



1                                   **UNIFORM COMMERCIAL CODE**  
2                                   **REVISED ARTICLE 9**  
3                                   **SECURED TRANSACTIONS; SALES OF**  
4                                   **ACCOUNTS AND CHATTEL PAPER**

5                                   **[PROPOSED REVISED TITLE:**

6                                   **UNIFORM COMMERCIAL CODE**  
7                                   **REVISED ARTICLE 9**  
8                                   **SECURED TRANSACTIONS; SALES OF ACCOUNTS, CHATTEL PAPER,**  
9                                   **AND PAYMENT INTANGIBLES; CONSIGNMENTS]**

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1 this draft. It also is divided into two subparts. Subpart 1  
2 addresses default and enforcement generally, and Subpart 2 covers  
3 noncompliance with the provisions of Article 9.

4 Before embarking on this reorganization we asked for the input  
5 on the proposed restructuring from members of the Style  
6 Committee, members of the Drafting Committee, and other  
7 interested persons. The response the we received was, without  
8 exception, positive. All recognize, of course, that there are  
9 both pros and cons to the reorganization. The approach taken in  
10 this draft will make it easier for both practitioners and judges  
11 to find and understand the rules. On the other hand, greater  
12 changes necessarily entail greater transition costs. Given that  
13 a substantial renumbering (and some resulting reorganization) was  
14 necessary in any event in view of the Style Committee's  
15 recommendations, taking the further step toward a more coherent  
16 structure seems appropriate.

17 **2. Reporters' Comments.** The 1996 Annual Meeting Draft  
18 contained extensive Reporters' Comments explaining the provisions  
19 of the draft, reasons for the changes, and the problems under  
20 current law that the draft addressed. For the most part we have  
21 not included those comments in this draft. The Reporters'  
22 Comments in this draft generally are limited to explanations of  
23 changes that this draft makes to the previous draft and  
24 substantive observations that were not included in the earlier  
25 comments.

26 **3. Source Table.** The following table lists the sections of  
27 the 1996 Annual Meeting Draft and the corresponding sections and  
28 subsections of this draft.

29	<u>1996 A M Draft</u>	<u>October, 1996 Draft</u>
30	§ 9-101. Short Title.	§ 9-101
31	§ 9-102. Scope of Article.	§ 9-112
32	§ 9-103. Multiple State Transactions.	
33	(a) (1)-(3) (non-possessory)	§ 9-301
34	(a) (4)-(5)	§ 9-307
35	(a) (6)	§ 9-314(a)
36	(b) (1)-(4) (possessory)	§ 9-302
37	(b) (5)	§ 9-314(b)
38	(c) (1)-(4) (cert. of title)	§ 9-303
39	(c) (5)	§ 9-314(c)
40	(c) (6)	§ 9-334
41	(d) (1)-(2) (deposit accounts)	§ 9-304
42	(d) (3)	§ 9-314(d)

1	(e) (minerals)	§ 9-306
2	(f) (investment property)	§ 9-305
3	§ 9-104. Exclusions.	§ 9-113
4	§ 9-105. Definitions.	§ 9-102
5	§ 9-106. Definitions: "Account," etc.	§ 9-103
6	§ 9-107. Definitions: "PMSI," etc.	§ 9-104
7	§ 9-107A. Definitions: "PrMSI," etc.	§ 9-105
8	§ 9-108. Antecedent Debt.	[Deleted]
9	§ 9-109. Classification of Goods.	§ 9-106
10	§ 9-110. Sufficiency of Description.	§ 9-111
11	§ 9-111. Applicability of Article 6.	§ 9-114
12	§ 9-112. Collateral Owned by	
13	Nondebtor.	[Deleted]
14	§ 9-113. S/I Under Article 2 or 2A.	§ 9-116
15	[§ 9-114. Rights of Consignee.]	[Deleted]
16	§ 9-115. Investment Property.	
17	(a) (definitions)	§ 9-107
18	(b) (attachment)	§ 9-203(d)
19	(perfection)	§ 9-308(e)
20	(c) (description)	§ 9-111(c)
21	(d)(1) (perfection by control)	§ 9-312
22	(d)(2) (perfection by filing)	§ 9-310(a)
23	(d)(3)-(4) (automatic perfection)	§ 9-309(a)(12),
24		(13)
25	(e) (priority)	§ 9-324
26	(f) (certificate in reg form)	§ 9-203(a)
27	(attach)	
28		§ 9-311
29	(perfection)	
30		§ 9-324
31	(priority)	
32		

