”). The
13 definition does not indicate whether aquatic goods are “crops, as to which the
14 model production money security interest priority in Section 9-320A applies, or
15 “livestock, as to which the purchase money priority in subsection (d) of this
16 section applies. The ABA Article 9 Revision Agricultural Financing task force has
17 suggested that for these purposes aquatic vegetables should be treated as “crops
18 and aquatic animals should be treated as “livestock. The Official Comments could
19 make this clear.

20 * * *

21 **SECTION 9-323. PRIORITY OF SECURITY INTERESTS IN**
22 **TRANSFERRED COLLATERAL.**

23 [(a)] [Subject to subsection (b), a] [A] security interest created by a debtor
24 is subordinate to a security interest in the same collateral created by another person,
25 notwithstanding anything to the contrary in this part, if:

26 (1) the debtor acquired the collateral subject to a security interest created
27 by the other person;

28 (2) the security interest created by the other person was perfected when
29 the debtor acquired the collateral; and

30 (3) there is no period thereafter when the security interest is unperfected.

1 [(b) If the security interest created by the other person is unperfected when
2 the debtor acquires the property or at any time thereafter, the other provisions of
3 this part, as applicable, determine its priority.]

4 **SECTION 9-323A. PRIORITY OF SECURITY INTERESTS CREATED**
5 **BY NEW DEBTOR.**

6 (a) Subject to subsection (b), a security interest that is perfected by a filed
7 financing statement that is effective solely under Section 9-510 in collateral in
8 which a new debtor has or acquires rights is subordinate to a security interest in the
9 same collateral that is perfected in another manner.

10 (b) If more than one security interest in the same collateral is subordinate
11 under this section, the other provisions of this part, as applicable, determine the
12 priority among of the subordinated security interests.

13 **SECTION 9-324. PRIORITY OF SECURITY INTERESTS IN**
14 **INVESTMENT PROPERTY.** The following rules govern priority among
15 conflicting security interests in the same investment property: ~~is governed by~~

16 (1) A security interest of a secured party that has control over investment
17 property has priority over a security interest of a secured party that does not have
18 control over the investment property.

19 (2) A ~~possessory~~ security interest in a certificated security [in registered
20 form] which is perfected under Section 9-311(a) has priority over a conflicting
21 security interest perfected by a method other than control.

1 (3) Except as otherwise provided in paragraphs (4) and (5), conflicting
2 security interests of secured parties each of which has control rank [according to
3 priority in time of obtaining control] [equally].

4 (4) A security interest held by a securities intermediary in a security
5 entitlement or a securities account maintained with the securities intermediary has
6 priority over a conflicting security interest held by another secured party.

7 (5) A security interest held by a commodity intermediary in a commodity
8 contract or a commodity account maintained with the commodity intermediary has
9 priority over a conflicting security interest held by another secured party.

10 (6) Conflicting security interests granted by a broker, securities
11 intermediary, or commodity intermediary which are perfected without control rank
12 equally.

13 (7) In all other cases, priority among conflicting security interests in
14 investment property is governed by Sections 9-319 and 9-320.

15 Reporters' Comments

16 **Discussion Questions:**

17 A. The official comments should explain that the priority rules in this
18 section operate without regard to whether a financing statement was filed with
19 respect to one or more conflicting security interests, except when applicable under
20 paragraph (7).

21 B. Concerning paragraph (2), see Section 9-311, Comment 2. Is the
22 reference to “registered form, which appeared in former § 9-115(6) and is now in
23 square brackets, necessary? Useful?

24 C. The investment property task force has suggested that a first-to-perfect
25 rule might be appropriate for automatically perfected security interests to which

1 paragraph (3) applies. See Comment 2. Should a similar change be made to
2 paragraph (6)?

3 1. **Source.** Former Section 9-115(5).

4 2. **Conflicting Security Interests Perfected by Control.** Former Section
5 9-115, added recently in conjunction with Revised Article 8, introduced into Article
6 9 the concept of security interests that rank equally. Some observers have
7 questioned the wisdom of ranking equally the security interests of parties holding
8 adverse interests in the same collateral. Recently the investment property task force
9 requested the Drafting Committee to seriously consider this issue. It pointed out
10 that no amount of diligence could protect a secured party who obtains control
11 against a subsequent control-perfected security interest. It also noted that in some
12 situations it is impractical to obtain an explicit agreement of the securities
13 intermediary not to enter into subsequent control agreements. In this draft we have
14 added in paragraph (3) an alternative “first-to-control” priority rule for the Drafting
15 Committee’s consideration. The official comments should emphasize that as a
16 general matter control priority is *not a temporal rule*. The alternative exception
17 would address a very narrow set of circumstances. If the new alternative is
18 adopted, a conforming change should be made in Section 8-510(c).

19 **SECTION 9-325. PRIORITY OF SECURITY INTERESTS IN DEPOSIT**

20 **ACCOUNTS.** The following rules govern priority among conflicting security
21 interests in the same deposit account: ~~is governed by~~

22 (1) A security interest held by a secured party that has control over the
23 deposit account has priority over a conflicting security interest held by a secured
24 party that does not have control.

25 (2) Except as otherwise provided in paragraphs (3) and (4), security
26 interests perfected by control rank equally.

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

1 (4) A security interest perfected by control pursuant to Section 9-109(a)(3)
2 has priority over a security interest held by the bank with which the deposit account
3 is maintained.

4 **SECTION 9-326. PRIORITY OF SECURITY INTERESTS IN LETTER-**
5 **OF-CREDIT RIGHTS.** The following rules govern priority among conflicting
6 security interests in the same letter-of-credit right: ~~rights. is governed~~

7 (1) Except as otherwise provided in paragraph (2):

8 (A) a security interest held by a secured party that has control over the
9 letter-of-credit ~~rights~~ right has priority to the extent of its control over a conflicting
10 security interest held by a secured party that does not have control; and

11 (B) security interests perfected by control rank equally.

12 (2) The rights of a transferee beneficiary or nominated person are
13 independent and superior to the extent provided by Section 5-114.

14 **SECTION 9-327. PURCHASE OF CHATTEL PAPER AND**
15 **INSTRUMENTS.**

16 (a) A purchaser of chattel paper [or an instrument] has priority over a
17 security interest in the chattel paper [or instrument] which is claimed merely as
18 proceeds of inventory subject to a security interest and, except as otherwise
19 provided in Section 9-325, in proceeds of the chattel paper if:

1 (1) in good faith and in the ordinary course of the purchaser's business,
2 the purchaser gives new value and takes possession or obtains control of the chattel
3 paper [or takes possession of the instrument]; and

4 (2) the chattel paper [or instrument] does not indicate that it has been
5 assigned to [an identified assignee] [the person holding the conflicting security
6 interest].

7 (b) A purchaser of chattel paper or an instrument has priority over a
8 security interest in the chattel paper or instrument which is claimed other than
9 merely as proceeds of inventory subject to a security interest and, except as
10 otherwise provided in Section 9-325, in proceeds of the chattel paper or instrument
11 if the purchaser gives new value and ~~takes possession of~~:

12 (1) takes possession or obtains control of the chattel paper in good faith,
13 in the ordinary course of the purchaser's business, and without knowledge that the
14 purchase violates the rights of the secured party; or

15 (2) takes possession of the instrument in good faith and without
16 knowledge that the purchase violates the rights of the secured party.

17 (c) For purposes of subsection (b), if chattel paper or an instrument
18 indicates that it has been assigned to an identified secured party, a purchaser of the
19 chattel paper or instrument has knowledge that the purchase violates the rights of
20 the secured party.

21 [(d) Except as otherwise provided in Section 9-328(c), a [possessory
22 security interest in] [purchaser for value that takes possession of] an instrument has

- 1 priority over a [nonpossessory security interest in the instrument perfected by
- 2 means other than filing] [security interest in the instrument perfected by filing].]

2 **Change from Prior Draft:** The revised section extends the special priority
3 rule for chattel paper to intangible chattel paper. Although possession remains a
4 necessary element of the priority rule for tangible chattel paper, control (Section 9-
5 110A) is the analogous element for intangible chattel paper.

6 **SECTION 9-328. PRIORITY OF RIGHTS OF PURCHASERS OF**
7 **INSTRUMENTS, DOCUMENTS, AND SECURITIES UNDER OTHER**
8 **ARTICLES; PRIORITY OF INTERESTS IN FINANCIAL ASSETS AND**
9 **SECURITY ENTITLEMENTS UNDER ARTICLE 8.**

10 (a) ~~(1) Except as otherwise provided in subsection (d), nothing~~ Nothing in
11 this article limits the rights of a holder in due course of a negotiable instrument, a
12 holder to whom a negotiable document of title has been duly negotiated, or a
13 protected purchaser of a security. ~~(2) These holders or purchasers take priority~~
14 over an earlier security interest, even if perfected, to the extent provided in Articles
15 3, 7, and 8.

16 (b) Nothing in this article limits the rights of or imposes liability on a
17 person to the extent that the person is protected against the assertion of an adverse
18 claim under Article 8 ~~A person that deals with or has an interest in a financial asset~~
19 ~~or security entitlement has priority over a security interest, even if perfected, to the~~
20 ~~extent provided in Article 8.~~

21 (c) Filing under this article does not constitute notice of a claim or defense
22 to the holders, or purchasers, or persons mentioned in subsections (a) and (b).

1 Although subsection (a) adequately deals with the rights of a protected purchaser
2 that takes free of adverse claims under Section 8-303, several other provisions in
3 Article 8 provide protection to other persons and in some cases are not structured as
4 priority rules. The new subsection makes explicit in Article 9 what is already
5 implicit in Article 9 and explicit in several provisions of Article 8. See, e.g.,
6 Sections 8-115, 8-502; 8-503(e); 8-510; 8-511. This does not change current law.
7 As with its predecessor, former Section 9-309, the purpose of this section is to
8 make an explicit statement in Article 9 of what otherwise would be implicit.

9 * * *

10 x. **Collections by Junior Secured Party.** Under this section, a junior
11 secured party in accounts may, under some circumstances collect and retain the
12 proceeds of those accounts, free of the claim of a senior secured party to those same
13 accounts. In order to qualify as a holder in due course, however, the junior must
14 satisfy the requirements of § 3-302, which include taking in “good faith . This
15 means that it must not only act “honestly , but also must observe “reasonable
16 commercial standards of fair dealing under the particular circumstances. § 9-
17 102(a)(27). Although mere knowledge that there is a security interest does not in
18 and of itself necessarily prevent a junior secured party from being a holder in due
19 course, there could be circumstances where the junior’s actions may not be in
20 accordance with “reasonable commercial standards of fair dealing . For example, a
21 junior secured party in the business of financing or purchasing accounts who fails to
22 undertake a search to determine the existence of prior security interests which
23 search, under the usages of trade of that business, would enable it to know or learn
24 upon reasonable inquiry that collecting the accounts violated the rights of a senior
25 secured party, may fail to meet those standards. See Utility Contractors Financial
26 Services, Inc. v. Amsouth Bank, NA, 985 F.2d 1554 (11th Cir. 1993). Likewise, a
27 junior secured party who collects accounts when it knew or should have known
28 under the particular circumstances that doing so would violate the rights of the
29 senior secured party because the debtor had agreed not to grant a junior security
30 interest in, or sell the accounts, may not satisfy the holder in due course
31 requirements. A restriction to that effect set forth in the financing statement filed
32 by the senior secured party may serve to give notice to a junior secured party who
33 conducts or should have conducted an appropriate search. On the other hand, if
34 there was a course of performance between the senior secured party and the debtor
35 which placed no such restrictions on the debtor and allowed the debtor to collect
36 and use the proceeds without any restrictions, the junior secured party may then
37 satisfy the requirements for being a holder in due course. This would be more
38 likely in those circumstances where the junior secured party was providing
39 additional financing to the debtor on an on-going basis by lending against or
40 purchasing the accounts and had no notice of any restrictions against doing so.
41 Generally, the senior secured party would not be prejudiced because the practical

1 effect of such payment to the junior secured party is little different than if the debtor
2 itself had made the collections and subsequently paid the secured party from the
3 debtor's general funds. In contrast, the senior secured party is likely to be
4 prejudiced where, as a part of a liquidation process, the junior secured party collects
5 the accounts by then notifying the account debtors to make payments directly to the
6 junior. Such collections may not be consistent with "reasonable commercial
7 standards of fair dealing . The issue of whether the junior secured party qualifies
8 as a holder in due course in these various types of circumstances is fact-sensitive
9 and should be decided on a case-by-case basis in the light of those circumstances.
10 Decisions such as Financial Management Services Inc. v. Familian, 905 P.2d 506
11 (Ariz. App. Div. 1995) finding holder in due course status could be determined
12 differently under this application of the good faith requirement.

13 **SECTION 9-329. TRANSFER OF MONEY; TRANSFER OF FUNDS**
14 **FROM DEPOSIT ACCOUNT.**

15 (a) A transferee of money takes the money free of a security interest unless
16 the transferee acts in collusion with the debtor in violating the rights of the secured
17 party.

18 (b) A transferee of funds from a deposit account takes the funds free of a
19 security interest in the deposit account unless the transferee acts in collusion with
20 the debtor in violating the rights of the secured party.

21 **SECTION 9-330. PRIORITY OF CERTAIN LIENS ARISING BY**
22 **OPERATION OF LAW. ~~MINOR STYLE CHANGES ONLY~~** If a person in
23 the ordinary course of the person's business furnishes services or materials with
24 respect to goods subject to a security interest, a lien[, other than an agricultural
25 lien.] upon goods in the possession of the person given by statute or rule of law for

1 the materials or services takes priority over a perfected security interest unless the
2 lien is statutory and the statute expressly provides otherwise.

3 Reporters' Comments

4 **Discussion Question:** Should the draft make agricultural liens, which are
5 nonpossessory, and the statutory liens covered by this section, as to which the lienor
6 must be in possession, mutually exclusive?

7 1. **Source.** Former Section 9-310.

8 2. **Status.** The Drafting Committee has not considered this section. The
9 liens that it covers are possessory liens under common law or statute. It may be
10 necessary to clarify this section to make clear that it does not deal with agricultural
11 liens, as defined in Section 9-102. Agricultural liens do not depend on possession
12 for their effectiveness.

13 **SECTION 9-331. PRIORITY OF SECURITY INTERESTS IN**
14 **FIXTURES.**

15 (a) A mortgage is a construction mortgage to the extent that it secures an
16 obligation incurred for the construction of an improvement on land including the
17 acquisition cost of the land if the recorded record so indicates.

18 (b) ~~(1) Subject to paragraph (2), a~~ A security interest under this article may
19 be created in goods that are fixtures or may continue in goods that become fixtures.
20 ~~(2) No~~ A security interest ~~exists~~ does not exist under this article in ordinary
21 building materials incorporated into an improvement on land.

22 (c) This article does not prevent creation of an encumbrance upon fixtures
23 under real property law.

24 (d) Except as otherwise provided in subsection (h), a ~~A~~ perfected security
25 interest in fixtures has priority over a conflicting interest of an encumbrancer or

1 owner of the real property if ~~(1) (A) except as otherwise provided in subsection (g);~~
2 the debtor has an interest of record in the real property or is in possession of the real
3 property and:

4 (1) the security interest is: ~~(i)~~ a purchase money security interest; [and]

5 (2) ~~(ii)~~ [the interest of the encumbrancer or owner arises before the
6 goods become fixtures; and

7 (3) ~~(iii)~~] the security interest is perfected by a fixture filing before the
8 goods become fixtures or within 20 days thereafter, ~~and~~

9 ~~(B) the debtor has an interest of record in the real property or is in~~
10 ~~possession of the real property;~~

11 (e) ~~(2) (A)~~ A perfected security interest in fixtures has priority over a
12 conflicting interest of an encumbrancer or owner of the real property if:

13 (1) the debtor has an interest of record in the real property or is in
14 possession of the real property and the security interest:

15 (A) ~~(i)~~ is perfected by a fixture filing before the interest of the
16 encumbrancer or owner is of record; and

17 (B) ~~(ii) the security interest~~ has priority over any conflicting interest
18 of a predecessor in title of the encumbrancer or owner; ~~and~~

19 ~~(B) the debtor has an interest of record in the real property or is in~~
20 ~~possession of the real property;~~

1 (2 3) ~~(A)~~ before the goods become fixtures the security interest is
2 perfected by any method permitted by this article and the fixtures are readily
3 removable:

4 (A) ~~(i)~~ factory or office machines;

5 (B) ~~(ii)~~ equipment that is not primarily used or leased for use in the
6 operation of the real property; or

7 (C) ~~(iii)~~ replacements of domestic appliances that are consumer
8 goods; ~~and~~

9 ~~(B) before the goods become fixtures the security interest is~~
10 ~~perfected by any method permitted by this article;~~

11 (3 4) the conflicting interest is a lien on the real property obtained by
12 legal or equitable proceedings after the security interest was perfected by any
13 method permitted by this article; or

14 (4 5) the security interest is:

15 (A) created in a manufactured home in a manufactured home
16 transaction; and

17 (B) perfected pursuant to a statute described in Section 9-309A(a)(2)
18 or (3) [before the manufactured home becomes a fixture or within 20 days
19 thereafter].

20 (f e) A security interest in fixtures, whether or not perfected, has priority
21 over a conflicting interest of an encumbrancer or owner of the real property if:

1 (1) the encumbrancer or owner has, in an authenticated record,
2 consented to the security interest or disclaimed an interest in the goods as fixtures;
3 or

4 (2) the debtor has a right to remove the goods as against the
5 encumbrancer or owner.

6 (g f) The priority of the security interest under subsection ~~(e)~~ (f) continues
7 for a reasonable time if the debtor's right to remove the goods as against the
8 encumbrancer or owner terminates.

9 (h g) ~~(1)~~ ~~Notwithstanding subsection (d)(1) but otherwise subject to~~
10 Except as otherwise provided in subsections ~~(d)~~, (e), ~~and~~ (f), a security interest in
11 fixtures is subordinate to a construction mortgage recorded before the goods
12 become fixtures if the goods become fixtures before the completion of the
13 construction. ~~(2)~~ A mortgage has this priority to the same extent as a construction
14 mortgage to the extent that it is given to refinance a construction mortgage.

15 (i h) In cases not governed by subsections ~~(b)~~ (d) through (h), ~~(g)~~; a security
16 interest in fixtures is subordinate to a conflicting interest of an encumbrancer or
17 owner of the related real property which is not the debtor.

18 **SECTION 9-332. ACCESSIONS.**

19 **~~Alternative A~~**

20 (a) ~~[In this section,] “accession means goods that are [installed in,]~~
21 ~~[affixed to,] [attached to,] [assembled with,] [manufactured into,] [processed with,]~~

1 ~~[or] [processed into]~~ other goods in a manner such that the identity of the original
2 goods is not lost.

3 **~~Alternative B~~**

4 (a) ~~[In this section,]~~ ~~“accession”~~ “Accession” means goods that are
5 physically united with other goods in a manner such that the identity of the original
6 goods is not lost.

7 **~~{End of Alternatives}~~**

8 (b) A security interest may be created in an accession and continues in
9 collateral that becomes an accession.

10 (c) If a security interest is perfected when the collateral becomes an
11 accession, the security interest remains perfected in the [collateral] [accession].

12 (d) Except as otherwise provided in subsection (e), the other provisions of
13 this part determine the priority of a security interest in an accession.

14 (e) A security interest in an accession is subordinate to a security interest in
15 the whole which is perfected by compliance with the requirements of a certificate-
16 of-title statute under Section ~~9-309A(b)~~ 9-309A(d).

17 (f) On default, subject to ~~part~~ Part 6, a secured party may remove an
18 accession from other goods if:

19 ~~(1)~~ the security interest in the accession has priority over the claims of
20 every person having an interest in the whole~~;~~ ~~and~~

21 ~~(2) removal will not cause [material] [serious] [irreparable] physical~~
22 ~~injury to the whole~~].

1 (g) ~~(1)~~ A secured party that removes an accession from other goods under
2 subsection (f) shall promptly reimburse any encumbrancer or owner of the whole or
3 of the other goods, other than the debtor, for the cost of repair of any physical injury
4 to the whole or the other goods. ~~(2)~~ The secured party need not reimburse the
5 encumbrancer or owner for any diminution in value of the whole or the other goods
6 caused by the absence of the accession removed or by any necessity for replacing it.
7 ~~(3)~~ A person entitled to reimbursement may refuse permission to remove until the
8 secured party gives adequate assurance for the performance of the obligation to
9 reimburse.

10 **SECTION 9-333. COMMINGLED GOODS.**

11 **~~Alternative A~~**

12 (a) ~~In this section, “commingled goods” means goods that are~~
13 ~~manufactured, processed, assembled, or commingled with other goods in such a~~
14 ~~manner that their identity is lost in a product or mass.~~

15 **~~Alternative B~~**

16 (a) In this section, “commingled goods” means goods that are physically
17 {united with} {related to} other goods in such a manner that their identity is lost in a
18 product or mass.

19 **{End of Alternatives}**

20 **~~Alternative A~~**

21 (b) ~~Except as otherwise provided in subsection (c), a security interest may~~
22 ~~not be created in commingled goods.~~

1 (c) ~~[(1)]~~ If collateral becomes commingled goods, the security interest in
2 the collateral is discharged, and a security interest attaches to the product or mass.