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3		rules re: automatic perfection	§ 9-309(a) (11)
4	§ 9-117.	"Control" (Deposit Account).	
5		(a)-(b) (definition)	§ 9-109
6		(c) (no obligation to disclose)	§ 9-339
7		(d)-(e) (obligation to release)	§ 9-208
8	§ 9-118.	"Control" (Inv. Property).	§ 9-108
9	§ 9-119.	"Control" (Letter of Credit).	§ 9-110
10	§ 9-201.	General Validity.	§ 9-201
11	§ 9-202.	Title to Collateral.	§ 9-202
12	§ 9-203.	Attachment.	§ 9-203
13		(e) Conflict with other statute	§ 9-115
14	§ 9-204.	Aft-Acq Property; Fut Adv	§ 9-204
15	§ 9-205.	Anti-Benedict v. Ratner.	§ 9-205
16	§ 9-206.	Waiver of Defenses.	§ 9-403
17	§ 9-207.	Collat in SP's Possession.	§ 9-207
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22		(d) (future advances)	§ 9-320(b)
23	§ 9-302.	Perfection by filing.	§ 9-309
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9	§ 9-310.	Liens Arising by Law.	§ 9-330
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7	(c)-(f)	(name of D & SP)	§ 9-503
8	(g)	(indication of collateral)	§ 9-504
9	(h)	(minor errors)	§ 9-506
10	(i)-(k)	(name & other changes)	§ 9-507
11	(l)	(amendment)	§ 9-509
12	(n)-(p)	(authorization)	§ 9-508
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12	§ 9-415. Claim re: Inaccurate Record.	§ 9-519
13	§ 9-501. SP's Rights & Duties; Waiver, etc.	
14	(a)-(b), (h), (j) (rts & remedies)	§ 9-601
15	(c), (d) (waiver)	§ 9-602
16	(e) (standards re: duties)	§ 9-603
17	(f)-(g) (real estate)	§ 9-604
18	(i) (unknown D or sec obligor)	§ 9-605
19	(k) (time of default for ag lien)	§ 9-606
20	§ 9-502. Collection and Enforcement.	
21	(a)-(d) (generally)	§ 9-607
22	(e), (g) (applic. of proceeds)	§ 9-608
23	(f) (jr's right to proceeds)	[Deleted]
24	§ 9-503. Right to Take Possession.	§ 9-609
25	§ 9-504. Disposition of Collateral.	
26	(a), (f) (general; comm reas)	§ 9-610

1	(b)-(e) (application of proceeds)	§ 9-614
2	(g)-(h) (whom to notify)	§ 9-611
3	(i) (waiver)	§ 9-623
4	(j) (timeliness of notice)	§ 9-612
5	(k)-(l) (contents of notice)	§ 9-613
6	(m) (pre-collection accounting)	[Deleted]
7	(n)-(o) (rights of transferee)	§ 9-615
8	(p) (rights of guarantor, etc.)	§ 9-616
9	(q) (title clearing)	§ 9-617
10	§ 9-504A. Limitation on Deficiency.	[Deleted]
11	§ 9-505. Acceptance of Collateral.	
12	(a)-(e), (k), (l) (general)	§ 9-618
13	(f)-(g) (notification)	§ 9-619
14	(h)-(i) (effect of acceptance)	§ 9-620
15	(j), (m) (waiver)	§ 9-623
16	§ 9-506. Redemption; Reinstatement.	
17	(a) (redemption)	§ 9-621
18	(b)-(e) (reinstatement)	§ 9-622
19	(f) (waiver)	§ 9-623
20	§ 9-507. Non-compliance with Part 5.	
21	(a)-(b), (g) (damages)	§ 9-624
22	(c) (deficiency actions)	§ 9-625
23	(d)-(f) (comm. reasonableness)	§ 9-626
24	(h) (attorney's fees)	§ 9-628
25	(i)-(k) (no liability)	§ 9-627





1 furnishes goods or services to a debtor engaged in a farming  
2 operation, and the effectiveness of which does not depend on the  
3 person's possession of the farm products or proceeds of farm  
4 products. An agricultural lien is not a security interest.

5 (3) "Chattel paper" means a writing or writings that  
6 evidence both a monetary obligation and a security interest in or  
7 a lease of specific goods. The term does not include a charter  
8 or other contract involving the use or hire of a vessel. If a  
9 transaction is evidenced both by a security agreement or a lease  
10 and by an instrument or a series of instruments, the group of  
11 writings taken together constitutes chattel paper.

12 (4) "Collateral" means the property subject to a  
13 security interest or an agricultural lien. The term includes  
14 proceeds to which a security interest attaches under Section 9-  
15 313, proceeds as to which an agricultural lien becomes effective,  
16 and accounts, chattel paper, and payment intangibles that have  
17 been sold.

18 (5) "Communicate" means to send a written or other  
19 tangible record, transmit a record by any means agreed upon by  
20 the persons sending and receiving the record, or in the case of  
21 transmission of a record to or by a filing office, transmit a  
22 record by any means prescribed by the rules.

23 (6) "Consumer debtor" means a debtor in a consumer  
24 secured transaction.

25 (7) "Consumer obligor" means an obligor who is an  
26 individual and who incurred the obligation as part of a

1 transaction entered into primarily for personal, family, or  
2 household purposes.