3 ~~[(2)]~~ The secured party may not enforce the security interest in the
4 product or mass to the extent the value of product or mass at the time of
5 enforcement exceeds the value of the collateral at the time it became commingled
6 goods.]

7 **Alternative B**

8 (b) Except as otherwise provided in subsection (c), no security interest
9 exists [under this Article] in commingled goods.

10 (c) ~~[(1)]~~ If collateral becomes commingled goods, a security interest
11 attaches to the product or mass.

12 ~~[(2)]~~ The secured party may not enforce the security interest in the
13 product or mass to the extent the value of product or mass at the time of
14 enforcement exceeds the value of the collateral at the time it became commingled
15 goods.]

16 **[End of Alternatives]**

17 (d) If a security interest in collateral is perfected before the collateral
18 becomes commingled goods, the security interest that attaches to the product or
19 mass under subsection (c) is perfected.

20 (e) Except as otherwise provided in subsection (f), the other provisions of
21 this part, as applicable, determine the priority of a security interest that attaches to
22 the product or mass under subsection (c).

1 (f) If more than one security interest attaches to the product or mass under
2 subsection (c), the following rules determine priority:

3 (1) A security interest that is perfected under subsection (d) has priority
4 over a security interest that is unperfected at the time the collateral becomes
5 commingled goods.

6 (2) If more than one security interest is perfected under subsection (d),
7 the security interests rank equally in proportion to value of the collateral at the time
8 it became commingled goods.

9 **SECTION 9-334. PRIORITY OF SECURITY INTERESTS IN GOODS**

10 **COVERED BY CERTIFICATE OF TITLE.** If, while a security interest in
11 goods is perfected by any method under the law of another jurisdiction, this State
12 issues a certificate of title that neither shows that the goods are subject to the
13 security interest nor contains a statement that they may be subject to security
14 interests not shown on the certificate:

15 (1) a buyer of the goods, other than a person that is in the business of selling
16 goods of that kind, takes free of the security interest to the extent that the buyer
17 gives value and receives delivery of the goods after issuance of the certificate and
18 without knowledge of the security interest; and

19 (2) the security interest is subordinate to a conflicting security interest in the
20 goods that attaches, and is perfected under Section ~~9-309A(c)~~, 9-309A(d), after

1 issuance of the certificate and without the conflicting secured party's knowledge of
2 the security interest.

3 **SECTION 9-335. PRIORITY OF SECURITY INTEREST OR**
4 **AGRICULTURAL STATUTORY LIEN PERFECTED BY EFFECTIVE**
5 **FINANCING STATEMENT CONTAINING INCORRECT INFORMATION.**

6 (a) A security interest or agricultural lien perfected by a filed financing statement
7 complying with Section 9-502(a) and (b) but containing information described in
8 Section 9-515(b)(5) ~~that~~ which is incorrect is subordinate to the rights of a holder of
9 a perfected security interest in or [another purchaser] [a buyer] of the collateral to
10 the extent that the secured party or [other purchaser] [buyer] gives value in
11 reasonable reliance upon the incorrect information.

12 ~~(b) A statutory lien, other than an agricultural lien, perfected by a filed~~
13 ~~financing statement complying with Section 9-502(a) but containing information~~
14 ~~described in Section 9-515(b)(5) that is incorrect is subordinate to the rights of a~~
15 ~~holder of a perfected security interest in the collateral to the extent that the secured~~
16 ~~party gives value in reasonable reliance upon the incorrect information.~~

17 **SECTION 9-336. PRIORITY SUBJECT TO SUBORDINATION.**

18 ***[MINOR STYLE CHANGES ONLY]*** Nothing in this article prevents
19 subordination by agreement by a person entitled to priority.

1 [SUBPART 4. RIGHTS OF ~~DEPOSITARY INSTITUTION~~ BANK]

2 **SECTION 9-337. EFFECTIVENESS OF RIGHT OF RECOUPMENT**
3 **OR SET-OFF AGAINST DEPOSIT ACCOUNT.**

4 (a) Except as otherwise provided in subsection (c), a bank with which a
5 deposit account is maintained may exercise against a secured party that holds a
6 security interest in the deposit account any right of recoupment or set-off.

7 (b) Except as otherwise provided in subsection (c), the application of this
8 article to a security interest in a deposit account does not affect a right of
9 recoupment or set-off of the secured party as to a deposit account maintained with
10 the secured party.

11 (c) The exercise by a bank of a set-off against a deposit account is
12 ineffective against a secured party that holds a security interest in the deposit
13 account which is perfected by control under Section 9-109(a)(3), if the set-off is
14 based on a claim against the debtor.

15 **SECTION 9-338. ~~DEPOSITARY INSTITUTION'S~~ BANK'S RIGHT TO**
16 **DISPOSE OF FUNDS IN DEPOSIT ACCOUNT.** Except as otherwise provided
17 in Section 9-337(c), and unless the bank otherwise agrees in an authenticated
18 record, a bank's rights and duties with respect to a deposit account maintained with
19 the bank are not terminated, suspended, or modified by:

20 (1) the creation or perfection of a security interest in the deposit account;

21 (2) the bank's knowledge of the security interest; or

1 (3) the bank's receipt of instructions from the secured party.

2 **SECTION 9-339. ~~DEPOSITARY INSTITUTION'S~~ BANK'S RIGHT TO**
3 **REFUSE TO ENTER INTO OR DISCLOSE EXISTENCE OF CONTROL**

4 **AGREEMENT.** This article does not require a bank to enter into an agreement of
5 the type described in Section 9-109(a)(2) even if its customer so requests or directs.

6 A bank that has entered into such an agreement is not required to confirm the
7 existence of the agreement to another person unless requested to do so by its
8 customer.

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PART 4
RIGHTS OF THIRD PARTIES

SECTION 9-401. ALIENABILITY OF DEBTOR'S RIGHTS. A debtor's rights in collateral may be voluntarily or involuntarily transferred notwithstanding any agreement [provision in the security agreement] prohibiting a transfer or making a transfer a default.

SECTION 9-402. SECURED PARTY NOT OBLIGATED ON CONTRACT OF DEBTOR. The existence of a security interest, ~~statutory~~ agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not impose contract or tort liability upon a secured party for the debtor's acts or omissions.

SECTION 9-403. AGREEMENT NOT TO ASSERT DEFENSES AGAINST ASSIGNEE.

(a) In this section, “value” has the meaning provided in Section 3-303(a).

(b) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

- (1) for value;
- (2) in good faith;

1 (3) without notice of a claim of a property or possessory right to the
2 property assigned; and

3 (4) without notice of a defense or claim in recoupment of the type that
4 may be asserted against a person entitled to enforce a negotiable instrument under
5 Section 3-305(a).

6 (c) An agreement described in subsection (b) is not enforceable with
7 respect to defenses of a type that may be asserted against a holder in due course of a
8 negotiable instrument under Section 3-305(b).

9 (d) This section is subject to other law that establishes a different rule for
10 an account debtor who is an individual and who incurred the obligation primarily
11 for personal, family, or household purposes.

12 (e) This section does not displace other law that gives effect to an
13 agreement by an account debtor not to assert a claim or defense against an assignee.

1 **SECTION 9-404. RIGHTS ACQUIRED BY ASSIGNEE; DEFENSES**
2 **AGAINST ASSIGNEE; MODIFICATION OF CONTRACT; DISCHARGE**
3 **OF ACCOUNT DEBTOR; NOTIFICATION OF ASSIGNMENT;**
4 **IDENTIFICATION AND PROOF OF ASSIGNMENT; TERM**
5 **PROHIBITING ASSIGNMENT INEFFECTIVE.**

6 (a) Unless an account debtor has made an enforceable agreement not to
7 assert defenses or claims, and subject to subsections (b) and ~~(i)~~, (j), the rights of an
8 assignee are subject to:

9 (1) all the terms of the agreement between the account debtor and
10 assignor and any defense or claim in recoupment arising from the transaction that
11 gave rise to the contract; and

12 (2) any other defense or claim of the account debtor against the assignor
13 which accrues before the account debtor receives a notification of the assignment
14 authenticated by the assignor or the assignee.

15 (b) Subject to subsection (j), ~~(i)~~, the claim of an account debtor against an
16 assignor may be asserted against an assignee under subsection (a) only to reduce the
17 amount the account debtor owes ~~owing or for the assignee's fraud~~.

18 ~~(c) (1) Subject to subsection (i), this subsection applies to the extent that:~~

19 ~~(A) the right to payment or a part thereof under an assigned contract~~
20 ~~has not been fully earned by performance; or~~

1 ~~(B) to the extent that the right to payment or a part thereof has been~~
2 ~~fully earned by performance and the account debtor has not received notification of~~
3 ~~the assignment under subsection (d).~~

4 (c) (2) A modification of or substitution for ~~the~~ an assigned contract is
5 effective against an assignee if made in good faith and in accordance with
6 reasonable commercial standards. ~~(3)~~ The assignee acquires corresponding rights
7 under the modified or substituted contract. ~~(4)~~ The assignment may provide that
8 the modification or substitution is a breach of contract by the assignor. This
9 subsection is subject to subsections (d) and (j).

10 (d) Subsection (c) applies to the extent that:

11 (1) the right to payment or a part thereof under an assigned contract has
12 not been fully earned by performance; or

13 (2) the right to payment or a part thereof has been fully earned by
14 performance and the account debtor has not received notification of the assignment
15 under subsection (e).

16 (e) (d) (1) Subject to subsections ~~(e)~~, (f), (g), (h), and (j), ~~(i)~~, an account
17 debtor on an account, chattel paper, [instrument other than a negotiable instrument,]
18 or payment intangible may discharge its obligation by paying the assignor until, but
19 not after, the account debtor receives a notification, authenticated by the assignor or
20 the assignee, that the amount due or to become due has been assigned and that
21 payment is to be made to the assignee. ~~(2)~~ After receipt of the notification, the

1 account debtor may discharge its obligation by paying the assignee and may not
2 discharge the obligation by paying the assignor.

3 ~~(f)~~ Subject to subsection (j), ~~(i)~~, a notification is ineffective under
4 subsection ~~(d)~~: (e):

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

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

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

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

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

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

17 ~~(g)~~ Subject to subsection (j), ~~(i)~~, if requested by the account debtor, the
18 assignee must seasonably furnish reasonable proof that the assignment has been
19 made. Unless the assignee complies, the account debtor may discharge its
20 obligation by paying the assignor even if the account debtor has received [an
21 effective] [a] notification under subsection ~~(d)~~: (e).

1 ~~(h)~~ ~~(g)~~ ~~(1)~~ Except as otherwise provided in Sections 2A-303 and 9-405,
2 and subject to subsection ~~(j)~~, ~~(i)~~, a term in an agreement between an account debtor
3 and an assignor is ineffective if it prohibits, restricts, or requires the account
4 debtor's consent to the assignment or transfer of or the creation, attachment, or
5 perfection of a security interest in an account, chattel paper, or payment intangible.
6 ~~(2)~~ This subsection does not apply to the sale of a payment intangible.

7 ~~(i)~~ ~~(h)~~ [Subject to subsection ~~(j)~~, ~~(i)~~, an] [An] account debtor may not waive
8 or vary its option under subsection ~~(e)~~~~(3)~~: (f)(3).

9 ~~(j)~~ ~~(i)~~ This section is subject to other law that establishes a different rule for
10 an account debtor who is an individual and who incurred the obligation primarily
11 for personal, family, or household purposes.

12 **SECTION 9-405. RESTRICTIONS ON CREATION OR**
13 **ENFORCEMENT OF SECURITY INTEREST IN LEASEHOLD INTEREST**
14 **OR IN LESSOR'S RESIDUAL INTEREST.**

15 (a) In this section, "creation of a security interest" includes the sale of a
16 lease contract that is subject to this article.

17 (b) ~~(1)~~ Except as otherwise provided in subsection (c), a provision in a
18 lease agreement is not enforceable if it:

19 (1) ~~(A)~~ prohibits the creation or enforcement of a security interest in an
20 interest of a party under the lease contract or in the lessor's residual interest in the
21 goods; or

1 (2) ~~(B)~~ makes such a transfer an event of default.

2 (c) A lease provision described in subsection (b) is enforceable to the extent
3 that there is:

4 (1) a transfer by the lessee of the lessee's right of possession or use of
5 the goods in violation of the provision; or

6 (2) a delegation of a material performance of either party to the lease
7 contract in violation of the provision.

8 (d) ~~(1) Except as otherwise provided in paragraph (2), neither~~ Neither the
9 granting nor the enforcement of a security interest in the lessor's interest under the
10 lease contract or the lessor's residual interest in the goods is a transfer that
11 materially impairs the prospect of obtaining return performance by, materially
12 changes the duty of, or materially increases the burden or risk imposed on, the
13 lessee within Section 2A-303(5). ~~(2)~~ This subsection does not apply to the extent
14 that; there is a delegation of a material performance of the lessor.

15 **SECTION 9-406. RESTRICTIONS ON ASSIGNMENT OF CERTAIN**
16 **GENERAL INTANGIBLES INEFFECTIVE.**

17 (a) ~~(1)~~ A term in a general intangible, including a contract, permit, license,
18 or franchise, between an account debtor and a debtor which prohibits, restricts, or
19 requires the account debtor's consent to the assignment or transfer of or creation,
20 attachment, or perfection of a security interest in the general intangible, is
21 ineffective to the extent that:

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

3 (2) ~~(B)~~ the creation, attachment, or perfection of the security interest
4 would cause a default, breach, right of recoupment, claim, defense, termination,
5 right of termination, or remedy under the general intangible.

6 ~~(b) (2) This subsection~~ Subsection (a) applies to a security interest in a
7 payment intangible only if the security interest arises out of a sale of the payment
8 intangible.

9 ~~(c) b)~~ A provision in a statute or governmental rule or regulation ~~that~~ which
10 prohibits, restricts, or requires the consent of a government or governmental body
11 or official to the assignment or transfer of or creation of a security interest in a
12 general intangible, including a contract, permit, license, or franchise, between an
13 account debtor and a debtor is ineffective to the extent that:

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

16 (2) the creation, attachment, or perfection of the security interest would
17 cause a default, breach, claim, defense, termination, right of termination, or remedy
18 under the general intangible.

19 (d) To the extent that a term in a general intangible, or provision in a
20 statute, rule, or regulation, is ineffective under subsection (a) or (c) but is effective
21 under other law, the creation, attachment, or perfection of a security interest in the
22 general intangible:

1 (1) is not enforceable against the account debtor;
2 (2) imposes no duties or obligations on the account debtor; and
3 (3) does not require the account debtor to recognize the security interest,
4 pay or render performance to the secured party, or accept payment or performance
5 from the secured party.

6 (e) This section prevails over any inconsistent provisions of the following
7 statutes, rules, and regulations:

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

10 **SECTION 9-406A. RESTRICTIONS ON ASSIGNMENT OF LETTERS**
11 **OF CREDIT INEFFECTIVE.**

12 (a) A term in a letter of credit or a rule of law, custom, or practice
13 applicable to the letter of credit which ~~that~~ prohibits, restricts, or requires the
14 consent of an applicant, issuer, or nominated person to a beneficiary's assignment of
15 or creation of a security interest in a letter-of-credit right ~~rights~~ is ineffective to the
16 extent that:

17 (1) the term or rule of law, custom, or practice would impair the
18 creation, attachment, or perfection of a security interest in the letter-of-credit right;
19 ~~rights~~; or

20 (2) the creation, attachment, or perfection of the security interest would
21 cause a default, breach, claim, defense, termination, right of termination, or remedy
22 under the letter-of-credit right. ~~rights~~.

1 (b) To the extent that a provision in a letter of credit is ineffective under
2 subsection (a) but is effective under Article 5, other law, or a rule of custom or
3 practice applicable to the letter of credit, to the transfer of a right to draw or
4 otherwise demand performance under the letter of credit, or to the assignment of a
5 right to proceeds of the letter of credit, the creation, attachment, or perfection of a
6 security interest in the letter-of-credit right: ~~rights~~:

7 (1) is not enforceable against the applicant, issuer, nominated person, or
8 transferee beneficiary;

9 (2) imposes no duties or obligations on the applicant, issuer, nominated
10 person, or transferee beneficiary; and

11 (3) does not require the applicant, issuer, nominated person, or
12 transferee beneficiary to recognize the security interest, pay or render performance
13 to the secured party, or accept payment or other performance from the secured
14 party.

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PART 5
FILING

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

SECTION 9-501. FILING OFFICE.

(a) Except as otherwise provided in subsection (b), if the law of this State governs perfection of a security interest or ~~statutory~~ agricultural lien, the office with which to file a financing statement to perfect the security interest or ~~statutory~~ agricultural lien is:

(1) the office designated for the filing or recording of a mortgage on the real property, if:

- (A) the collateral is timber to be cut or as-extracted collateral; or
- (B) the financing statement is filed as a fixture filing and the

collateral is goods that are or are to become fixtures; ~~[and]~~

~~[(2) the office of the debtor's registered agent, if the debtor has designated a registered agent under Section 9-525; and]~~

(~~2~~ 3) the office of [] [or any office duly authorized by []] in all other cases, including if the goods are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) The office with which to file a financing statement to perfect a security interest on ~~or statutory lien in~~ collateral, including fixtures, of a transmitting utility

1 is the office of []. The financing statement [also] constitutes a fixture filing as to
2 the collateral indicated in the financing statement which is or is to become fixtures.

3 *Legislative Note: The State should designate the filing office where the brackets*
4 *appear. ~~The filing office may be that of a governmental official (e.g., the Secretary~~*
5 *of State) or a private party that maintains the State's filing system (see Section*
6 *9-526).*

7 **SECTION 9-502. CONTENTS OF FINANCING STATEMENT;**
8 **MORTGAGE AS FINANCING STATEMENT; TIME OF FILING**
9 **FINANCING STATEMENT.**

10 (a) Subject to subsection (b), a financing statement is sufficient only if it:

11 (1) provides the name of the debtor and the name and mailing address of
12 the secured party or a representative of the secured party; and

13 (2) indicates the collateral covered by the financing statement.

14 (b) ~~(1) This subsection applies to~~ Except as otherwise provided in Section
15 9-501(b), to be sufficient, a financing statement that: ~~(A)~~ covers timber to be cut or
16 as-extracted collateral; or ~~(B)~~ is filed as a fixture filing and the collateral is goods
17 that are or are to become fixtures: ~~(2) Except as otherwise provided in Section 9-~~
18 ~~501(b), to be sufficient,~~ the financing statement also must:

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

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

22 (3) ~~(C)~~ provide a description of the real property [sufficient if it were
23 contained in a mortgage of the real property to give constructive notice of the

1 mortgage under the law of this State if the description were contained in a mortgage
2 of the real property]; and

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

5 *Legislative Note: Language in brackets is optional. Where the State has any*
6 *special recording system for real property other than the usual grantor-grantee*
7 *index (as, for instance, a tract system or a title registration or Torrens system)*
8 *local adaptations of subsection (b) and Section 9-520(b) through (d) may be*
9 *necessary. See, e.g., Mass. Gen. Laws Chapter 106, Section 9-410.*

10 [(c) If a financing statement indicates that it is filed in connection with a
11 {public finance transaction} {or} {manufactured home transaction}, it also may
12 indicate that its period of effectiveness is {10, 20, or 30} years after the date of
13 filing.]

14 (d) A real property mortgage is effective from the date of recording as a
15 financing statement filed as a fixture filing or as a financing statement covering
16 [timber to be cut or] as-extracted collateral only if:

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

18 (2) ~~(A)~~ the goods are or are to become fixtures related to the real
19 property described in the mortgage; or

20 ~~(B)~~ the collateral is as-extracted collateral related to the real property
21 described in the mortgage;

22 (3) the mortgage complies with the requirements for a financing
23 statement in this section other than an indication that it is to be filed in the real
24 property records; and

1 (4) the mortgage is [duly] recorded.

2 (e) A financing statement may be filed before a security agreement is made
3 or a security interest otherwise attaches.

4 Reporters' Comments

5 **Discussion Question:** Is subsection (c) necessary? An alternative would
6 be to provide that a financing statement indicating that it is filed in connection with
7 a public finance transaction or manufactured home transaction automatically is
8 effective for 30 years. This is the approach Section 9-516(g) takes to financing
9 statements covering fixtures of transmitting utilities.

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

11 (a) A financing statement sufficiently provides the name of the debtor:

12 (1) if the debtor is a registered entity, only if the financing statement
13 provides the name of the debtor as shown on the public records of the debtor's State
14 of organization;

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

17 (3) if the debtor is a trust or a trustee acting with respect to property of a
18 trust, only if the financing statement:

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

1 (B) indicates, in the debtor's name or otherwise, that the debtor is a
2 trust; and

3 (4) in other cases:

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

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

8 (b) A financing statement that sufficiently provides the name of the debtor
9 in accordance with subsection (a) is not rendered ineffective by the [presence or]
10 absence of:

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

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

14 (c) A financing statement that provides only the debtor's trade name does
15 not sufficiently provide the name of a debtor.

16 (d) A financing statement may provide the name of more than one debtor
17 and the name of more than one secured party.

18 (e) The failure to indicate the representative capacity of a secured party or
19 representative of a secured party does not affect the sufficiency of a financing
20 statement.

1 **SECTION 9-504. INDICATION OF COLLATERAL.** A financing
2 statement sufficiently indicates the collateral that it covers if the financing
3 statement provides:

- 4 (1) a description of the collateral pursuant to Section 9-111;
5 (2) an indication of the type of collateral; or
6 (3) an indication that the financing statement covers all assets or all
7 personal property.

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

11 (a) A consignor, lessor, or bailor of goods or a buyer of a payment
12 intangible may file a financing statement, or may comply with a statute or treaty
13 described in Section 9-309A(a), using the terms “consignor, “consignee, “lessor,
14 “lessee, “bailor, “bailee, “owner, “registered owner , “buyer, “seller, or ~~the~~
15 like, words of similar import, instead of the terms “secured party and “debtor.

16 (b) ~~(1)~~ This part applies to the filing of such a financing statement and, as
17 appropriate, to compliance that is equivalent to filing a financing statement under
18 Section 9-309A(c), but the filing or compliance is not of itself a factor in
19 determining whether the collateral secures an obligation.

1 (2) If it is determined for another reason that the collateral secures an
2 obligation, a security interest held by the consignor, lessor, bailor, owner, or buyer
3 which attaches to the collateral is perfected by the filing or compliance.

1 **SECTION 9-506. EFFECT OF INSUFFICIENCY.**

2 (a) A financing statement substantially complying with the requirements of
3 this part is effective even if it contains an insufficiency, unless the insufficiency
4 makes the financing statement seriously misleading.

5 (b) Except as otherwise provided in subsection (c), a financing statement
6 that fails to sufficiently provide the name of the debtor in accordance with Section
7 9-503(a) is seriously misleading.

8 (c) If a search of the records of the filing office under the debtor’s correct
9 name, utilizing the filing office’s standard search technique, would disclose a
10 financing statement that fails to sufficiently provide the name of the debtor in
11 accordance with Section 9-503(a), the name provided does not make the financing
12 statement seriously misleading.

13 (d) For purposes of Section 9-510(b), the “debtor’s correct name” in
14 subsection (c) means the correct name of the new debtor.

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

17 (a) If a debtor so changes its name that a filed financing statement becomes
18 seriously misleading under Section ~~9-506(c)~~ 9-506:

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

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

5 (b) A filed financing statement remains effective with respect to collateral
6 that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a
7 security interest [or agricultural lien] continues under Section 9-313(c), even if the
8 secured party knows of or consents to the disposition.

9 (c) Except as otherwise provided in subsection (a) and Section 9-510, a
10 financing statement is not rendered ineffective if, after the financing statement is
11 filed, the information contained in the financing statement becomes seriously
12 misleading under Section 9-506.

13 **SECTION 9-508. WHEN RECORD MAY BE FILED.**

14 (a) A person is entitled to file an initial financing statement, ~~an~~ amendment
15 that adds collateral covered by a financing statement, or ~~an~~ amendment that adds a
16 debtor to a financing statement only if:

17 (1) the debtor authorizes the filing in an authenticated record; or

18 (2) ~~(A)~~ the person holds ~~a statutory~~ an agricultural lien that has become
19 effective at the time of filing; and

20 ~~(B)~~ the financing statement covers only collateral in which the
21 person holds ~~a statutory~~ an agricultural lien.

1 (b) By authenticating a security agreement, a debtor authorizes the filing of
2 an initial financing statement, and an amendment, covering[:

3 (1)] the collateral described in the security agreement; [and

4 (2) proceeds of the collateral, whether or not the security agreement
5 expressly covers proceeds].

6 (c) A person is entitled to file an amendment other than an amendment that
7 adds collateral covered by a financing statement or an amendment that adds a
8 debtor to a financing statement only if:

9 (1) the secured party of record authorizes the filing [in an authenticated
10 record]; or

11 (2) the amendment is a termination statement for a financing statement
12 as to which the secured party of record has failed to file or send a termination
13 statement as required by Section 9-511(b) or ~~(c)~~ (d).

14 (d) If there is more than one secured party of record for a financing
15 statement, each secured party of record may authorize the filing of an amendment
16 under subsection (c).

17 **SECTION 9-508A. EFFECTIVENESS OF FILED RECORD.**

18 (a) Subject to subsection (c), a filed record is effective only to the extent
19 that a person is entitled to file it under Section 9-508.

20 (b) A record authorized by one secured party of record does not affect the
21 rights under the financing statement of another secured party of record.

1 (c) If a person is entitled to file a termination statement only under Section
2 9-508(c)(2), the filed termination statement is effective only if the debtor authorizes
3 the filing and the termination statement indicates that the filing is made by or on
4 behalf of the debtor.

5 (d) A continuation statement that is filed outside the six-month period
6 described in Section 9-516(d) is ineffective.

7 **SECTION 9-509. AMENDMENT OF FINANCING STATEMENT.**

8 (a) Subject to Section 9-508, a person may add or delete collateral covered
9 by a financing statement or, subject to subsection ~~(d)~~, (e), otherwise amend the
10 information contained in a financing statement by filing an amendment that
11 identifies the initial financing statement by its file number ~~or if the file number does~~
12 ~~not itself indicate the date of filing, by the date of filing and file number.~~

13 (b) Except as otherwise provided in Section 9-516, the filing of an
14 amendment does not extend the period of effectiveness of a financing statement.

15 (c) A financing statement that is amended by an amendment that adds
16 collateral; is effective as to the added collateral only from the date of the filing of
17 the amendment.

18 (d) A financing statement that is amended by an amendment that adds a
19 debtor is effective as to the added debtor only from the date of the filing of the
20 amendment.

21 (e) An amendment is ineffective to the extent it:

1 (1) purports to delete all secured parties of record and fails to provide
2 the name of a new secured party of record; or

3 (2) purports to delete the names of all debtors and fails to provide the
4 name of a debtor not previously covered by the financing statement.

5 **{SECTION 9-509A. SECURED PARTY OF RECORD.**

6 (a) A secured party of record with respect to a financing statement is a
7 person whose name is provided as the name of the secured party or a representative
8 of the secured party in an initial financing statement that has been filed.

9 (b) A person [whose name is provided] remains a secured party of record
10 until the filing of an effective amendment of the financing statement which
11 indicates that the person is not a secured party or a representative of a secured party.

12 (c) If an effective amendment of a financing statement which provides the
13 name of a person as a secured party or a representative of a secured party is filed,
14 the person named in the amendment is a secured party of record.}

15 **SECTION 9-510. EFFECTIVENESS OF FINANCING STATEMENT IF**
16 **NEW DEBTOR BECOMES BOUND BY SECURITY AGREEMENT.**

17 (a) Except as otherwise provided in subsections (b) and (c), a filed
18 financing statement naming an original debtor is effective to perfect a security
19 interest in collateral in which a new debtor has or acquires rights to the extent that

1 the financing statement would have been effective had the original debtor acquired
2 rights in the collateral.

3 (b) If the difference between the name of the original debtor and that of the
4 new debtor causes a filed financing statement that is effective under subsection (a)
5 to be seriously misleading under Sections 9-506(c) and (d):

6 (1) the financing statement is effective to perfect a security interest in
7 collateral acquired by the new debtor before, and within four months after, the new
8 debtor becomes bound under Section 9-203(c); and

9 (2) the financing statement is not effective to perfect a security interest
10 in collateral acquired by the new debtor more than four months after the new debtor
11 becomes bound under Section 9-203(c) unless an initial financing statement
12 providing the name of the new debtor is filed before the expiration of that time.

13 (c) This section does not apply to collateral as to which a filed financing
14 statement remains effective against the new debtor under Section 9-507(b).

15 Reporters' Comments

16 **SECTION 9-511. TERMINATION STATEMENT.**

17 (a) A termination statement for a financing statement is an amendment of
18 the financing statement that:

19 (1) complies with the requirements of Section 9-509(a); and

20 (2) indicates either that it is a termination statement or that an identified
21 financing statement is no longer effective.

1 (b) ~~(1)~~ The secured party shall cause the secured party of record for a
2 financing statement to file with the filing office a termination statement for the
3 financing statement if:

4 (A) the financing statement covers consumer goods; and

5 (B)(i) there is no outstanding secured obligation and no commitment
6 to make an advance, incur an obligation, or otherwise give value; or

7 (ii) the debtor did not authorize the filing of the initial financing
8 statement.

9 (c) ~~(2)~~ The To comply with subsection (b), the secured party shall cause the
10 secured party of record to file the termination statement:

11 (1) ~~(A)~~ within one month after there is no outstanding secured
12 obligation and no commitment to make an advance, incur an obligation, or
13 otherwise give value; or, if earlier,

14 (2) ~~(B)~~ [within 10 days] ~~[as soon as reasonably practicable, but not more~~
15 ~~than three days,]~~ after the secured party receives a ~~[signed]~~ an ~~[authenticated]~~
16 demand by the debtor.

17 (d e) In ~~other~~ cases not governed by subsection (b), within 10 days after the
18 secured party receives a ~~[signed]~~ an ~~[authenticated]~~ demand by the debtor, the
19 secured party shall cause the secured party of record for a financing statement to
20 send to the debtor a termination statement for the financing statement or file the
21 termination statement with filing office if:

1 (1) there is no outstanding secured obligation and no commitment to
2 make an advance, incur an obligation, or otherwise give value;

3 (2) the debtor did not authorize the filing of the initial financing
4 statement; or

5 (3) the financing statement covers accounts, chattel paper, or payment
6 intangibles that have been sold but as to which the account debtor or other person
7 obligated has discharged its obligation.

8 (~~e~~ ~~d~~) Except as otherwise provided in Section 9-508A, upon the filing of a
9 termination statement with the filing office, the financing statement to which the
10 termination statement relates becomes ineffective.

11 **SECTION 9-512. ASSIGNMENT OF POWERS OF SECURED PARTY**
12 **OF RECORD.**

13 (a) (~~+~~) Except as otherwise provided in subsection (~~d~~), (~~e~~); an initial
14 financing statement may reflect an assignment of all of the secured party's power to
15 authorize an amendment to the financing statement by providing the name and
16 mailing address of the assignee as the name and address of the secured party. (~~2~~)
17 Upon the filing of the initial financing statement, the assignee named in an initial
18 financing statement filed under this subsection is the secured party of record for the
19 financing statement.

20 (b) (~~+~~) Except as otherwise provided in subsection (~~d~~ ~~e~~), a secured party of
21 record may assign of record all or part of its power to authorize an amendment to a

1 financing statement by filing in the filing office an amendment of the financing
2 statement that:

3 (1) ~~(A)~~ complies with the requirements of Section 9-509(a);

4 (2) ~~(B)~~ provides the name and mailing address of the secured party of
5 record; and

6 (3) ~~(C)~~ provides the name and mailing address of the assignee.

7 (c) ~~(2)~~ Upon the filing of an amendment [under] [pursuant to] subsection
8 (b), the assignee named in an amendment filed under this subsection becomes a
9 secured party of record for the financing statement.

10 (d) ~~(e)~~ An assignment of record of a security interest in a fixture covered by a
11 real property mortgage that is effective as a fixture filing under Section ~~9-502(e)~~ 9-
12 502(d) may be made only by an assignment of record of the mortgage in the manner
13 provided by other law of this State.

14 **SECTION 9-513.**

15 [deleted]

16 **SECTION 9-514.**

17 [deleted]

1 **SECTION 9-515. WHAT CONSTITUTES FILING; EFFECTIVENESS**
2 **OF FILING.**

3 (a) Except as otherwise provided in subsection (b), communication of a
4 record to a filing office and tender of the filing fee or acceptance of the record by
5 the filing office constitutes filing.

6 (b) Filing does not occur with respect to a record that a filing office refuses
7 to accept because:

8 (1) [~~except as otherwise provided in Section 9-521(c) and (d),~~] the
9 record is not communicated by a method or medium of communication authorized
10 by the filing office;

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

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

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

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

17 (i) does not identify the initial financing statement as required by
18 Section 9-509 or 9-519, as applicable; or

19 (ii) ~~the record~~ identifies an initial financing statement whose
20 effectiveness has lapsed under Section 9-516; or

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

4 (5) in the case of an initial financing statement, the statement record
5 does not:

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

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

8 or

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

11 (i) the type of organization;

12 (ii) a State of organization for the debtor; or

13 (iii) an organizational identification number for the debtor or
14 indicate that the debtor has none;

15 (6) in the case of an assignment reflected in an initial financing
16 statement under Section 9-512(a) or an amendment filed under Section 9-512(b),
17 the record does not provide a name and mailing address for the assignee; ~~or~~

18 (7) in the case of an amendment that provides a name of a debtor which
19 was not previously provided in the financing statement to which the record relates,
20 the record does not provide a mailing address for the debtor; or

21 (8) in the case of a continuation statement, the record is not filed within
22 the six-month period specified in Section 9-516(d).

1 (c) For purposes of subsection (b):

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

4 (2) a record that neither indicates it is an amendment nor identifies the
5 initial financing statement as required by Section 9-509 or 9-519, is an initial
6 financing statement.

7 (d) Except as otherwise provided in Section 9-335, a filed financing
8 statement complying with Section 9-502(a) and (b) is effective even if some or all
9 of the information described in subsection (b)(5) is not stated or is incorrect.

10 (e) A record that is presented to the filing office with tender of the filing
11 fee, but which the filing office refuses to accept for a reason other than one set forth
12 in subsection (b), is effective as a filed record except as against a purchaser of the
13 collateral which gives value in reasonable reliance upon the absence of the record
14 from the files.

15 **SECTION 9-516. DURATION AND EFFECTIVENESS OF FINANCING**
16 **STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT.**

17 (a) Except as otherwise provided in subsections (b), (e), ~~(f)~~, and (g) ; and
18 (h), ~~Section 9-519(i)~~, a filed financing statement is effective for a period of five
19 years after the date of filing.

20 (b) Except as otherwise provided in subsections ~~(e)~~, ~~(f)~~, and (g) ; and (h),
21 ~~Section 9-519(i)~~, if an initial financing statement is filed in connection with a

1 ~~{public finance transaction} {or} {manufactured home transaction} and indicates that~~
2 ~~it is effective for an extended period under Section 9-502(b), the filed financing~~
3 ~~statement is effective for the extended period indicated~~ is effective for a period of
4 30 years after the date of filing if it indicates that[:

5 (1)] it is filed in connection with a public finance transaction or
6 manufactured home transaction[: and

7 (2) its period of effectiveness is 30 years after the date of filing].

8 (c)(~~1~~) The effectiveness of a filed financing statement lapses on the
9 expiration of the period of its effectiveness unless before the lapse a continuation
10 statement is filed pursuant to subsection (d) [, notwithstanding the commencement
11 of insolvency proceedings by or against the debtor].-(~~2~~) Upon lapse, a financing
12 statement becomes ineffective and any security interest or ~~statutory~~ agricultural lien
13 that was perfected by the financing statement becomes unperfected, unless the
14 security interest [or ~~statutory~~ agricultural lien] is perfected without filing. (~~3~~) If the
15 security interest or a ~~statutory~~ an agricultural lien becomes unperfected upon lapse,
16 it is deemed never to have been perfected as against a ~~prior~~ previous or subsequent
17 purchaser of the collateral for value.

18 (d) A continuation statement may be filed only within six months before
19 the expiration of the five-year period specified in subsection (a) ~~or the extended~~
20 ~~period under subsection (b).~~

21 (e) (~~1~~) Except as otherwise provided in subsection (f) and Section 9-508A,
22 upon timely filing of a continuation statement, the effectiveness of the initial

1 financing statement continues for a period of five years commencing on the day on
2 which the financing statement would have become ineffective in the absence of the
3 filing. ~~(2)~~ Upon the expiration of the five-year period, the financing statement
4 lapses in the same manner as provided in subsection (c), unless, before the lapse,
5 another continuation statement is filed pursuant to subsection (d). ~~(3)~~ Succeeding
6 continuation statements may be filed in the same manner to continue the
7 effectiveness of the initial financing statement.

8 (f) Filing of a continuation statement does not extend the effectiveness of a
9 financing statement described in subsection (b).

10 (g f) If a debtor is a transmitting utility and a filed financing statement so
11 indicates, the financing statement is effective until a termination statement is filed.

12 (h g) A real property mortgage that is effective as a fixture filing under
13 Section 9-502(d) ~~9-502(e)~~ remains effective as a fixture filing until the mortgage is
14 released or satisfied of record or its effectiveness otherwise terminates as to the real
15 property.

16 Reporters' Comments

17 **Discussion Question:** Regarding the bracketed language in subsection (b),
18 see Section 9-502, Discussion Question.

19 **SECTION 9-517. CONTENTS OF CONTINUATION STATEMENT.** A
20 continuation statement for a financing statement is an amendment of the financing
21 statement that:

22 (1) complies with the requirements of Section 9-509(a); and

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

3 **SECTION 9-518. EFFECT OF INDEXING ERRORS.** ~~(a) Except as~~
4 ~~otherwise provided in subsection (b), the~~ The failure of the filing office to index a
5 record correctly does not affect the effectiveness of the record.

6 ~~(b) A filed but improperly indexed record is ineffective against a purchaser~~
7 ~~of the collateral which gives value in reasonable reliance upon the apparent absence~~
8 ~~of the record from the files.~~

9 **SECTION 9-519. CLAIM CONCERNING INACCURATE OR**
10 **WRONGFULLY FILED RECORD.**

11 (a) A person may file with the filing office a correction statement with
12 respect to a record indexed there under the person's name if the person believes that
13 the record is inaccurate or was wrongfully filed.

14 (b) A correction statement must:

15 (1) identify the record to which it relates by the file number assigned to
16 the initial financing statement to which the record relates ~~or, if the file number does~~
17 ~~not itself indicate the date of filing, by the date of filing and file number;~~

18 (2) indicate that it is a correction statement; and

19 (3) either:

1 (A) provide the basis for the person's belief that the record or was
2 wrongfully filed; or

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

6 (c) The filing of a correction statement does not affect the effectiveness of
7 the initial financing statement or other record [relating to it] [to which it relates].

8 [SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE]

9 **SECTION 9-520. NUMBERING, MAINTAINING, AND INDEXING**
10 **RECORDS; COMMUNICATING INFORMATION CONTAINED IN**
11 **RECORDS.**

12 (a) For each record filed with a filing office, the filing office shall:

13 (1) assign a unique number to the record;

14 (2) create a record that bears the number assigned to the record and the
15 date and time of filing;

16 (3) maintain the filed record for public inspection; and

17 (4) index the record in accordance with subsections (b), (c), and (d). ~~;~~

18 **and**

1 ~~(5) communicate the [information contained in the record] [the fact that~~
2 ~~the record has been filed with the filing office] to each person whose name was~~
3 ~~provided as the name of the debtor or secured party or representative of the secured~~
4 ~~party in the financing statement to which the record relates and to the person that~~
5 ~~filed the record with the filing office.]~~

6 (b) Except as otherwise provided in subsections (c) and (d), the filing
7 office:

8 (1) ~~the filing office~~ shall index an initial financing statement according
9 to the name of the debtor and shall index all filed records relating to the initial
10 financing statement in a manner that associates with one another an initial financing
11 statement and all filed records relating to the initial financing statement; and

12 (2) ~~the filing office~~ shall index a record that provides a name of a debtor
13 which was not previously provided in the financing statement to which the record
14 relates also according to the name that was not previously provided.

15 (c) If a financing statement is filed as a fixture filing or covers timber to be
16 cut or as-extracted collateral, [it must be filed for record and] the filing office shall
17 index it:

18 (1) under the names of the debtor and of each owner of record shown on
19 the financing statement as if they were the mortgagors under a mortgage of the real
20 property described; and

21 (2) to the extent that the law of this State provides for indexing of
22 mortgages under the name of the mortgagee, under the name of the secured party as

1 if the secured party were the mortgagee thereunder, or, if indexing is by description,
2 as if the financing statement were a mortgage of the real property described.

3 (d) If a financing statement is filed as a fixture filing or covers timber to be
4 cut or as-extracted collateral, the filing office shall index an assignment filed under
5 Section 9-512(a) or an amendment filed under Section 9-512(b):

6 (1) under the name of the assignor as grantor; and

7 (2) to the extent that the law of this State provides for indexing the
8 assignment of a real property mortgage under the name of the assignee, under the
9 name of the assignee.

10 (e) The filing office shall maintain a storage and retrieval capability that:

11 (1) provides for retrieval of a record by the name of the debtor and by
12 the file number assigned to initial financing statement to which the record relates;
13 and

14 (2) associates with one another an initial financing statement and each
15 filed record relating to the initial financing statement.

16 (f) The filing office shall not remove a debtor's name from the index [until
17 the effectiveness of a financing statement naming the debtor lapses under Section 9-
18 516 (a) with respect all secured parties of record].

19 (g) The filing office shall perform the acts required by subsections (a)
20 through (d) at the time and in the manner prescribed by rule, but not later than two
21 business days after the filing office receives the record in question.

1 *Legislative Note: In States in which writings will not appear in the real property*
2 *records and indices unless actually recorded the bracketed language in subsection*
3 *(c) should be used.*

4 **SECTION 9-520A. FILE NUMBER.**

5 [(a)] “File number means the number assigned to an initial financing
6 statement pursuant to Section 9-520(a)(1).

7 [(b)] A file number must contain at least three separate segments in the
8 following order:

9 (1) ~~The first segment must indicate, in numbers, the date of filing, in~~
10 ~~numbers;~~

11 (2) ~~The second segment must consist of a number that is assigned~~
12 ~~sequentially based on the order in which records are filed on each business day; and~~

13 (3) ~~The third segment must consist of [an algorithmically derived] [a]~~
14 ~~verification number based on the numbers assigned pursuant to paragraphs (1) and~~
15 ~~(2).]~~

16 **SECTION 9-521. ACCEPTANCE AND REFUSAL TO ACCEPT**
17 **RECORD.**

18 (a) ~~[Except as otherwise provided in subsections (c) and (d),] a A filing~~
19 ~~office shall refuse to accept a record for filing for a reason set forth in Section 9-~~
20 ~~515(b) and may refuse to accept a record for filing only for a reason set forth in~~
21 ~~Section 9-515(b).~~

1 (b) ~~(1)~~ If a filing office refuses to accept a record for filing, it shall
2 communicate the fact of and reason for its refusal to the person that presented the
3 record.

4 ~~(2)~~ The communication must be made at the time and in the manner
5 prescribed by rule; but in no event more than two business days after the filing
6 office receives the record.

7 (c) ~~[The filing office]~~ [A filing office that accepts written records] may not
8 refuse to accept a written initial financing statement in the following form except
9 for a reason set forth in Section 9-515(b):

1

[INSERT FINANCING STATEMENT FORM]

1

[INSERT ADDENDUM FORM]

1 (d) [~~The filing office~~] [A financing statement that accepts written records]
2 may not refuse to accept a written record in the following form except for a reason
3 set forth in Section 9-515(b):

1

[INSERT CHANGE FORM]

1

[INSERT CHANGE ADDENDUM]

1 **SECTION 9-522. LAPSED FINANCING STATEMENTS.**

2 (a) Except to the extent that a statute governing disposition of public
3 records provides otherwise, if a financing statement lapses under Section 9-516 ~~(a)~~
4 with respect to all secured parties of record, the filing office immediately may
5 destroy any written record evidencing the financing statement.

6 (b) If the filing office destroys a written record evidencing a financing
7 statement, it shall maintain another record of the financing statement which is
8 retrievable by using [the name of the debtor or by using the] file number assigned to
9 the initial financing statement to which the destroyed record relates.

10 **SECTION 9-523. INFORMATION FROM FILING OFFICE; SALE OR**
11 **LICENSE OF RECORDS.**

12 (a) If a person filing a written record furnishes a copy to the filing office,
13 the filing office upon request shall:

14 (1) either:

15 (A) note upon the copy:

16 (i) the number assigned to the record pursuant to Section 9-
17 520(a)(1); and

18 (ii) the date and time of the filing of the original; and

19 (B) deliver or send the copy to the person; or

1 (2) send to the person an image of the record showing the number
2 assigned to the record pursuant to Section 9-520(a)(1) and the date and time of the
3 filing of the original.

4 **[Alternative A]**

5 (b) The filing office shall communicate the following information to any
6 person that requests it:

7 (1) whether there is on file on a date and time specified by the filing
8 office, but not a date earlier than three business days before the filing office
9 receives the request, any financing statement that:

10 (A) designates a particular debtor [or, if the request so states,
11 designates a particular debtor at the address specified in the request]; and

12 (B) has not lapsed under Section 9-516 ~~(a)~~ with respect to all secured
13 parties of record[, and, if the request so states, has lapsed under Section 9-516 ~~(a)~~];

14 (2) the date and time of filing of each financing statement; and

15 (3) the information contained in each financing statement.

16 **[Alternative B]**

17 (b) The filing office shall communicate the following information to any
18 person that requests it:

19 (1) whether there is on file on a date and time specified by the filing
20 office, but not a date earlier than three business days before the filing office
21 receives the request, any financing statement that:

1 (A) designates a particular debtor [or, if the request so states,
2 designates a particular debtor at the address specified in the request]; and

3 (B) has not lapsed under Section 9-516 ~~(a)~~ with respect to all secured
4 parties of record], and, if the request so states, has lapsed under Section 9-516~~(a)~~];

5 (2) the date and time of filing of each financing statement; and

6 (3) either:

7 (A)] the information contained in each financing statement; [or

8 (B)] if the request so states, [with respect to each record comprising
9 the financing statement:

10 (i) the number assigned to the record pursuant to Section 9-
11 520(a)(1);

12 (ii) the names and addresses of the debtor and secured party
13 provided in the record; and

14 (iii) whether the record is an initial financing statement or an
15 amendment] [a reasonable summary of the information (other than an indication of
16 collateral) contained in the record].

17 **[End of Alternatives]**

18 (c) In complying with its duty under subsection (b), the filing office may
19 communicate information in any medium. However, if requested, the filing office
20 shall communicate information by issuing [its written certificate] [a record that can
21 be admitted into evidence in the courts of this State without extrinsic evidence of its
22 authenticity].

1 (d) At least weekly, the [insert appropriate official or governmental agency]
2 [filing office] shall sell or license to the public on a nonexclusive basis, in bulk,
3 copies of all records filed with it under this part, in every medium from time to time
4 available to the filing office.

5 (e) The filing office shall perform the acts required by subsections (a) and
6 (b) at the time and in the manner prescribed by rule, but not later than two business
7 days after the filing office receives the request.

8 *Legislative Note: States whose filing office responds to search requests limited to a*
9 *particular address should adopt the bracketed language in subsection ~~(b)(1)~~.*
10 *(b)(1)(A).*

11 Reporters' Comments

12 **Discussion Question:** See comment 3.

13 * * *

14 **3. Information that Must Be Provided.** The draft presents alternative
15 approaches to defining the information that the filing office must provide.
16 Subsection (b), Alternative A, requires the filing office to provide “the information
17 contained in each financing statement to a person who requests it. However, this
18 alternative does not in any manner restrict the filing office from offering to provide
19 less than all of the information (presumably for a lower price) to a person who asks
20 for less. The Official Comments could be expanded to make it quite clear that the
21 statute accommodates the current practice of providing only the filing number, date
22 and time of filing, and names and addresses of the debtor and secured party when a
23 requesting person asks for no more (i.e., when the person does not ask for copies of
24 financing statements).

25 Alternative B provides an explicit statutory treatment of requests for less
26 than all information contained in a financing statement. Alternative B itself
27 contains two alternatives. One specifies the more limited information that the filing
28 office must provide when requested; the other requires that it provide only a
29 “reasonable summary. In the interest of brevity and flexibility, we prefer
30 Alternative A with an expanded official comment.

31 * * *

1 **Reason for Deletion.** The Drafting Committee determined that this section
2 is unnecessary.

3 **[SECTION 9-527. FEES.**

4 **~~Subsection (a)–Alternative A~~**

5 (a) [Except as otherwise provided in subsection (f), the] [The] fee for:
6 ~~(1)~~ filing and indexing a [record under this part] [financing statement,
7 amendment, continuation statement, or termination statement] other than an initial
8 financing statement of the kind described in Section 9-502(c) is:

9 (1) ~~(A)~~ \$ __[X]_____ if the record is communicated in writing {and
10 consists of one or two pages; ~~{and}~~

11 (2) ~~(A1)~~ \$ __[2X]_____ if the record is communicated in writing {and
12 consists of more than two pages; and

13 (3) ~~(B)~~ \$ __[1/2X]___ if the record is communicated by another
14 medium authorized by rule. ~~;~~ ~~{and}~~

15 (b) ~~(2)~~ [Except as otherwise provided in subsection (f), the] [The] fee for
16 filing and indexing an initial financing statement of the kind described in Section 9-
17 502(c) is:

18 (1) ~~(C)~~ { \$ _____ if the financing statement indicates that it is of the
19 kind described in Section 9-502(b)(1), \$ _____; and} filed in connection with a
20 public finance transaction;

21 (2) \$ _____ if the financing statement indicates that it is filed in
22 connection with a manufactured home transaction.

1 (c) ~~(2)~~ [Except as otherwise provided in subsection (f), the] [The] fee for
2 each name more than two required to be indexed ~~{~~, if the record is communicated in
3 writing,~~}~~ is \$ _____.

4 (d) [Except as otherwise provided in subsection (f), the] [The] fee for
5 responding to a request for information from the filing office, including for [issuing
6 a certificate showing] [communicating] whether there is on file any financing
7 statement naming a particular debtor, is:

8 _____ (1) \$ _____ if the request is communicated in writing; and

9 _____ (2) \$ _____ if the request is communicated by another medium
10 authorized by rule].

11 ~~(3) filing a financing statement stating an extended period of~~
12 ~~effectiveness under Section 9-502(b) is [~~\$____, if the period of effectiveness is 10
13 ~~years, \$____, if the period of effectiveness is 20 years, and \$____, if the period of~~
14 ~~effectiveness is 30 years]; and~~

15 ~~(e 4)~~ The fee for {filing a written record in a form other than as set forth in
16 Sections 9-521(c) and (d) may not be less than the fee charged for filing a written
17 record of the same kind in the form set forth in those sections.}

18 ~~(f b)~~ [No A fee is not required for the filing of a mortgage filed as a
19 financing statement, other than the regular recording and satisfaction fees with
20 respect to the mortgage.]

1 (c) ~~The fee for responding to a request for information from the filing~~
2 ~~office, including for [issuing a certificate showing] [communicating] whether there~~
3 ~~is on file any financing statement naming a particular debtor, is~~
4 ~~_____ (1) \$ _____ if the request is communicated in writing; and~~
5 ~~_____ (2) \$ _____ if the request is communicated by another medium~~
6 ~~authorized by rule.]~~

7 *Legislative Note: A State may wish to consolidate the provisions of this section*
8 *with statutes setting fees for other services.*

9 **SECTION 9-528. ADMINISTRATIVE RULES.**

10 (a) The [insert appropriate official or governmental agency] [filing office]
11 shall adopt rules to carry out the provisions of this article. The rules must be:

12 (1) consistent with this article[]; and

13 (2) adopted in accordance with the [insert any applicable state
14 administrative procedure act].

15 (b) To keep the rules and practices of the filing office in harmony with the
16 rules and practices of filing offices in other jurisdictions that enact substantially this
17 part, and to keep the technology used by the filing office compatible with the
18 technology used by filing offices in other jurisdictions that enact substantially this
19 part, the filing office, so far as is consistent with the purposes, policies, and
20 provisions of this article, shall in adopting, amending, and repealing rules:

21 (1) consult with filing offices in other jurisdictions that enact
22 substantially this part; and

1 (2) consult the most recent version of the Model Rules promulgated by
2 the International Association of Corporate Administrators or any successor
3 organization; and

4 (3) take into consideration the rules and practices of, and the technology
5 used by, filing offices in other jurisdictions that enact substantially this part.

6 **SECTION 9-529. DUTY TO REPORT.**

7 (a) The [insert appropriate official or governmental agency] [filing office]
8 shall report [annually on or before _____] to the [Governor and Legislature] on
9 the operation of the filing office.

10 (b) The report must contain a statement of the extent to which:

11 (1) the filing office has complied with the time limits prescribed in this
12 part and the reasons for any noncompliance;

13 (2) the rules are not in harmony with the rules of filing offices in other
14 jurisdictions that enact substantially this part and the reasons for these variations;
15 and

16 (3) the rules are not in harmony with the most recent version of the
17 Model Rules promulgated by the International Association of Corporate
18 Administrators or any successor organization and the reasons for these variations.

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PART 6
DEFAULT

[SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST]

**SECTION 9-601. RIGHTS AND REMEDIES AFTER DEFAULT;
JUDICIAL ENFORCEMENT; CONSIGNOR OR BUYER OF ACCOUNTS,
CHATTEL PAPER, OR PAYMENT INTANGIBLES; ~~CERTAIN~~
~~STATUTORY LIENS.~~**

(a) After default, a secured party has the rights and remedies provided in this part and, except as otherwise provided in Section 9-602(a), those provided by agreement of the parties. A secured party:

(1) may reduce ~~a~~ the claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) ~~if~~ if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) [A secured party in possession has the rights, remedies, and duties provided in Section 9-207.]

(c) The rights and remedies referred to in ~~this subsection~~ subsections (a) and (b) are cumulative and may be exercised simultaneously.

1 (d) Except as otherwise provided in subsection (g) and Section 9-605, after
2 default, a debtor and an obligor have the rights and remedies provided in this part
3 [and] [,] by agreement of the parties[, and in Section 9-207].

4 (e) If a secured party has reduced its claim to judgment, the lien of any levy
5 that may be made upon the collateral by virtue of an execution based upon the
6 judgment relates back to the earliest of:

7 (1) the date of perfection of the security interest or agricultural lien in
8 the collateral;

9 (2) the date of filing a financing statement covering the collateral; or

10 (3) any date specified in a statute under which the agricultural lien was
11 created.

12 (f) A sale pursuant to ~~the~~ an execution is a foreclosure of the security
13 interest or agricultural lien by judicial procedure within the meaning of this section.
14 A secured party may purchase at the sale and thereafter hold the collateral free of
15 any other requirements of this article.

16 (g) Except as otherwise provided in Sections 9-607(c), ~~9-607(d)~~, 9-608(b),
17 and 9-614(f), ~~9-614(e)~~, ~~the duties of a secured party under this part~~ imposes no
18 duties upon ~~do not apply to~~ a secured party that is a consignor or is a buyer of
19 accounts, chattel paper, or payment intangibles.

20 ~~(e) This part applies to an agricultural lien but not to any other statutory~~
21 ~~lien.~~

1 Reporters' Comments

2 * * *

3 6. **Consignments.** This Article is inapplicable to the true consignor's
4 enforcement of its ownership interest. See subsection ~~(d)~~ (g). However, this
5 Article does govern cases in which the ownership interest of the true consignor
6 (which this Article refers to as a "security interest ") is subordinate to the rights of
7 the consignee's secured party. In particular, Section 9-614(b) requires an enforcing
8 senior secured party to pay all of the excess proceeds to the junior consignor-owner.
9 See Section 9-614, Comment 2.

10 * * *

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

13 (a) To the extent that they give rights to a debtor or an obligor and impose
14 duties on a secured party, the rules stated in the following sections may not be
15 waived or varied by a debtor, [a] secondary obligor, or ~~by~~ [a] consumer obligor in a
16 consumer goods secured transaction, except as expressly provided in Section 9-623:

17 (1) Section ~~9-607(d)~~ 9-607(c)[, which deals with collection and
18 enforcement of collateral];

19 (2) Sections 9-610(b), 9-611, and 9-613[, which deal with disposition of
20 collateral];

21 (3) Section 9-609 insofar as it imposes upon a secured party that takes
22 possession of collateral without judicial process the duty to do so without breach of
23 the peace;

1 (4) Sections 9-608(a) and 9-614(d) ~~9-614(c)~~ insofar as they deal with
2 application or payment of noncash proceeds of collection, enforcement, or
3 disposition;

4 (5) Sections 9-608(a); and 9-614(e) and (f) ~~9-614(d)~~ insofar as they
5 require accounting for or payment of surplus proceeds of collateral;

6 (6) Section ~~9-614(e)~~ 9-614(h)[, which deals with calculation of a
7 deficiency or surplus when the proceeds of a disposition are unreasonably low];

8 (7) Section 9-618, 9-619, or 9-620[, which deal with acceptance of
9 collateral in satisfaction of obligation];

10 (8) Section 9-621[, which deals with redemption of collateral];

11 (9) Section 9-622[, which deals with reinstatement of obligations];

12 (10) Section 9-623[, which deals with permissible waivers];

13 (11) Sections 9-624, 9-625, and 9-628[, which deal with the secured
14 party's liability for failure to comply with this article]; and

15 (12) Section 9-209[, which deals with requests for an accounting and
16 requests concerning a list of collateral and statement of account].

17 (b) An obligor other than a consumer obligor in a consumer goods secured
18 transaction or a secondary obligor may waive or vary the rules referred to in
19 subsection (a) to the extent and in the manner provided by other law.

1 **SECTION 9-603. AGREEMENT ON STANDARDS CONCERNING**
2 **RIGHTS AND DUTIES.**

3 (a) The parties may determine by agreement the standards measuring the
4 fulfillment of the rights of a debtor or obligor and the duties of a secured party;
5 ~~other than duties concerning taking possession of collateral without breach of the~~
6 ~~peace under Section 9-609~~, if the standards are not manifestly unreasonable.

7 (b) Subsection (a) does not apply to the duty under Section 9-609 to refrain
8 from breaching the peace when taking possession of collateral.

9 **SECTION 9-604. PROCEDURE IF SECURITY AGREEMENT COVERS**
10 **REAL PROPERTY OR FIXTURES.**

11 (a) If a security agreement covers both personal and real property, a secured
12 party may proceed:

13 (1) under this part as to the personal property without prejudicing any
14 rights and remedies with respect to the real property; or

15 (2) as to both the personal and real property in accordance with the
16 rights and remedies with respect to the real property, in which case the other
17 provisions of this part do not apply.

18 (b) Subject to subsection (c), if ~~if~~ a security agreement covers goods that
19 are or become fixtures, a secured party, ~~subject to subsection (c)~~, may proceed:

20 (1) under this part; or

1 (2) in accordance with the rights and remedies with respect to real
2 property, in which case the other provisions of this part do not apply.

3 (c) Subject to the other provisions of this part, if ~~If~~ a secured party with a
4 security interest in fixtures has priority over all owners and encumbrancers of the
5 real property, the secured party may, on default, ~~subject to the other provisions of~~
6 ~~this part~~, remove the collateral from the real property.

7 (d) [Unless otherwise agreed, a] [A] secured party that removes collateral
8 shall promptly reimburse any encumbrancer or owner of the real property, other
9 than the debtor, for the cost of repair of any physical injury caused by the removal.
10 The secured party need not reimburse the encumbrancer or owner for any
11 diminution in value of the real property caused by the absence of the goods
12 removed or by any necessity of replacing them. A person entitled to reimbursement
13 may refuse permission to remove until the secured party gives adequate assurance
14 for the performance of the obligation to reimburse.

15 **SECTION 9-605. UNKNOWN DEBTOR OR SECONDARY OBLIGOR.**

16 A secured party ~~owes no~~ does not owe a duty based on its status as secured party to
17 a person, or to a secured party or lienholder that has filed a financing statement
18 against the person, unless the secured party knows:

19 (1) that a person is a debtor or a secondary obligor;

20 (2) ~~knows~~ the identity of the person; and

21 (3) ~~knows~~ how to communicate with the person.

1 remedies of the debtor with respect to the obligation of the account debtor or other
2 person obligated on collateral [to make payment or otherwise render performance to
3 the debtor, and with respect to any property that secures the obligations of the
4 account debtor or other person obligated on the collateral];

5 (4) if it holds a security interest in a deposit account perfected by control
6 under Section 9-109(a)(1), may apply the balance of the deposit account to the
7 obligation secured by the deposit account; and

8 (5) if it holds a security interest in a deposit account perfected by control
9 under Section 9-109(a)(2) or (3), may instruct the bank to pay the balance of the
10 deposit account to or for the benefit of the secured party.

11 (b) If necessary ~~In order to~~ enable a secured party to exercise under
12 subsection (a)(3) the ~~rights~~ right of a debtor to enforce nonjudicially any mortgage,
13 ~~[mortgage/deed of trust]~~ covering real property, a the secured party may
14 ~~[file/record]~~ record in the office in which the ~~[mortgage/deed of trust]~~ mortgage is
15 ~~[filed/recorded]~~ recorded:

16 (1) a copy of the security agreement that creates or provides for a
17 security interest in the obligation secured by the mortgage ~~[entitles the secured party~~
18 ~~to exercise those rights]~~; and

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

20 (A) a default has occurred; and

21 (B) ~~that~~ the secured party is entitled to enforce nonjudicially the
22 mortgage. ~~[mortgage/deed of trust].]~~

1 (c) ~~If so agreed, and in any event on default:~~

2 ~~—————(1) a secured party that holds a security interest in a deposit account~~
3 ~~perfected by control under Section 9-109(a)(1) may apply the balance of the deposit~~
4 ~~account to the obligation secured by the deposit account; and~~

5 ~~—————(2) a secured party that holds a security interest in a deposit account~~
6 ~~perfected by control under Section 9-109(a)(2) or (3) may instruct the bank to pay~~
7 ~~the balance of the deposit account to or for the benefit of the secured party.~~

8 (c) A secured party shall proceed in a commercially reasonable manner if
9 the secured party:

10 (1) undertakes to collect from or enforce an obligation of an account
11 debtor or other person obligated on collateral; and

12 (2) ~~that~~ is entitled [by agreement] to charge back uncollected collateral
13 or otherwise to full or limited recourse against the debtor or against a secondary
14 obligor, ~~and that undertakes to collect from or enforce an obligation of an account~~
15 ~~debtor or other person obligated on collateral shall proceed in a commercially~~
16 ~~reasonable manner.~~

17 (d) The secured party may deduct from the collections made pursuant to
18 subsection (c) reasonable expenses of collection and enforcement, including
19 reasonable attorney's fees and legal expenses incurred by the secured party.

20 [(e) This section does not determine whether an account debtor, bank, or
21 other person obligated on collateral owes a duty to a secured party.]

2 **Discussion Question:** Should subsection (e) be retained, or should the
3 matter be left to an Official Comment along the lines of Comment 2 below?

4 1. **Source.** Former Section 9-502; subsections (b) and (c) are new.

5 2. **Scope.** As a general matter Part 6 deals with the rights and duties of
6 debtors and secured parties following default. However, this section applies to the
7 collection and enforcement rights of secured parties whether or not a default has
8 occurred. Although seemingly anomalous, in practice it is not unusual for debtors
9 to agree that secured parties are entitled to collect and enforce rights against
10 account debtors prior to default.

11 This section permits a secured party to collect and enforce obligations
12 included in collateral in its capacity as a secured party. It is not necessary for a
13 secured party first to become the owner of the collateral pursuant to a disposition or
14 acceptance. However, the secured party's rights to collect from and enforce
15 collateral against account debtors and others obligated on collateral under
16 subsection (a) are subject to Sections 9-338, 9-404, 9-405, 9-406, 9-406A and other
17 applicable law. Neither this Article nor former Section 9-502 should be understood
18 to regulate the duties of an account debtor or other person obligated on collateral.
19 For example, the secured party may be unable to exercise the debtor's rights under
20 an instrument if the debtor is in possession of the instrument, or under a non-
21 transferable letter of credit if the debtor is the beneficiary. Unless a secured party
22 has control over letter-of-credit rights and is entitled to receive payment or
23 performance from the issuer or a nominated person under Article 5, its remedies
24 with respect to the letter of credit may be limited to the recovery of any identifiable
25 proceeds from the debtor. This section establishes only the baseline rights of the
26 secured party *vis-a-vis the debtor*—the secured party is entitled to enforce and collect
27 upon default or earlier if so agreed.

28 * * *

29 **SECTION 9-608. APPLICATION OF PROCEEDS OF COLLECTION**
30 **OR ENFORCEMENT; LIABILITY FOR DEFICIENCY AND RIGHT TO**
31 **SURPLUS.**

32 (a) If a security interest or agricultural lien secures payment or performance
33 of an obligation, the following rules apply:

1 (1) A secured party shall apply or pay over for application the cash
2 proceeds of collection or enforcement under this section in the following order to:

3 (A) the reasonable expenses of collection and enforcement and, to
4 the extent provided for by agreement and not prohibited by law, reasonable
5 attorney's fees and legal expenses incurred by the secured party;

6 (B) the satisfaction of obligations secured by the security interest or
7 agricultural lien under which the collection or enforcement is made; and

8 (C) the satisfaction of obligations secured by any subordinate
9 security interest in or other lien on the collateral subject to the security interest or
10 agricultural lien under which the collection or enforcement is made if the secured
11 party receives an authenticated demand for proceeds before distribution of the
12 proceeds is completed.

13 (2) If requested by a secured party, a holder of a subordinate security
14 interest or other lien shall furnish reasonable proof of the interest or lien within a
15 reasonable time. Unless the holder complies, the secured party need not comply
16 with the holder's demand under paragraph (1)(C).

17 (3) A secured party need not apply or pay over for application the
18 noncash proceeds (~~Section 9-313~~) of collection and enforcement under this section.
19 A secured party that applies or pays over for application noncash proceeds shall do
20 so in a commercially reasonable manner.

21 (4) A secured party shall account to and pay a debtor for any surplus
22 despite notwithstanding any agreement to the contrary, and, unless otherwise

1 agreed, the obligor is liable for any deficiency. ~~Recovery of a deficiency under this~~
2 ~~subsection is subject to Section 9-625.~~

3 (b) If the underlying transaction is a sale of accounts, chattel paper, or
4 payment intangibles, the debtor is entitled to any surplus, and the obligor is liable
5 for any deficiency, only if its agreement so provides. ~~Recovery of a deficiency~~
6 ~~under this subsection is subject to Section 9-625.~~

7 (c) Recovery of a deficiency under this section is subject to Section 9-625.

8 **SECTION 9-609. SECURED PARTY'S RIGHT TO TAKE POSSESSION**
9 **AFTER DEFAULT. *[MINOR STYLE CHANGES ONLY]***

10 (a) A ~~Unless otherwise agreed,~~ a secured party has the right on default to
11 take possession of the collateral.

12 (b) A secured party may take possession of collateral:

13 _____ (1) [with] [pursuant to] judicial process; or

14 _____ (2) if it takes possession ~~In taking possession, a secured party may~~
15 ~~proceed without judicial process, if the taking can be done without breach of the~~
16 ~~peace, without judicial process. , or may proceed by action.~~

17 (c) If a security agreement so provides, a secured party may require a debtor
18 to assemble the collateral and make it available to the secured party at a place to be
19 designated by the secured party which is reasonably convenient to both parties.

20 (d) Without removal, a secured party:

21 (1) may render equipment unusable; and

1 (2) may dispose of collateral on a debtor's premises under Section 9-610.

2 **SECTION 9-610. DISPOSITION OF COLLATERAL AFTER**
3 **DEFAULT.**

4 (a) A secured party after default may sell, lease, license, or otherwise
5 dispose of any or all of the collateral in its ~~then~~ present condition or following any
6 commercially reasonable preparation or processing. ~~Unless effectively disclaimed~~
7 ~~or modified, a contract for sale, lease, license, or other disposition includes the~~
8 ~~warranties relating to title, possession, quiet enjoyment, and the like which by~~
9 ~~operation of law accompany a voluntary disposition of property of the kind subject~~
10 ~~to the contract. A secured party may disclaim or modify warranties under this~~
11 ~~section in the contract for disposition by giving a purchaser an authenticated~~
12 ~~statement that contains specific language disclaiming or modifying the warranties.~~
13 ~~Language in an authenticated statement is sufficient to disclaim warranties under~~
14 ~~this section if it states "There is no warranty relating to title, possession, quiet~~
15 ~~enjoyment, or the like in this disposition, or words of similar import.~~

16 (b) Every aspect of a disposition of collateral, including the method,
17 manner, time, place, and other terms, must be commercially reasonable. If
18 commercially reasonable, a secured party may dispose of collateral by public or
19 private proceedings, by one or more contracts, as a unit or in parcels, and at any
20 time and place and on any terms.

21 (c) A secured party may purchase collateral: ~~buy~~

- 1 (1) at a public sale; or
- 2 (2) ~~A secured party may buy~~ at a private sale only if the collateral is of a
- 3 kind that is:
- 4 (A) customarily sold on a recognized market; or
- 5 (B) ~~is of a kind that~~ is the subject of widely distributed standard
- 6 price quotations.
- 7 (d) A contract for sale, lease, license, or other disposition includes the
- 8 warranties relating to title, possession, quiet enjoyment, and the like which by
- 9 operation of law accompany a voluntary disposition of property of the kind subject
- 10 to the contract.
- 11 (e) A secured party may disclaim or modify warranties under subsection (d)
- 12 in the contract for disposition by giving a purchaser [an authenticated] [a] statement
- 13 explicitly disclaiming or modifying the warranties. [A] [An authenticated]
- 14 statement is sufficient to disclaim warranties under this section if it states “There is
- 15 no warranty relating to title, possession, quiet enjoyment, or the like in this
- 16 disposition or contains words of similar import.

17 Reporters’ Comments

18 **Changes from Prior Draft:** The ABA Article 9 Revision Agricultural
19 Financing task force requested that the reference to livestock be deleted from
20 Comment 8. It is their view, depending on the facts any type of farm products may
21 be perishable, may speedily decline in value, or be of a type customarily sold on a
22 recognized market.

23 * * *

1 8. **“Recognized Market.”** A “recognized market, as used in subsection
2 (c) and Section 9-611(c), is one in which the items sold are fungible and prices are
3 not subject to individual negotiation. For example, the New York Stock Exchange
4 is a recognized market, whereas the markets for used automobiles and livestock are
5 not.

6 * * *

7 **SECTION 9-611. PERSONS ENTITLED TO NOTIFICATION BEFORE**
8 **DISPOSITION OF COLLATERAL.**

9 (a) In this section, “notification date” means the earlier of the date on
10 which:

11 (1) a secured party sends to the debtor and any secondary obligor an
12 authenticated notification of disposition; [or] [and]

13 (2) ~~the date on which~~ the debtor and any secondary obligor waive the
14 right to notification.

15 (b) A secured party shall send to a debtor and any secondary obligor a
16 reasonable authenticated notification of disposition under Section 9-613 ~~unless~~
17 ~~collateral is perishable or threatens to decline speedily in value or is of a type~~
18 ~~customarily sold on a recognized market.~~ If the collateral is ~~In the case of~~
19 ~~consumer goods, the secured party need not send~~ another notification ~~need not be~~
20 ~~sent.~~ If the collateral is not consumer goods, the ~~In other cases~~ a secured party shall
21 send an authenticated notification of disposition to:

22 (1) any other person from which the secured party has received, before
23 the notification date, an authenticated notification of a claim of an interest in the
24 collateral;

1 (2) any other secured party that, [] days before the notification date,
2 held a security interest or agricultural lien in the collateral perfected by the filing of
3 a financing statement that:

4 (A) identified the collateral;

5 (B) was indexed under the debtor's name as of that date; and

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

8 (3) any other secured party that, [] days before the notification date,
9 held a security interest in the collateral perfected by compliance with a statute or
10 treaty described in Section 9-309A(a).

11 (c) Subsection (b) does not apply if the collateral is perishable or threatens
12 to decline speedily in value or is of a type customarily sold on a recognized market.

13 (d) A secured party complies with the notification requirement specified in
14 subsection (b)(2) if:

15 (1) not later than [] days before the notification date, the secured party
16 requests, in a commercially reasonable manner, information concerning financing
17 statements indexed under the debtor's name in the office indicated in subsection
18 (b)(2); and

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

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

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

4 Reporters' Comments

5 **Changes From Prior Draft:** New subsection (c) makes it clear that there is
6 no obligation to give notification of a disposition in the case of perishable collateral
7 or collateral customarily sold on a recognized market (e.g., marketable securities).
8 Former Section 9-504(3) might be read (incorrectly) to relieve the secured party
9 from notifying a debtor but not from notifying other secured parties in connection
10 with disposing of such collateral.

11 **SECTION 9-612. TIMELINESS OF NOTIFICATION BEFORE**
12 **DISPOSITION OF COLLATERAL.**

13 (a) [A] ~~[Unless otherwise agreed, in a transaction other than a consumer~~
14 ~~goods secured transaction a]~~ notification of disposition is sent within a reasonable
15 ~~time before the disposition if it is sent after default and 10 days or more before the~~
16 earliest time of disposition set forth in the notification is sent within a reasonable
17 time before the disposition.

18 (b) Whether a notification sent less than 10 days before the earliest time of
19 disposition set forth in the notification ~~nevertheless~~ is sent within a reasonable time
20 is a question of fact.

21 (c) This section does not apply to a consumer goods secured transaction.

1 **SECTION 9-613. CONTENTS AND FORM OF NOTIFICATION**

2 **BEFORE DISPOSITION OF COLLATERAL.**

3 (a) Except in a consumer goods secured transaction, the following rules
4 apply:

5 (1) ~~[The]~~ [Unless otherwise agreed, the] contents of a notification of
6 disposition are sufficient if the notification:

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

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

10 (C) states the method of intended disposition;

11 (D) states that the debtor [or secondary obligor] is entitled to an
12 accounting of the unpaid indebtedness and states the charge, if any for an
13 accounting; and

14 (E) states the time and place of a public sale or the time after which
15 any other disposition is to be made, whether or not the notification contains
16 additional information.

17 (2) Whether a notification that lacks any of the information set forth in
18 paragraph (1) is nevertheless sufficient is a question of fact.

19 ~~(3) A particular phrasing of the notification is not required. A~~
20 ~~notification substantially complying with the requirements of this subsection is~~
21 ~~sufficient, even if it contains minor errors that are not seriously misleading.~~

1 **[End of Form]**

2 (b) In a consumer goods secured transaction, the following rules apply:

3 (1) A notification of disposition must contain the following
4 information:

5 (A) the information specified in ~~Section 9-613(a)(1)~~; subsection
6 (a)(1);

7 (B) a description of any liability for a deficiency of the person to
8 which the notification is sent;

9 (C) a telephone number from which the amount that must be paid to
10 the secured party to redeem the collateral under Section 9-621 is available;

11 (D) a telephone number from which the amount that must be paid to
12 the secured party to reinstate the obligation secured under Section 9-622 is
13 available; and

14 (E) a telephone number or mailing address from which additional
15 information concerning the disposition and the obligation secured is available.

16 ~~(2) A particular phrasing of the notification is not required. A~~
17 ~~notification substantially complying with the requirements of this subsection is~~
18 ~~sufficient even if it contains minor errors that are not seriously misleading.~~

19 (2) ~~(3)~~ The following form of notification, when completed, contains
20 sufficient information:

21 **NOTIFICATION OF OUR PLAN TO SELL PROPERTY**

22 To: [Name of debtor or obligor to whom the notification is sent]

1 From: [Name, address, and telephone number of secured party]
2 Name of Debtor(s): [Include only if debtor(s) are not an addressee]
3 [You] [name of obligor, if different] owe(s) us money on a debt and [you
4 have] [has] not paid it to us on time. We have [your] [the debtor's] [describe
5 collateral] because we took it from [you] [the debtor] or [you] [the debtor]
6 voluntarily gave it to us. [You] [name of debtor, if different] agreed to let us
7 do that when [you] [name of obligor, if different] created the debt.

8 *[For a public disposition:]*

9 We plan to sell [or lease or license, *as applicable*] the [describe collateral]
10 [to the highest qualified bidder] in public. The sale [or lease or license, *as*
11 *applicable*] will be held as follows:

12 Day and Date: _____

13 Time: _____

14 Place: _____

15 You can bring bidders to the sale if you want.

16 *[For a private disposition:]*

17 We will sell [or lease or license, *as applicable*] the [describe collateral]
18 privately sometime after [day and date].

19 The money that we get from the sale [or lease or license, *as applicable*] (after
20 paying our costs) will be paid on the debt that [you] [name of obligor, if
21 different] owe(s) to us. *[Include the following sentence only if the addressee is*
22 *obligated on the secured debt.] IF WE GET LESS MONEY THAN YOU OWE,*

1 YOU WILL STILL OWE US THE DIFFERENCE, and we may sue you and take
2 part of your wages or other property. *[Include the following sentence only if the*
3 *addressee is a debtor.]* If we get more money than [you] [name of obligor, if
4 different] owe(s) to us, [you] [name of obligor, if different] will get the extra
5 money.

6 You can stop the sale [and get] [and the debtor will get] the property back. To
7 do this, [you] [name of obligor, if different] must:

8 Pay us the full amount of the debt plus our costs before the sale. Then [you]
9 [name of obligor, if different] will not owe us any more money. To learn the
10 exact amount you must pay, call us at [telephone number] . ;

11 *[add the following paragraph if applicable]* OR

12 Pay us our costs of retaking the property, all regular payments that are overdue,
13 and all late charges. To learn the exact amount you must pay, call us at
14 [telephone number]. You would have to make this payment by
15 [date]. If you make the payment, [you] [name of obligor, if different]
16 will have to keep on making the rest of the regular [monthly] payments.

17 If you want us to explain to you in writing how we have figured the amount that
18 you owe us, you may call us at [telephone number]. [We will charge you
19 \$ _____ for the explanation.]

20 **[End of Form]**

1 (3) A particular phrasing of the notification is not required. A
2 notification substantially complying with the requirements of this subsection is
3 sufficient even if it contains minor errors that are not seriously misleading.

4 **SECTION 9-614. APPLICATION OF PROCEEDS OF DISPOSITION;**
5 **LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS.**

6 (a) In this section:

7 (1) “Person related to with respect to an individual means:

8 (A) the spouse of the individual;

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

11 (C) an ancestor or lineal descendant of the individual or the
12 individual’s spouse of the individual; and

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

16 (2) “Person related to with respect to an organization means:

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

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

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

3 (D) the spouse of a person described in paragraph (A), (B), or (C);
4 and

5 (E) a person related by blood or marriage to a person described in
6 paragraph (A), (B), (C), or (D) and who shares the same home with the person.

7 (b) A secured party shall apply or pay over for application the cash
8 proceeds of disposition in the following order to:

9 (1) the reasonable expenses of retaking, holding, preparing for
10 disposition, processing, and disposing, and, to the extent provided for by agreement
11 and not prohibited by law, reasonable attorney's fees and legal expenses incurred by
12 the secured party;

13 (2) the satisfaction of obligations secured by the security interest or
14 agricultural lien under which the disposition is made;

15 (3) the satisfaction of obligations secured by any subordinate security
16 interest in or other lien on the collateral if:

17 (A) the secured party receives an authenticated demand for proceeds
18 before distribution of the proceeds is completed; and

19 (B) if a consignor has an interest in the collateral, the subordinate
20 security interest or lien is senior to the interest of the consignor; and

21 (4) a secured party that is a consignor of the collateral.

1 (c) If requested by a secured party, a holder of a subordinate security
2 interest or other lien shall furnish reasonable proof of the interest or lien within a
3 reasonable time. Unless the holder does so, the secured party need not comply with
4 the holder's demand under subsection (b)(3).

5 (d) A secured party need not apply or pay over for application noncash
6 proceeds of disposition under this section. A secured party that applies or pays over
7 for application noncash proceeds shall do so in a commercially reasonable manner.

8 (e) If the security interest under which a disposition is made secures
9 payment or performance of an obligation, after making the payments and
10 applications required by subsection (b):

11 (1) unless subsection (b)(4) requires the secured party to apply or pay
12 over cash proceeds to a consignor, the secured party shall account to and pay a
13 debtor for any surplus; and

14 (2) [unless otherwise agreed,] the obligor is liable for any deficiency.

15 (f) If the underlying transaction is a sale of accounts, chattel paper, or
16 payment intangibles:

17 (1) the debtor is entitled to any surplus; and

18 (2) the obligor is [not] liable for any deficiency[, only if its agreement so
19 provides].

20 (g) Recovery of any deficiency under ~~this~~ subsection (e) or (f) is subject to
21 Section 9-625.

1 **2. Application of Proceeds.** This section contains the rules governing
2 application of proceeds and the debtor’s liability for a deficiency. Subsection (b)
3 provides a “safe harbor” for a secured party that complies with its terms. However,
4 a secured party that does not comply with subsection (b) is liable only as provided
5 in Section 9-624.

6 The substantive changes to subsections (b) and (e) address the right of a
7 consignor to receive proceeds of a disposition by a secured party whose interest is
8 senior to that of the consignor. Subsection (b) requires the enforcing secured party
9 to pay excess proceeds first to subordinate secured parties or lienholders whose
10 interests are senior to that of a consignor and, finally, to a consignor. Inasmuch as a
11 consignor is the owner of the collateral, secured parties and lienholders whose
12 interests are junior to the consignor’s interest will not be entitled to any proceeds.
13 In like fashion, under revised subsection (e)(1) the debtor is not entitled to a surplus
14 when the enforcing secured party is required to pay over proceeds to a consignor.

15 * * *

16 **6. “Low Price” Dispositions.** Subsection (h) provides a special method
17 for calculating a deficiency or surplus when the secured party, a person related to
18 the secured party (as defined in subsection (a)), or a secondary obligor acquires the
19 collateral at a foreclosure disposition. It recognizes that when the foreclosing
20 secured party or a related party is the transferee of the collateral, the secured party
21 sometimes lacks the incentive to maximize the proceeds of disposition. As a
22 consequence, the disposition may comply with the procedural requirements of this
23 Article (e.g., it is conducted in a commercially reasonable manner following
24 reasonable notice) but nevertheless fetch a price that is unreasonably low.

25 Subsection (h) adjusts for this lack of incentive. If the proceeds of a
26 disposition of collateral to a secured party, a person related to the secured party, or
27 a secondary obligor are “unreasonably low,” then instead of calculating a deficiency
28 (or surplus) based on the actual net proceeds, the calculation is based upon the
29 amount that would have been received in a commercially reasonable disposition to
30 an unrelated person. Subsection (h) thus rejects the view that the secured party’s
31 receipt of an unreasonably low amount constitutes noncompliance with Part 6.

32 The term “unreasonably low” is not susceptible to precise definition.
33 Whether an amount of proceeds is “unreasonably low” depends on [whether it is
34 unreasonably low when compared to] [whether it is
35 well/substantially/markedly/significantly below] the range of prices that a
36 commercially reasonable disposition to an unrelated third person would have
37 brought.

1 **SECTION 9-614A. EXPLANATION OF SURPLUS OR DEFICIENCY.**

2 (a) This section applies to a consumer goods secured transaction in which
3 the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency
4 under Section 9-614(e).

5 (b) In this section:

6 (1) “Explanation” means a writing that:

7 (A) states the amount of the surplus or deficiency; and

8 (B) provides a reasonable explanation of how the secured party
9 calculated the surplus or deficiency, including an indication of:

10 (i) the amount of the obligation secured, calculated as of a date
11 not more than [] days before disposition of the collateral;

12 (ii) the components of the obligation secured, including, as
13 applicable, the unpaid balance of principal or purchase price, interest or other
14 finance charges, delinquency, default, deferral, or other additional charges, and
15 reasonable expenses and attorney's fees of the type described in Section 9-
16 614(b)(1); and

17 (iii) the amount of credit applied to the obligation secured, made
18 after the date of calculation, and its components, including, as applicable,
19 payments, rebates, and proceeds of a disposition of collateral.

20 (2) “Request” means a record:

21 (A) authenticated by a debtor or consumer obligor; and

22 (B) requesting that the recipient provide an explanation.

1 (c) A secured party shall send an explanation to the debtor or consumer
2 obligor, as applicable:

3 (1) before or when the secured party accounts to the debtor and pays any
4 surplus or first makes written demand on the consumer obligor for payment of the
5 deficiency; and

6 (2) within two weeks after receipt of a request.

7 (d) A particular phrasing of the explanation is not required. An explanation
8 complying substantially with the requirements of ~~this~~ subsection (b) is sufficient
9 even if it contains minor errors that are not seriously misleading.

10 (e) A debtor or consumer obligor is entitled without charge to one response
11 to a request under this section during any six-month period in which the secured
12 party did not send to the debtor or consumer obligor an explanation pursuant to
13 subsection (c)(1). The secured party may require payment of a charge not
14 exceeding \$[] for each additional response.

15 **SECTION 9-615. RIGHTS OF TRANSFEREE OF COLLATERAL.**

16 (a) A secured party's disposition of collateral after default:

17 (1) transfers to a transferee for value all of a debtor's rights in the
18 collateral; and

19 (2) discharges the security interest under which the disposition is made;
20 and

1 (3) discharges any subordinate security interest or other lien [other than
2 liens created under] [cite acts or statutes providing for liens, if any, that are not to
3 be discharged].

4 (b) The transferee takes free of the rights and interests described in
5 subsection (a) even if the secured party fails to comply with the requirements of this
6 article or any judicial proceedings:

7 (1) in a public sale, if the transferee:

8 (A) has no knowledge of any defects in the sale;

9 (B) does not buy in collusion with the secured party, other bidders,
10 or the person conducting the sale; and

11 (C) acts in good faith; and ~~or~~

12 (2) in any other case, if the transferee acts in good faith.

13 (c) ~~(b)~~ If a transferee does not take free of the rights and interests described
14 in subsection (a), the transferee takes the collateral subject to:

15 (1) the debtor's rights in the collateral;

16 (2) ~~and subject to any~~ the security interest or agricultural lien under
17 which the disposition is made; and

18 (3) any [subordinate] security interest or other lien.

19 (d) ~~(c)~~ Except as otherwise provided in this ~~subsection~~ section or elsewhere
20 in this article, a secured party's disposition of collateral does not discharge any
21 security interest or other lien.

1 **SECTION 9-616. RIGHTS AND DUTIES OF CERTAIN [SECONDARY**
2 **OBLIGORS] [PERSONS LIABLE TO SECURED PARTY].**

3 (a) A {secondary obligor} [~~person that is liable to a secured party under a~~
4 ~~guaranty, indorsement, repurchase agreement, or the like~~] acquires the rights and
5 becomes obligated to perform the duties of the secured party after the {person}
6 {secondary obligor}:

7 (1) receives an assignment of a secured obligation from the secured
8 party;

9 (2) receives a transfer of collateral from the secured party and agrees to
10 accept the rights and assume the duties of the secured party; or

11 (3) is subrogated to the rights of a secured party with respect to
12 collateral.

13 (b) An assignment, transfer, or subrogation described in subsection (a):

14 (1) is not a disposition of collateral under [Section 9-610] [~~this article~~];
15 and

16 (2) relieves ~~does not relieve~~ the secured party of further its duties under
17 this article.

18 **SECTION 9-617. TRANSFER OF RECORD OR LEGAL TILE.**

19 (a) In this section, "transfer statement" means a record authenticated by a
20 secured party stating:

1 (1) that the debtor has defaulted in connection with an obligation
2 secured by specified collateral;

3 (2) that the secured party has exercised its post-default remedies with
4 respect to the collateral;

5 (3) that, by reason of the exercise, a transferee has acquired the rights of
6 the debtor in the collateral; and

7 (4) the name and mailing address of the secured party, the debtor, and
8 the transferee.

9 (b) A transfer statement entitles the transferee to the transfer of record of all
10 rights of the debtor in the collateral specified in the statement in any official filing,
11 recording, registration, or certificate-of-title system covering the collateral. If a
12 transfer statement is presented with the applicable fee and request form to the
13 official or office responsible for maintaining the system, the official or office:

14 (1) ~~must~~ shall accept the transfer statement;

15 (2) shall promptly amend its records to reflect the transfer; and

16 (3) if applicable, shall issue a new appropriate certificate of title in the
17 name of transferee.

18 (c) A transfer of the record or legal title to collateral to a secured party is
19 not of itself a disposition of collateral under this article and does not of itself relieve
20 the secured party of its duties under this article.

1 **SECTION 9-618. ACCEPTANCE OF COLLATERAL IN FULL OR**
2 **PARTIAL SATISFACTION OF OBLIGATION; COMPULSORY**
3 **DISPOSITION OF COLLATERAL.**

4 (a) In this section and in Sections 9-619 and 9-620, “proposal” means a
5 [written] statement authenticated by a secured party containing the terms on which
6 the secured party is willing to accept collateral in full or partial satisfaction of the
7 obligation it secures.

8 (b) A secured party may accept collateral in full or partial satisfaction of the
9 obligation it secures only if:

10 (1) the debtor consents to the acceptance under subsection (d);

11 (2) the secured party does not receive, within the time set forth in
12 subsection (e), a notification of objection to the proposal authenticated by

13 (A) a person to which the secured party was required to send a
14 proposal under Section 9-619; or

15 (B) any other person holding an interest in the collateral subordinate
16 to the security interest that is the subject of the proposal; and

17 (3) if the collateral is consumer goods, the collateral is not in the
18 possession of the debtor when the debtor consents to the acceptance.

19 (c) A purported or apparent acceptance of collateral under this section is
20 ineffective unless:

21 (1) the secured party consents to the acceptance in an authenticated
22 record or sends to the debtor a proposal; and

1 (2) the conditions of subsection (b) are met.

2 (d) For purposes of this section:

3 (1) a debtor consents to an acceptance of collateral in partial satisfaction
4 of the obligation it secures only if the debtor agrees to the terms of the acceptance
5 in a record authenticated after default; and

6 (2) a debtor consents to an acceptance of collateral in full satisfaction of
7 the obligation it secures only if the debtor agrees to the terms of the acceptance in a
8 record authenticated after default or the secured party:

9 (A) sends to the debtor after default a proposal that is unconditional
10 or subject only to a condition that collateral not in the possession of the secured
11 party be preserved or maintained;

12 (B) in the proposal, proposes to accept collateral in full satisfaction
13 of the obligation it secures; and

14 (C) does not receive a notification of objection authenticated by the
15 debtor within 20 days after the proposal is sent.

16 (e) To be effective under subsection (b)(2), a notification of objection must
17 be received by the secured party:

18 (1) in the case of a person to which the proposal was sent pursuant to
19 Section 9-619, within 20 days after notification was sent to that person; and

20 (2) in other cases:

21 (A) within 20 days after the last notification was sent pursuant to
22 Section 9-619; or

1 (B) if a notification was not sent, before the debtor consents to the
2 acceptance under subsection (d).

3 (f) A secured party that has taken possession of collateral shall dispose of
4 the collateral pursuant to Section 9-610 within the time specified in subsection (g)
5 if:

6 (1) If 60 percent of the cash price has been paid in the case of a purchase
7 money security interest in consumer goods; or

8 (2) 60 percent of the principal amount of the obligation secured has been
9 paid in the case of another security interest in consumer goods~~[, and the debtor has~~
10 ~~not consented to an acceptance,]~~ a secured party that has taken possession of
11 collateral shall dispose of the collateral pursuant to Section 9-610. (g) To

12 comply with subsection (f), the secured party shall dispose of the collateral:

13 _____ (1) within 90 days after taking possession; or

14 (2) within any [extended] [longer] period to which the debtor and all
15 secondary obligors have agreed by [signing] [authenticating] a statement to that
16 effect after default.

17 **SECTION 9-619. NOTIFICATION OF PROPOSAL TO ACCEPT**
18 **COLLATERAL.**

19 (a) ~~A secured party that desires to accept collateral in partial satisfaction of~~
20 ~~the obligation it secures shall send its proposal to any secondary obligor and a A~~

1 secured party that desires to accept collateral in full or partial satisfaction of the
2 obligation it secures shall send its proposal ~~also~~ to:

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

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

9 (A) identified the collateral;

10 (B) was indexed under the debtor's name as of that date; and

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

13 (3) any other secured party that, [] days before the debtor consented to
14 the acceptance, held a security interest in the collateral perfected by compliance
15 with a statute or treaty described in Section 9-309A(a).

16 (b) A secured party that desires to accept collateral in partial satisfaction of
17 the obligation it secures shall send its proposal to any secondary obligor in addition
18 to the persons described in subsection (a).

19 **SECTION 9-620. EFFECT OF ACCEPTANCE OF COLLATERAL.**

20 (a) A secured party's acceptance of collateral in full or partial satisfaction
21 of the obligation it secures:

- 1 (1) discharges the obligation to the extent consented to by the debtor,
2 but recovery of a deficiency is subject to Section 9-625;
- 3 (2) transfers to the secured party all of a debtor's rights in the collateral;
- 4 (3) discharges the security interest or agricultural lien that is the subject
5 of the debtor's consent and any subordinate security interest or other lien; and
- 6 (4) terminates any other subordinate interest.
- 7 (b) A subordinate interest is discharged or terminated under subsection (a)
8 whether or not the secured party is required to send or does send its proposal to the
9 holder of the interest. However, any person to which the secured party was
10 required to send, but did not send, its proposal has the remedy provided by Section
11 9-624(b).

12 **SECTION 9-621. RIGHT TO REDEEM COLLATERAL.**

13 (a) The debtor, any secondary obligor, or any other secured party or
14 lienholder may redeem the collateral.

15 (b) To redeem collateral, a person must tender:

16 (1) fulfillment of all obligations secured by the collateral; and

17 (2) the reasonable expenses and attorney's fees described in Section 9-
18 614(b)(1).

19 (c) A redemption may occur at ~~At~~ any time before a secured party:

20 (1) has collected collateral under Section 9-607;

1 (1) 60 percent of the cash price has been paid in the case of a purchase
2 money security interest in consumer goods; or

3 (2) 60 percent of the principal amount of the obligation secured has been
4 paid in the case of another consumer goods secured transaction.

5 (b) To cure a default under subsection (a), a person must tender:

6 (1) ~~a by tendering~~ the unpaid amount of the secured obligation due at the
7 time of tender, without acceleration, including charges for delinquency, default, or
8 deferral; and

9 (2) reasonable expenses and attorney's fees of the type described in
10 Section 9-614(b)(1).

11 (c) ~~(b)~~ A tender of payment under subsection ~~(a)~~ (b) is ineffective to cure a
12 default or reinstate a secured obligation unless made before the later of:

13 (1) 21 days after the secured party sends a notification of disposition
14 under Section 9-611(b) to the debtor and any consumer obligor who is a secondary
15 obligor; and

16 (2) the time the secured party:

17 (A) disposes of collateral or enters into a contract for its disposition
18 under Section 9-610; or

19 (B) accepts collateral in full or partial satisfaction of the obligation it
20 secures under Section 9-618.

21 (d) ~~(c)~~ A tender of payment under subsection ~~(a)~~ (b) restores to the debtor
22 and a consumer obligor who is a secondary obligor their respective rights as if the

1 default had not occurred and all payments had been made when scheduled,
2 including the debtor's right, if any, to possess the collateral. Promptly upon the
3 tender, the secured party shall take all steps necessary to cause any judicial process
4 affecting the collateral to be vacated and any pending action based on the default to
5 be dismissed.

6 (e) ~~(d)~~ A secured obligation may be reinstated under ~~subsection (a)~~ this
7 section only once.

8 **SECTION 9-623. WAIVER.**

9 (a) Subject to subsection (c), a debtor, [a] secondary obligor, or [a]
10 consumer obligor in a consumer goods secured transaction may waive the right to
11 notification of disposition of collateral under Section 9-611, the right to redeem the
12 collateral under Section 9-621, or the right to reinstate a secured obligation under
13 Section 9-622 only by ~~signing~~ authenticating a record containing a statement to that
14 effect after default.

15 (b) Subject to subsection (c), a consumer obligor in a consumer goods
16 secured transaction may waive the obligor's rights and the secured party's duties
17 under Section 9-618 or 9-619 only by ~~signing~~ authenticating a record containing a
18 statement to that effect after default.

19 [(c) In a consumer goods secured transaction, a statement authenticated by
20 the debtor or a consumer obligor is ineffective under subsection (a) or (b) unless the

1 secured party establishes by clear and convincing evidence that the debtor or
2 consumer obligor expressly agreed to its terms.]

3 [SUBPART 2. NONCOMPLIANCE WITH ARTICLE.]

4 **SECTION 9-624. REMEDIES FOR SECURED PARTY'S FAILURE TO**
5 **COMPLY WITH THIS ARTICLE.**

6 (a) If it is established that a secured party is not proceeding in accordance
7 with this article, a court may order or restrain collection, enforcement, or
8 disposition of collateral on appropriate terms and conditions.

9 (b) A secured party is liable for damages in the amount of any loss caused
10 by a failure to comply with this article. Loss caused by a failure to comply with a
11 request under Section 9-209 may include loss resulting from the debtor's inability
12 to obtain, or increased costs of, alternative financing.

13 (c) Except as otherwise provided in Section 9-627, a person that, at the time
14 of the failure, was a debtor, was a secondary obligor, or held a security interest in or
15 other lien on the collateral has a right to recover damages for its loss under this
16 subsection. A debtor whose deficiency is eliminated under Section 9-625 may
17 recover damages for the loss of any surplus. However, but a debtor or consumer
18 obligor whose deficiency is eliminated or reduced under Section 9-625 may not
19 otherwise recover under this subsection for noncompliance with [Sections 9-607

1 through 9-614A] [the provisions of this part relating to collection, enforcement,
2 disposition, or acceptance].

3 (d e) Except as otherwise provided in Section 9-627, in a consumer goods
4 secured transaction, a person that was a debtor at the time a secured party failed to
5 comply with this part has a right to recover from the noncomplying secured party an
6 amount equal to the interest or finance charges plus 10 percent of the principal
7 amount of the obligation less the sum of:

8 (1) any amount by which any consumer obligor's personal liability for a
9 deficiency is eliminated or reduced under Section 9-625; and

10 (2) any amount ~~for which awarded against the secured party is liable~~
11 under subsection (b).

12 (e d) The secured party has the burden of establishing the amount of any
13 deduction under paragraph (d)(1). ~~(e)(1)~~.

14 (f e) The debtor, consumer obligor, or requestor, as applicable, may recover
15 \$500 in each case and, in addition, any damages recoverable under subsection (b)
16 from:

17 (1) a ~~A~~ secured party that fails to comply with Section 9-208;

18 (2) a person that, without reasonable excuse, fails to comply with a
19 request under Section 9-209;

20 (3) a person that files a record that the person is not entitled to file under
21 Section 9-508(a);

1 (4) a secured party that fails to cause the secured party of record to file
2 or send a termination statement as required by Section 9-511(b) or ~~(c)~~; (d);

3 (5) a secured party that fails to comply with Section 9-614A(c)(1) and
4 whose failure is part of a pattern, or consistent with a practice, of noncompliance;
5 or

6 (6) a secured party that fails to comply with Section 9-614A(c)(2) is
7 ~~liable to the debtor, consumer obligor, or requestor, as applicable, in each case for~~
8 ~~\$500 and, in addition, for any damages under subsection (b).~~

9 ~~(g f) A person that, without reasonable excuse, fails to comply with a~~
10 ~~request under Section 9-209 is liable to the debtor for \$500, for damages in the~~
11 ~~amount of any loss resulting from the debtor's inability to obtain, or increased costs~~
12 ~~of, alternative financing, and, in addition, for any damages under subsection (b). A~~
13 ~~recipient of a request under Section 9-209 which never claimed an interest in the~~
14 ~~collateral or obligations that are the subject of a request under that section has a~~
15 ~~reasonable excuse for failure to comply with the request within the meaning of~~
16 ~~subsection (f).~~

17 ~~(h g) If a secured party fails~~ As against a person reasonably misled by a
18 ~~secured party's failure~~ to comply with a request regarding a list of collateral or a
19 statement of account under Section 9-209, the secured party may claim a security
20 interest only as shown in the statement contained in the request as against a person
21 that is reasonably misled by the failure.

2 **Change from Prior Draft:**

3 A. Subsection (d)(2) has been revised to make clear that proof of actual
4 damages, if any, is not a condition precedent to recovery of statutory damages. A
5 deduction from damages calculated under the statutory formula is to be made only
6 if the amount of actual damages is shown and actually awarded.

7 B. Comment 7 has been revised to address the relationship between
8 subsection (d) and damages for tort liability for conduct constitutes a breach of the
9 peace in violation of Section 9-609.

10 * * *

11 **4. Damages for Noncompliance with this Article.** Subsection (b) sets
12 forth the basic remedy for failure to comply with the requirements of this Article: a
13 damage recovery in the amount of loss caused by the noncompliance. This
14 subsection affords a remedy to any aggrieved person that is a secondary obligor or
15 that holds a competing security interest or lien, regardless of whether the aggrieved
16 person is entitled to notification under Part 6. The remedy is available even to
17 holders of senior security interests and liens. The exercise of this remedy is subject
18 to the normal rules of pleading and proof. A person that has delegated the duties of
19 a secured party but that remains obligated to perform them is liable under this
20 subsection. The last sentence of subsection (c) eliminates the possibility of double
21 recovery or other over-compensation arising out of noncompliance with [Sections
22 9-607 through 9-614A] [the provisions of this part relating to collection,
23 enforcement, disposition, or acceptance]. Assuming no double recovery, a debtor
24 whose deficiency is reduced or eliminated under Section 9-625 can pursue a claim
25 for a surplus.

26 Damages for the violation the requirements of this article, including
27 Section 9-609, are those reasonably calculated to put an eligible claimant in the
28 position that it would have occupied had no violation occurred. See Section 1-106.
29 For example, assume that a secured party commits a breach of the peace that
30 enables it to obtain possession of collateral following an actual default. Assume
31 further that in the absence of the breach of the peace, the secured party could have
32 obtained possession through judicial proceedings three weeks later than the time
33 that it actually took possession. Under these circumstances, the debtor should be
34 compensated for the value of the use of the collateral for the three-week period.
35 Assume, alternatively, that the secured party commits a breach of peace during a
36 while wrongfully taking possession of the collateral (i.e., wrongfully, because no
37 default had occurred). Following its taking possession, the secured party sells the
38 collateral. The collateral now has vanished. These circumstances warrant the

1 debtor's recovery of the entire value of the collateral. In neither of these cases,
2 however, is the debtor precluded from claiming a different measure of damages in
3 tort. Although subsection (b) supports the recovery of actual damages for
4 committing a breach of the peace in violation of Section 9-609, principles of tort
5 law supplement this Section. See Section 1-103.

6 * * *

7 **7. Minimum Damages in Consumer Goods Secured Transactions.**

8 Subsection (d) provides a minimum damage recovery for debtors in a consumer
9 goods secured transaction. It is designed to insure that every noncompliance with
10 the requirements of Part 6 results in liability, regardless of any injury that may have
11 resulted. If an aggrieved person is awarded damages under subsection (b) or a
12 reduction of personal liability for a deficiency under Section 9-625, those amounts
13 are deducted from the amount available under this subsection. Damages based on
14 another theory, such as a tort claim for a breach of the peace, need not be deducted,
15 however. See Comment 4. Regarding calculation of the principal amount of the
16 obligation for purposes of this subsection, see the Comments to Section 9-622.

17 **Alternative A**

18 **(“Absolute Bar” Rule for Consumer Goods Secured Transactions;**

19 **“Rebuttable Presumption” Rule for Other Transactions)**

20 **SECTION 9-625. ACTION IN WHICH DEFICIENCY OR SURPLUS IS**
21 **IN ISSUE.**

22 (a) This section applies in ~~in~~ an action in which the amount of a deficiency
23 or surplus is in issue, ~~the following rules apply:~~

24 (b) A secured party need not prove ~~establish~~ compliance with [Sections
25 9-607 through 9-614A] [the provisions of this part relating to collection,
26 enforcement, disposition, or acceptance] unless the debtor or a secondary obligor
27 places the secured party's compliance in issue. If the secured party's compliance is
28 placed in issue ~~In that case~~, the secured party has the burden of establishing that the

1 collection, enforcement, disposition, or acceptance was conducted in accordance
2 with [Sections 9-607 through 9-614A, as applicable] [the applicable provisions of
3 this part].

4 (c) Except as otherwise provided in Section 9-627, if a secured party fails
5 to prove that the collection, enforcement, disposition, or acceptance was conducted
6 in accordance with [Sections 9-607 through 9-614A] [the provisions of this part
7 relating to collection, enforcement, disposition, or acceptance] the following rules
8 apply:

9 (1) In a consumer goods secured transaction for which no other property
10 remains to secure the obligation, neither the debtor nor a secondary obligor is liable
11 for a deficiency.

12 (2) In other cases, the liability of a debtor or a secondary obligor for a
13 deficiency is limited to an amount by which the sum of the secured obligation,
14 expenses, and attorney's fees exceeds the greater of:

15 (A) the proceeds of the collection, enforcement, disposition, or
16 acceptance; or

17 (B) the amount of proceeds that would have been realized had the
18 noncomplying secured party proceeded in accordance with [Sections 9-607 through
19 9-614A] [the provisions of this part relating to collection, enforcement, disposition,
20 or acceptance].

21 (d) For purposes of subsection (c)(2)(B), However, the amount of proceeds
22 that would have been realized is equal to the sum of the secured obligation,

1 expenses, and attorney’s fees unless the secured party proves that the amount is less
2 than that sum.

3 (e) In a consumer goods secured transaction, liability under ~~paragraph (2)~~
4 subsection (c)(2) is not a personal liability of a consumer obligor but may be
5 satisfied only by enforcing a security interest or other consensual lien against
6 property securing the obligation.

7 **Alternative B**
8 **(“Rebuttable Presumption” Rule for All Transactions)**

9 **SECTION 9-625. ACTION IN WHICH DEFICIENCY OR SURPLUS IS**
10 **IN ISSUE.**

11 (a) This section applies in ~~in~~ an action in which the amount of a deficiency
12 or surplus is in issue, ~~the following rules apply:~~

13 (b) A secured party need not ~~establish~~ prove compliance with [Sections
14 9-607 through 9-614A] [the provisions of this part relating to collection,
15 enforcement, disposition, or acceptance] unless the debtor or a secondary obligor
16 places the secured party's compliance in issue. If the secured party’s compliance is
17 placed in issue ~~In that case~~, the secured party has the burden of establishing that the
18 collection, enforcement, disposition, or acceptance was conducted in accordance
19 with [Sections 9-607 through 9-614A, as applicable] [the applicable provisions of
20 this part].

21 (c) Except as otherwise provided in Section 9-627, if a secured party fails
22 to prove that the collection, enforcement, disposition, or acceptance was conducted

1 in accordance with [Sections 9-607 through 9-614A,] [the provisions of this part
2 relating to collection, enforcement, disposition, or acceptance,] the liability of a
3 debtor or a secondary obligor for a deficiency is limited to an amount by which the
4 sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

5 (1) the proceeds of the collection, enforcement, disposition, or
6 acceptance; or

7 (2) the amount of proceeds that would have been realized had the
8 noncomplying secured party proceeded in accordance with [Sections 9-607 through
9 9-614A] [the provisions of this part relating to collection, enforcement, disposition,
10 or acceptance].

11 (d) For purposes of subsection (c)(2), ~~However,~~ the amount of proceeds
12 that would have been realized is equal to the sum of the secured obligation,
13 expenses, and attorney's fees unless the secured party proves that the amount is less
14 than that sum.

15 **SECTION 9-626. DETERMINATION OF WHETHER CONDUCT WAS**
16 **COMMERCIALLY REASONABLE.**

17 (a) The fact that a greater amount could have been obtained by a collection,
18 enforcement, disposition, or acceptance at a different time or in a different method
19 from that selected by the secured party is not of itself sufficient to preclude the
20 secured party from establishing that the collection, enforcement, disposition, or
21 acceptance was made in a commercially reasonable manner.

1 (b) A disposition of collateral is made in a commercially reasonable manner
2 if the disposition is made:

3 (1) in the usual manner on any recognized market therefor;

4 (2) at the price current in any recognized market at the time of the
5 disposition; or

6 (3) otherwise in conformity with reasonable commercial practices
7 among dealers in the type of property that was the subject of the disposition.

8 (c) A collection, enforcement, disposition, or acceptance is commercially
9 reasonable if it ~~that~~ has been approved:

10 (A) in any judicial proceeding;

11 (B) ~~or~~ by any [court appointed] bona fide creditors' committee[;] [or]

12 (C) by any [court appointed] representative of creditors[; or

13 (D) by any assignee for the benefit of creditors] ~~is commercially~~
14 ~~reasonable.~~

15 (d) Approval under subsection (c) ~~However, approval~~ need not be obtained;
16 and lack of approval does not mean that the collection, enforcement, disposition, or
17 acceptance is not commercially reasonable.

1 **SECTION 9-627. NONLIABILITY AND LIMITATION ON LIABILITY**
2 **OF SECURED PARTY; LIABILITY OF SECONDARY OBLIGOR.**

3 (a) Unless a secured party knows that a person is a debtor or a secondary
4 obligor, knows the identity of the person, and knows how to communicate with the
5 person:

6 (1) the secured party is not liable to the person or to a secured party or
7 lienholder that has filed a financing statement against the person for failure to
8 comply with this article; and

9 (2) the secured party's failure to comply with this article does not affect
10 the liability of the person for a deficiency.

11 (b) A secured party is not liable to any person, and a person's liability for a
12 deficiency is not affected, because of any act or omission, other than the failure to
13 send a notification required by Section 9-611(b)(2), that occurs before the secured
14 party knows that the person is a debtor or a secondary obligor or knows that the
15 person has a security interest or other lien in the collateral.

16 (c) A secured party is not liable to any person and a person's liability for a
17 deficiency is not affected because of any act or omission arising out of the secured
18 party's reasonable belief that a transaction is not a consumer goods secured
19 transaction or a consumer secured transaction or that goods are not consumer
20 goods, if the secured party's belief is based on:

21 (1) its reasonable reliance on a debtor's representation concerning the
22 purpose for which collateral was to be used, acquired, or held; or

1 (2) an obligor's representation concerning the purpose for which a
2 secured obligation was incurred.

3 (d) A secured party is not liable to any person under Section 9-624(d)
4 ~~9-624(c)~~ if the secured party proves that its failure to comply with this part was not
5 intentional and resulted from a good-faith error notwithstanding the secured party's
6 maintenance of procedures reasonably adapted to avoid the failure. Examples of a
7 good-faith error include clerical, calculation, computer malfunction, programing,
8 and printing errors. An error of legal judgment concerning the secured party's
9 rights and duties under this part is not a good-faith error.

10 (e) The total recovery under Section 9-624(d) ~~9-624(c)~~ in a class action or a
11 series of class actions arising out of the same noncompliance by the same secured
12 party shall not be more than the lesser of \$500,000 or one percent of the net worth
13 of the secured party.

14 (f) A secured party is not liable to any person under Section 9-6024(d) ~~9-~~
15 ~~624(c)~~ for its failure to comply with Section 9-614A(c)(1).

16 **SECTION 9-628. ATTORNEY'S FEES IN CONSUMER GOODS**
17 **SECURED TRANSACTIONS.** If the secured party's compliance with this article
18 is placed in issue in an action with respect to a consumer goods secured transaction,
19 the following rules apply:

1 (1) If the secured party would have been entitled to attorney's fees as the
2 prevailing party, the court shall award to a consumer debtor or consumer obligor
3 prevailing on the issue the costs of the action and reasonable attorney's fees.

4 (2) In other cases, the court may award to a consumer debtor or consumer
5 obligor prevailing on that issue the costs of the action and reasonable attorney's
6 fees.

7 (3) In determining the attorney's fees, the amount of the recovery on behalf
8 of the prevailing consumer debtor or consumer obligor is not a controlling ~~factor~~.

1

PART 7

2

TRANSITION

3

SECTION 9-701. EFFECTIVE DATE. This [Act] takes effect

4

SECTION 9-702. SAVINGS CLAUSE.

5

[To be added]

1 **APPENDIX**

2 **SECTION 1-201. GENERAL DEFINITIONS.** Subject to additional
3 definitions contained in the subsequent Articles of this Act which are applicable to
4 specific Articles or Parts thereof, and unless the context otherwise requires, in this
5 Act:

6 * * *

7 (9) “Buyer in ordinary course of business” means a person that buys goods
8 in good faith, without knowledge that the sale violates the rights of another person
9 in the goods, and in the ordinary course from a person, other than a pawnbroker, in
10 the business of selling goods of that kind. A person buys goods in the ordinary
11 course if the sale to the person comports with the usual or customary practices in
12 the kind of business in which the seller is engaged or with the seller’s own usual or
13 customary practices. A person that sells oil, gas, or other minerals at the wellhead
14 or minehead is a person in the business of selling goods of that kind. A buyer in
15 ordinary course of business may buy for cash, by exchange of other property, or on
16 secured or unsecured credit, and may acquire goods or documents of title under a
17 pre-existing contract for sale. Only a buyer that takes possession of the goods or
18 has a right to recover the goods from the seller under Section [2-XXX] may be a
19 buyer in ordinary course of business. A person that acquires goods in a transfer in
20 bulk or as security for or in total or partial satisfaction of a money debt is not a
21 buyer in ordinary course of business.

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* * *

(32) “Purchase includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or re-issue, gift, or any other voluntary transaction creating an interest in property.

* * *

(37) “Security interest means . . . The term also includes any interest of a consignor and a buyer of accounts, chattel paper, or a payment intangible in a transaction that is subject to Article 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 2-401 is not a “security interest , but a buyer may also acquire a “security interest by complying with Article 9.

* * *

SECTION 5-118. SECURITY INTEREST OF ISSUER OR NOMINATED PERSON.

(a) An issuer or nominated person has a security interest in a document presented under a letter of credit and any identifiable proceeds of the collateral to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) Subject to subsection (c), as long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value

1 given with respect to a security interest under subsection (a), the security interest
2 continues and is subject to Article 9, but:

3 (1) a security agreement is not necessary to make the security interest
4 enforceable under Section ~~9-203(a)(1)~~; 9-203(b)(3); and

5 (2) the security interest is perfected and it has priority over conflicting
6 [perfected] security interests in the collateral or its proceeds.

7 (c) A security interest that arises under this section is subject to the rights of
8 a subsequent purchaser under Section 9-327 or [Section] 9-328 or a transferee
9 under Section 9-329.

10 **SECTION 8-102. DEFINITIONS.**

11 * * *

12 **[Marked to show changes from Official Comments]**

13 Official Comment

14 * * *

15 7. "Entitlement holder." This term designates those who hold financial
16 assets through intermediaries in the indirect holding system. Because many of the
17 rules of Part 5 impose duties on securities intermediaries in favor of entitlement
18 holders, the definition of entitlement holder is, in most cases, limited to the person
19 specifically designated as such on the records of the intermediary. The last
20 sentence of the definition covers the relatively unusual cases where a person may
21 acquire a security entitlement under Section 8-501 even though the person may not
22 be specifically designated as an entitlement holder on the records of the securities
23 intermediary.

24 A person may have an interest in a security entitlement, and may even have
25 the right to give entitlement orders to the securities intermediary with respect to it,
26 even though the person is not the entitlement holder. For example, a person who
27 holds securities through a securities account in its own name may have given
28 discretionary trading authority to another person, such as an investment adviser.

1 Similarly, the control provisions in Section 8-106 and the related provisions in
2 Article 9 are designed to facilitate transactions in which a person who holds
3 securities through a securities account uses them as collateral in an arrangement
4 where the securities intermediary has agreed that if the secured party so directs the
5 intermediary will dispose of the positions. In such arrangements, the debtor
6 remains the entitlement holder but has agreed that the secured party can initiate
7 entitlement orders. Moreover, an entitlement holder may be acting for another
8 person as a nominee, agent, trustee, or in another capacity. Unless the entitlement
9 holder is itself acting as a securities intermediary for the other person, in which case
10 the other person would be an entitlement holder with respect to the securities
11 entitlement, the relationship between an entitlement holder and another person for
12 whose benefit the entitlement holder holds a securities entitlement is governed by
13 other law.

14 8. "Entitlement order." This term is defined as a notification communicated
15 to a securities intermediary directing transfer or redemption of the financial asset to
16 which an entitlement holder has a security entitlement. The term is used in the
17 rules for the indirect holding system in a fashion analogous to the use of the terms
18 "indorsement" and "instruction" in the rules for the direct holding system. If a
19 person directly holds a certificated security in registered form and wishes to transfer
20 it, the means of transfer is an indorsement. If a person directly holds an
21 uncertificated security and wishes to transfer it, the means of transfer is an
22 instruction. If a person holds a security entitlement, the means of disposition is an
23 entitlement order. An entitlement order includes a direction under Section 8-508 to
24 the securities intermediary to transfer a financial asset to the account of the
25 entitlement holder at another financial intermediary or to cause the financial asset to
26 be transferred to the entitlement holder in the direct holding system (e.g., the
27 delivery of a securities certificate registered in the name of the former entitlement
28 holder). As noted in Comment 7, an entitlement order need not be initiated by the
29 entitlement holder in order to be effective, so long as the entitlement holder has
30 authorized the other party to initiate entitlement orders. See Section 8-107(b).

31 **SECTION 8-106. CONTROL.**

32 (a) A purchaser has "control" of a certificated security in bearer form if the
33 certificated security is delivered to the purchaser.

34 (b) A purchaser has "control" of a certificated security in registered form if
35 the certificated security is delivered to the purchaser, and:

1 (1) the certificate is indorsed to the purchaser or in blank by an effective
2 indorsement; or

3 (2) the certificate is registered in the name of the purchaser, upon
4 original issue or registration of transfer by the issuer.

5 (c) A purchaser has "control" of an uncertificated security if:

6 (1) the uncertificated security is delivered to the purchaser; or

7 (2) the issuer has agreed that it will comply with instructions originated
8 by the purchaser without further consent by the registered owner.

9 (d) A purchaser has "control" of a security entitlement if[
10

(1) the purchaser becomes the entitlement holder;] ~~or~~

11 [(1)] [(2)] the securities intermediary has agreed that it will comply with
12 entitlement orders originated by the purchaser without further consent by the
13 entitlement holder; or

14 _____ [(2)] [(3)] another person has control of the security entitlement on
15 behalf of the purchaser or, having previously acquired control of the security
16 entitlement, acknowledges that it has control on behalf of the purchaser.

17 (e) If an interest in a security entitlement is granted by the entitlement
18 holder to the entitlement holder's own securities intermediary, the securities
19 intermediary has control.

20 (f) A purchaser who has satisfied the requirements of subsection (c)(2) or
21 (d)[(1)][(2)] has control even if the registered owner in the case of subsection
22 (c)(2) or the entitlement holder in the case of subsection (d)[(1)][(2)] retains the

1 right to make substitutions for the uncertificated security or security entitlement, to
2 originate instructions or entitlement orders to the issuer or securities intermediary,
3 or otherwise to deal with the uncertificated security or security entitlement.

4 (g) An issuer or a securities intermediary may not enter into an agreement
5 of the kind described in subsection (c)(2) or (d)~~[(1)]~~[(2)] without the consent of the
6 registered owner or entitlement holder, but an issuer or a securities intermediary is
7 not required to enter into such an agreement even though the registered owner or
8 entitlement holder so directs. An issuer or securities intermediary that has entered
9 into such an agreement is not required to confirm the existence of the agreement to
10 another party unless requested to do so by the registered owner or entitlement
11 holder.

12 Reporters' Comments

13 **Discussion Question:** Should the substance of subsection (f) be made
14 applicable to situations in which control of collateral is obtained by a method other
15 than those specified in that subsection?

16 Changes From Prior Draft:

17 A. During its November, 1997, meeting the Drafting Committee asked us
18 to revise the draft by deleting the means of obtaining control specified in subsection
19 (d)(1), if we could do so without changing the meaning of the statute. We have
20 placed subsection (d)(1) in square brackets. The revised Official Comment below
21 assumes that subsection (d)(1) will be deleted.

22 B. New paragraph [(2)] [(3)] is intended to clarify current law, under which
23 there is no plausible basis for preventing a person from acting effectively for
24 another person in obtaining control over a security entitlement. The new paragraph
25 provides a statutory structure parallel to that for delivery of certificated securities
26 and uncertificated securities under Section 8-301.

1 [Revised] Official Comment
2 [Marked to show changes from Official Comment]

3 1. The concept of "control" plays a key role in various provisions dealing
4 with the rights of purchasers, including secured parties. See Sections 8-303
5 (protected purchasers); 8-503(e) (purchasers from securities intermediaries); 8-510
6 (purchasers of security entitlements from entitlement holders); ~~9-115(4)~~ 9-312
7 (perfection of security interests); ~~9-115(5)~~ 9-324 (priorities among conflicting
8 security interests).

9 Obtaining "control" means that the purchaser has taken whatever steps are
10 necessary, given the manner in which the securities are held, to place itself in a
11 position where it can have the securities sold, without further action by the owner.

12 * * *

13 Example 8. Able & Co. a securities dealer, holds a wide range of securities
14 through its account at Clearing Corporation. Able enters into an arrangement
15 with Alpha Bank pursuant to which Alpha provides financing to Able secured
16 by securities identified as the collateral on lists provided by Able to Alpha on a
17 daily or other periodic basis. Able, Alpha, and Clearing Corporation enter into
18 an agreement under which Clearing Corporation agrees that if at any time Alpha
19 directs Clearing Corporation to do so, Clearing Corporation will transfer any
20 securities from Able's account at Alpha's instructions. Because Clearing
21 Corporation has agreed to act on Alpha's instructions with respect to any
22 securities carried in Able's account, at the moment that Alpha's security interest
23 attaches to securities listed by Able, Alpha obtains control of those securities
24 under subsection (d)~~(2)~~. There is no requirement that Clearing Corporation be
25 informed of which securities Able has pledged to Alpha.

26 * * *

27 4. Subsection (d) specifies the means by which a purchaser can obtain
28 control over a security entitlement. ~~Two mechanisms are possible, analogous to~~
29 ~~those provided in subsection (c) for uncertificated securities. Under subsection~~
30 ~~(d)(1), a purchaser has control if it is the entitlement holder. This subsection would~~
31 ~~apply whether the purchaser holds through the same intermediary that the debtor~~
32 ~~used, or has the securities position transferred to its own intermediary.~~

33 ~~Subsection (d)(2) It~~ provides that a purchaser has control if the securities
34 intermediary has agreed to act on entitlement orders originated by the purchaser if
35 no further consent by the entitlement holder is required. Control may be achieved
36 whether or not, ~~even though~~ the original entitlement holder ~~transferor~~ remains
37 ~~listed~~ as the entitlement holder. This section specifies only the minimum

1 requirements that such an arrangement must meet to confer "control"; the details of
2 the arrangement can be specified by agreement. The arrangement might cover all of
3 the positions in a particular account or subaccount, or only specified positions.
4 There is no requirement that the control party's right to give entitlement orders be
5 exclusive. The arrangement might provide that only the control party can give
6 entitlement orders, or that either the entitlement holder or the control party can give
7 entitlement orders. See subsection (f).

8 The following examples illustrate the application of rules of subsection (d):

9 Example 1. Debtor grants Alpha Bank a security interest in a security
10 entitlement that includes 1000 shares of XYZ Co. stock that Debtor holds
11 through an account with Able & Co. Alpha also has an account with Able.
12 Debtor instructs Able to transfer the shares to Alpha, and Able does so by
13 crediting the shares to Alpha's account. Alpha has control of the 1000 shares
14 under subsection (d). Although Debtor remains the beneficial owner of the
15 securities entitlement as between Debtor and Alpha, Able has agreed to act on
16 Alpha's entitlement orders because, as between Able and ~~(1)~~, because Alpha,
17 Alpha has become is the entitlement holder. See Section 8-506.

18 Example 2. Debtor grants Alpha Bank a security interest in a security
19 entitlement that includes 1000 shares of XYZ Co. stock that Debtor holds
20 through an account with Able & Co. Alpha does not have an account with
21 Able. Alpha uses Beta as its securities custodian. Debtor instructs Able to
22 transfer the shares to Beta, for the account of Alpha, and Able does so. Alpha
23 has control of the 1000 shares under subsection (d). As in Example 1, although
24 Debtor remains the beneficial owner of the securities entitlement as between
25 Debtor and Alpha, Beta has agreed to act on Alpha's entitlement orders
26 because, as between Beta and Alpha, ~~(1)~~, because Alpha has become is the
27 entitlement holder.

28 Example 3. Debtor grants Alpha Bank a security interest in a security
29 entitlement that includes 1000 shares of XYZ Co. stock that Debtor holds
30 through an account with Able & Co. Debtor, Able, and Alpha enter into an
31 agreement under which Debtor will continue to receive dividends and
32 distributions, and will continue to have the right to direct dispositions, but
33 Alpha also has the right to direct dispositions. Alpha has control of the 1000
34 shares under subsection (d)~~(2)~~.

35 Example 4. Able & Co., a securities dealer, grants Alpha Bank a security
36 interest in a security entitlement that includes 1000 shares of XYZ Co. stock
37 that Able holds through an account with Clearing Corporation. Able causes
38 Clearing Corporation to transfer the shares into Alpha's account at Clearing

1 Corporation. As in Example 1, Alpha has control of the 1000 shares under
2 subsection (d)(~~1~~).

3 Example 5. Able & Co., a securities dealer, grants Alpha Bank a security
4 interest in a security entitlement that includes 1000 shares of XYZ Co. stock
5 that Able holds through an account with Clearing Corporation. Alpha does not
6 have an account with Clearing Corporation. It holds its securities through Beta
7 Bank, which does have an account with Clearing Corporation. Able causes
8 Clearing Corporation to transfer the shares into Beta's account at Clearing
9 Corporation. Beta credits the position to Alpha's account with Beta. As in
10 Example 2, Alpha has control of the 1000 shares under subsection (d)(~~1~~).

11 Example 6. Able & Co. a securities dealer, grants Alpha Bank a security
12 interest in a security entitlement that includes 1000 shares of XYZ Co. stock
13 that Able holds through an account with Clearing Corporation. Able causes
14 Clearing Corporation to transfer the shares into a pledge account, pursuant to an
15 agreement under which Able will continue to receive dividends, distributions,
16 and the like, but Alpha has the right to direct dispositions. As in Example 3,
17 Alpha has control of the 1000 shares under subsection (d)(~~2~~).

18 Example 7. Able & Co. a securities dealer, grants Alpha Bank a security
19 interest in a security entitlement that includes 1000 shares of XYZ Co. stock
20 that Able holds through an account with Clearing Corporation. Able, Alpha,
21 and Clearing Corporation enter into an agreement under which Clearing
22 Corporation will act on instructions from Alpha with respect to the XYZ Co.
23 stock carried in Able's account, but Able will continue to receive dividends,
24 distributions, and the like, and will also have the right to direct dispositions. As
25 in Example 3, Alpha has control of the 1000 shares under subsection (d)(~~2~~).

26 Example 8. Able & Co. a securities dealer, holds a wide range of securities
27 through its account at Clearing Corporation. Able enters into an arrangement
28 with Alpha Bank pursuant to which Alpha provides financing to Able secured
29 by securities identified as the collateral on lists provided by Able to Alpha on a
30 daily or other periodic basis. Able, Alpha, and Clearing Corporation enter into
31 an agreement under which Clearing Corporation agrees that if at any time Alpha
32 directs Clearing Corporation to do so, Clearing Corporation will transfer any
33 securities from Able's account at Alpha's instructions. Because Clearing
34 Corporation has agreed to act on Alpha's instructions with respect to any
35 securities carried in Able's account, at the moment that Alpha's security interest
36 attaches to securities listed by Able, Alpha obtains control of those securities
37 under subsection (d)(~~2~~). There is no requirement that Clearing Corporation be
38 informed of which securities Able has pledged to Alpha.

1 Example 9. Debtor grants Alpha Bank a security interest in a security
2 entitlement that includes 1000 shares of XYZ Co. stock that Debtor holds
3 through an account with Able & Co. Beta Bank agrees with Alpha to act as
4 Alpha's collateral agent with respect to the security entitlement. Debtor, Able,
5 and Beta enter into an agreement under which Debtor will continue to receive
6 dividends and distributions, and will continue to have the right to direct
7 dispositions, but Beta also has the right to direct dispositions. Because Able has
8 agreed that it will comply with entitlement orders originated by Beta without
9 further consent by Alpha, Beta has control of the security entitlement (see
10 Example 3). Because Beta has control on behalf of Alpha, Alpha also has
11 control under subsection (d)(2). It is not necessary for Able to enter into an
12 agreement directly with Alpha or for Able to be aware of Beta's agency
13 relationship with Alpha.

14 5. For a purchaser to have "control" under subsection (c)(2) or (d)~~(2)~~, it is
15 essential that the issuer or securities intermediary, as the case may be, actually be a
16 party to the agreement. If a debtor gives a secured party a power of attorney
17 authorizing the secured party to act in the name of the debtor, but the issuer or
18 securities intermediary does not specifically agree to this arrangement, the secured
19 party does not have "control" within the meaning of subsection (c)(2) or (d)~~(2)~~
20 because the issuer or securities intermediary is not a party to the agreement. The
21 secured party does not have control under subsection (c)(1) or (d)~~(1)~~ because,
22 although the power of attorney might give the secured party authority to act on the
23 debtor's behalf as an agent, the secured party has not actually become the registered
24 owner or entitlement holder.

25 * * *

26 7. The term "control" is used in a particular defined sense. The
27 requirements for obtaining control are set out in this section. The concept is not to
28 be interpreted by reference to similar concepts in other bodies of law. In particular,
29 the requirements for "possession" derived from the common law of pledge are not
30 to be used as a basis for interpreting subsection (c)(2) or (d)~~(2)~~. Those provisions
31 are designed to supplant the concepts of "constructive possession" and the like. A
32 principal purpose of the "control" concept is to eliminate the uncertainty and
33 confusion that results from attempting to apply common law possession concepts to
34 modern securities holding practices.

35 The key to the control concept is that the purchaser has the ~~present~~ ability to
36 have the securities sold or transferred without further action by the transferor.
37 There is no requirement that the powers held by the purchaser be exclusive. For
38 example, in a secured lending arrangement, if the secured party wishes, it can allow
39 the debtor to retain the right to make substitutions, ~~or~~ to direct the disposition of the

1 uncertificated security or security entitlement, or otherwise to give instructions or
2 entitlement orders. (As explained in Section 8-102, Comment 8, an entitlement
3 order includes a direction under Section 8-508 to the securities intermediary to
4 transfer a financial asset to the account of the entitlement holder at another financial
5 intermediary or to cause the financial asset to be transferred to the entitlement
6 holder in the direct holding system (e.g., by delivery of a securities certificate
7 registered in the name of the former entitlement holder).) Subsection (f) is included
8 to make clear the general point stated in subsections (c) and (d) that the test of
9 control is whether the purchaser has obtained the requisite power, not whether the
10 debtor has retained other powers. There is no implication that retention by the
11 debtor of powers other than those mentioned in subsection (f) is inconsistent with
12 the purchaser having control. Nor is there a requirement that the purchaser's
13 powers be unconditional, provided that further consent of the entitlement holder is
14 not a condition. For example, a securities intermediary could agree to act on the
15 instructions of a senior secured party and a junior secured party. In that case each
16 secured party would have "control. In particular, the junior secured party would
17 have control notwithstanding a term of the securities intermediary's agreement
18 providing that its obligation to act on the junior's entitlement orders is conditioned
19 on the senior's consent. Again, the crucial distinction is that the securities
20 intermediary's agreement is not conditioned on the entitlement holder's further
21 consent. In many situations, however, it will be better practice for both the
22 securities intermediary and the purchaser to insist that any conditions relating in any
23 way to the entitlement holder be effective only as between the purchaser and the
24 entitlement holder. That would avoid the risk that the securities intermediary could
25 be caught between conflicting assertions of the entitlement holder and the purchaser
26 as to whether the conditions in fact have been met. Nonetheless, the existence of
27 unfulfilled conditions effective against the intermediary would not preclude the
28 purchaser from having control.

29 **SECTION 8-110. APPLICABILITY; CHOICE OF LAW.**

30 **[Marked to reflect changes from former text]**

31 * * *

32 (e) The following rules determine a "securities intermediary's jurisdiction"
33 for purposes of this section:

34 (1) If an agreement between the securities intermediary and its
35 entitlement holder expressly provides ~~specifies that it is governed by the law of a~~

1 ~~particular jurisdiction~~ the securities intermediary's jurisdiction for purposes of this
2 part, this article, or this act, that jurisdiction is the securities intermediary's
3 jurisdiction.

4 (2) If paragraph (1) does not apply and an agreement between the
5 securities intermediary and entitlement holder expressly provides that it is governed
6 by the law of a particular jurisdiction, that jurisdiction is the securities
7 intermediary's jurisdiction.

8 (3) ~~(2)~~ If neither paragraph (i) nor paragraph (ii) applies and an
9 agreement between the securities intermediary and its entitlement holder does not
10 specify the governing law as provided in paragraph (1), but expressly provides
11 specifies that the securities account is maintained at an office in a particular
12 jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

13 (4) ~~(3)~~ If none of paragraph (i), (ii), or (iii) applies an agreement
14 between the securities intermediary and its entitlement holder does not specify a
15 jurisdiction as provided in paragraph (1) or (2), the securities intermediary's
16 jurisdiction is the jurisdiction in which is located the office identified in an account
17 statement as the office serving the entitlement holder's account.

18 (5) ~~(4)~~ If none of the other paragraphs applies an agreement between the
19 securities intermediary and its entitlement holder does not specify a jurisdiction as
20 provided in paragraph (1) or (2) and an account statement does not identify an
21 office serving the entitlement holder's account as provided in paragraph (3), the

1 securities intermediary's jurisdiction is the jurisdiction in which is located the chief
2 executive office of the securities intermediary.

3 (f) A securities intermediary's jurisdiction is not determined by the physical
4 location of certificates representing financial assets, or by the jurisdiction in which
5 is organized the issuer of the financial asset with respect to which an entitlement
6 holder has a security entitlement, or by the location of facilities for data processing
7 or other record keeping concerning the account.

8 **Reporters' Comments**

9 This section has been revised to provide more flexibility for the parties to
10 select the security intermediary's jurisdiction. See also Sections 9-304(b) (bank's
11 jurisdiction); 9-305(a)(5) (commodity intermediary's jurisdiction).

12 **SECTION 8-302. RIGHTS OF PURCHASER.**

13 (a) Except as otherwise provided in subsections (b) and (c), a purchaser
14 ~~upon delivery of a certificated or uncertificated security to a purchaser, the~~
15 ~~purchaser~~ acquires all rights in the security that the transferor had or had power to
16 transfer.

17 (b) A purchaser of a limited interest acquires rights only to the extent of the
18 interest purchased.

19 (c) A purchaser of a certificated security who as a previous holder had
20 notice of an adverse claim does not improve its position by taking from a protected
21 purchaser.

22 **Reporters' Comment**

1 claims. That formulation has not been used, however, for fear that it would be
2 misinterpreted as suggesting that the person acquires a right to the underlying
3 financial assets that could not be affected by the competing rights of others
4 claiming through common or higher tier intermediaries. A security entitlement is a
5 complex bundle of rights. This section does not deal with the question of what
6 rights are in the bundle. Rather, this section provides that once a person has
7 acquired the bundle, someone else cannot take it away on the basis of assertion that
8 the transaction in which the security entitlement was created involved a violation of
9 the claimant's rights.

10 2. Because securities trades are typically settled on a net basis by book-
11 entry movements, it would ordinarily be impossible for anyone to trace the path of
12 any particular security, no matter how the interest of parties who hold through
13 intermediaries is described. Suppose, for example, that S has a 1000 share position
14 in XYZ common stock through an account with a broker, Able & Co. S's identical
15 twin impersonates S and directs Able to sell the securities. That same day, B places
16 an order with Baker & Co., to buy 1000 shares of XYZ common stock. Later, S
17 discovers the wrongful act and seeks to recover "her shares." Even if S can show
18 that, at the stage of the trade, her sell order was matched with B's buy order, that
19 would not suffice to show that "her shares" went to B. Settlement between Able
20 and Baker occurs on a net basis for all trades in XYZ that day; indeed Able's net
21 position may have been such that it received rather than delivered shares in XYZ
22 through the settlement system.

23 In the unlikely event that this was the only trade in XYZ common stock
24 executed in the market that day, one could follow the shares from S's account to B's
25 account. The plaintiff in an action in conversion or similar legal action to enforce a
26 property interest must show that the defendant has an item of property that belongs
27 to the plaintiff. In this example, B's security entitlement is not the same item of
28 property that formerly was held by S, it is a new package of rights that B acquired
29 against Baker under Section 8-501. Principles of equitable remedies might,
30 however, provide S with a basis for contending that if the position B received was
31 the traceable product of the wrongful taking of S's property by S's twin, a
32 constructive trust should be imposed on B's property in favor of S. See G. Palmer,
33 *The Law of Restitution* § 2.14. Section 8-502 ensures that no such claims can be
34 asserted against a person, such as B in this example, who acquires a security
35 entitlement under Section 8-501 for value and without notice, regardless of what
36 theory of law or equity is used to describe the basis of the assertion of the adverse
37 claim.

38 In the above example, S would ordinarily have no reason to pursue B unless
39 Able is insolvent and S's claim will not be satisfied in the insolvency proceedings.
40 Because S did not give an entitlement order for the disposition of her security

1 entitlement, Able must recredit her account for the 1000 shares of XYZ common
2 stock. See Section 8-507(b).

3 3. The following examples illustrate the operation of Section 8-502.

4 Example 1. Thief steals bearer bonds from Owner. Thief delivers the
5 bonds to Broker for credit to Thief's securities account, thereby acquiring a
6 security entitlement under Section 8-501(b). Under other law, Owner may have
7 a claim to have a constructive trust imposed on the security entitlement as the
8 traceable product of the bonds that Thief misappropriated. Because Thief was
9 himself the wrongdoer, Thief obviously had notice of Owner's adverse claim.
10 Accordingly, Section 8-502 does not preclude Owner from asserting an adverse
11 claim against Thief.

12 Example 2. Thief steals bearer bonds from Owner. Thief owes a personal
13 debt to Creditor. Creditor has a securities account with Broker. Thief agrees to
14 transfer the bonds to Creditor as security for or in satisfaction of his debt to
15 Creditor. Thief does so by sending the bonds to Broker for credit to Creditor's
16 securities account. Creditor thereby acquires a security entitlement under
17 Section 8-501(b). Under other law, Owner may have a claim to have a
18 constructive trust imposed on the security entitlement as the traceable product
19 of the bonds that Thief misappropriated. Creditor acquired the security
20 entitlement for value, since Creditor acquired it as security for or in satisfaction
21 of Thief's debt to Creditor. See Section 1-201(44). If Creditor did not have
22 notice of Owner's claim, Section 8-502 precludes any action by Owner against
23 Creditor, whether framed in constructive trust or other theory. Section 8-105
24 specifies what counts as notice of an adverse claim.

25 Example 3. Father, as trustee for Son, holds XYZ Co. shares in a securities
26 account with Able & Co. In violation of his fiduciary duties, Father sells the
27 XYZ Co. shares and uses the proceeds for personal purposes. Father dies, and
28 his estate is insolvent. Assume -- implausibly -- that Son is able to trace the
29 XYZ Co. shares and show that the "same shares" ended up in Buyer's securities
30 account with Baker & Co. Section 8-502 precludes any action by Son against
31 Buyer, whether framed in constructive trust or other theory, provided that Buyer
32 acquired the security entitlement for value and without notice of adverse claims.

33 Example 4. Debtor holds XYZ Co. shares in a securities account with Able
34 & Co. As collateral for a loan from Bank, Debtor grants Bank a security
35 interest in the security entitlement to the XYZ Co. shares. Bank perfects by a
36 method which leaves Debtor with the ability to dispose of the shares. See
37 Section 9-115. In violation of the security agreement, Debtor sells the XYZ Co.
38 shares and absconds with the proceeds. Assume -- implausibly -- that Bank is

1 able to trace the XYZ Co. shares and show that the "same shares" ended up in
2 Buyer's securities account with Baker & Co. Section 8-502 precludes any
3 action by Bank against Buyer, whether framed in constructive trust or other
4 theory, provided that Buyer acquired the security entitlement for value and
5 without notice of adverse claims.

6 Example 5. Debtor owns controlling interests in various public companies,
7 including Acme and Ajax. Acme owns 60% of the stock of another public
8 company, Beta. Debtor causes the Beta stock to be pledged to Lending Bank as
9 collateral for Ajax's debt. Acme holds the Beta stock through an account with a
10 securities custodian, C Bank, which in turn holds through Clearing Corporation.
11 Lending Bank is also a Clearing Corporation participant. The pledge of the
12 Beta stock is implemented by Acme instructing C Bank to instruct Clearing
13 Corporation to debit C Bank's account and credit Lending Bank's account.
14 Acme and Ajax both become insolvent. The Beta stock is still valuable.
15 Acme's liquidator asserts that the pledge of the Beta stock for Ajax's debt was
16 wrongful as against Acme and seeks to recover the Beta stock from Lending
17 Bank. Because the pledge was implemented by an outright transfer into
18 Lending Bank's account at Clearing Corporation, Lending Bank acquired a
19 security entitlement to the Beta stock under Section 8-501. Lending Bank
20 acquired the security entitlement for value, since it acquired it as security for a
21 debt. See Section 1-201(44). If Lending Bank did not have notice of Acme's
22 claim, Section 8-502 will preclude any action by Acme against Lending Bank,
23 whether framed in constructive trust or other theory.

24 Example 6. Debtor grants Alpha Co. a security interest in a security
25 entitlement that includes 1000 shares of XYZ Co. stock that Debtor holds
26 through an account with Able & Co. Alpha also has an account with Able.
27 Debtor instructs Able to transfer the shares to Alpha, and Able does so by
28 crediting the shares to Alpha's account. Alpha has control of the 1000 shares
29 under Section 8-106(d). (The facts to this point are identical to those in Section
30 8-106, Comment 4, Example 1, except that Alpha Co. was Alpha Bank.) Under
31 Section 8-502 Debtor cannot assert an adverse claim against Alpha with respect
32 to Alpha's security interest. Debtor's only adverse claim of which Alpha has
33 notice consists of Debtor's remaining rights under Article 9, such as Debtor's
34 right of redemption. See Section 9-621. Alpha next grants Beta Co. a security
35 interest in the 1000 shares included in Alpha's security entitlement. See
36 Section 9-207(d)(3). Alpha instructs Able to transfer the shares to Gamma Co.,
37 Beta's custodian. Able does so, and Gamma credits the 1000 shares to Beta's
38 account. Beta now has control under Section 8-106(d). If the transaction took
39 place with Debtor's permission, Debtor has no adverse claim to assert against
40 Beta. Even if Debtor did hold an adverse claim, if Beta did not have notice of

1 Debtor's claim, Section 8-502 will preclude any action by Debtor against Beta,
2 whether framed in constructive trust or other theory.

3 4. Although this section protects entitlement holders against adverse
4 claims, it does not protect them against the risk that their securities intermediary
5 will not itself have sufficient financial assets to satisfy the claims of all of its
6 entitlement holders. Suppose that Customer A holds 1000 shares of XYZ Co. stock
7 in an account with her broker, Able & Co. Able in turn holds 1000 shares of XYZ
8 Co. through its account with Clearing Corporation, but has no other positions in
9 XYZ Co. shares, either for other customers or for its own proprietary account.
10 Customer B places an order with Able for the purchase of 1000 shares of XYZ Co.
11 stock, and pays the purchase price. Able credits B's account with a 1000 share
12 position in XYZ Co. stock, but Able does not itself buy any additional XYZ Co.
13 shares. Able fails, having only 1000 shares to satisfy the claims of A and B.
14 Unless other insolvency law establishes a different distributional rule, A and B
15 would share the 1000 shares held by Able pro rata, without regard to the time that
16 their respective entitlements were established. See Section 8-503(b). Section
17 8-502 protects entitlement holders, such as A and B, against adverse claimants. In
18 this case, however, the problem that A and B face is not that someone is trying to
19 take away their entitlements, but that the entitlements are not worth what they
20 thought. The only role that Section 8-502 plays in this case is to preclude any
21 assertion that A has some form of claim against B by virtue of the fact that Able's
22 establishment of an entitlement in favor of B diluted A's rights to the limited assets
23 held by Able.

24 * * *

25 **SECTION 8-510. RIGHTS OF PURCHASER OF SECURITY**

26 **ENTITLEMENT FROM ENTITLEMENT HOLDER.**

27 (a) In a case not covered by the priority rules in Article 9 or the rules stated
28 in subsection (c), a ~~An~~ action based on an adverse claim to a financial asset or
29 security entitlement, whether framed in conversion, replevin, constructive trust,
30 equitable lien, or other theory, may not be asserted against a person who purchases
31 a security entitlement, or an interest therein, from an entitlement holder if the

1 purchaser gives value, does not have notice of the adverse claim, and obtains
2 control.

3 (b) If an adverse claim could not have been asserted against an entitlement
4 holder under Section 8-502, the adverse claim cannot be asserted against a person
5 who purchases a security entitlement, or an interest therein, from the entitlement
6 holder.

7 (c) In a case not covered by the priority rules in Article 9, a purchaser for
8 value of a security entitlement, or an interest therein, who obtains control has
9 priority over a purchaser of a security entitlement, or an interest therein, who does
10 not obtain control. Purchasers who have control rank equally, except that a
11 securities intermediary as purchaser has priority over a conflicting purchaser who
12 has control unless otherwise agreed by the securities intermediary.

13 **Reporters' Comment**

14 The proposed new language in is for clarification only. It conforms
15 subsection (a) to subsection (c) and makes clear that the Article 9 priority rules,
16 when applicable, are controlling.