3 (8) "Consumer secured transaction" means a transaction  
4 in which an obligation is incurred primarily for personal,  
5 family, or household purposes, a security interest secures the  
6 obligation, and the collateral is used or held by the debtor for  
7 personal, family, or household purposes [, if

8 (A) the obligation arises out of the sale of goods,  
9 services, or another product and the portion of the obligation  
10 attributable to the cash price does not exceed \$[XX];

11 (B) in the case of any other obligation, the  
12 principal amount of the obligation does not exceed \$[XX] at any  
13 time and there is no agreement to extend credit in an amount that  
14 exceeds \$[XX] outstanding at any time; or

15 (C) the collateral includes [a motor vehicle or]  
16 personal property or fixtures used or expected to be used as the  
17 debtor's principal dwelling].

18 The term does not include a transaction to the extent that the  
19 collateral is a security entitlement and the secured party has  
20 control under Section 8-106(e) or the collateral is a commodity  
21 contract and the secured party has control under the second  
22 sentence of Section 9-108(b).

23 (9) "Debtor" means:

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

1 (B) the seller of accounts, chattel paper, or payment  
2 intangibles; or

3 (C) a consignee.

4 (10) "Deposit account" means a demand, time, savings,  
5 passbook, or like account maintained with a depository  
6 institution. The term does not include investment property or an  
7 account evidenced by an instrument.

8 (11) "Depository institution" means an organization  
9 that accepts deposits in the ordinary course of its business.  
10 The term includes a bank, savings bank, savings and loan  
11 association, credit union, and trust company.

12 (12) "Document" means a document of title or a receipt  
13 of the kind described in Section 7-201(2).

14 (13) "Encumbrance" includes a real estate mortgage,  
15 other lien on real estate, and any other right in real estate  
16 which is not an ownership interest.

17 (14) "Filing office" means an office designated in  
18 Section 9-501 as the place to file a financing statement. [The  
19 term includes the filing officer and other personnel of the  
20 office.]

21 (15) "Financing statement" means an initial financing  
22 statement and any record on file relating to the initial  
23 financing statement.

24 (16) "Fixture filing" means a filing, in the office  
25 where a mortgage on the real estate would be filed or recorded,  
26 of a financing statement covering goods that are or are to become  
27 fixtures and conforming to the requirements of Section 9-502(a).

1           (17) "Fixtures" means goods that have become so related  
2 to particular real estate that an interest in them arises under  
3 real estate law.

4           (18) "Good faith" means honesty in fact and the  
5 observance of reasonable commercial standards of fair dealing.

6           (19) "Goods" includes all things that are movable when a  
7 security interest attaches, fixtures, standing timber that is to  
8 be cut and removed under a conveyance or contract for sale, the  
9 unborn young of animals, and crops grown, growing, or to be  
10 grown, including crops produced on trees, vines, and bushes. The  
11 term does not include money, documents, instruments, investment  
12 property, accounts, chattel paper, general intangibles, deposit  
13 accounts, letters of credit, and minerals or the like, including  
14 oil and gas, before extraction.

15           (20) "Instrument" means a negotiable instrument  
16 (Section 3-104), or any other writing that evidences a right to  
17 the payment of money and is not itself a security agreement or  
18 lease and is of a type that in ordinary course of business is  
19 transferred by delivery with any necessary indorsement or  
20 assignment. The term does not include investment property or a  
21 writing that evidences a right to payment arising out of the use  
22 of a credit or charge card [or information contained on or for  
23 use with the card].

24           (21) "Jurisdiction of organization" with respect to a  
25 registered entity means the jurisdiction under whose law the  
26 entity is organized.

1           (22) "Mortgage" means a consensual interest created by  
2 a real estate mortgage, a trust deed on real estate, or the like.

3           (23) "New debtor" means a person that becomes bound as  
4 debtor, under Section 9-203(c), by a security agreement  
5 previously entered into by another person.

6           (24) "New value" means money or money's worth in  
7 property, services, or new credit, or release by a transferee of  
8 an interest in property previously transferred to the transferee.  
9 The term does not include an obligation substituted for another  
10 obligation.

11           (25) "Obligor" means a person that owes, has provided  
12 property other than the collateral to secure, or is otherwise  
13 accountable in whole or in part for payment or other performance  
14 of an obligation secured by a security interest in or  
15 agricultural lien on the collateral.

16           (26) "Original debtor" means a person that, as debtor,  
17 entered into a security agreement to which a new debtor has  
18 become bound under Section 9-203(c).

19           (27) An advance is made or other value is given  
20 "pursuant to commitment" if the secured party is bound to make or  
21 give it, whether or not a subsequent event of default or other  
22 event not within the secured party's control has relieved or may  
23 relieve the secured party from its obligation.

24           (28) "Record" means information that is inscribed on a  
25 tangible medium or that is stored in an electronic or other  
26 medium and is retrievable in perceivable form.

1            [(29) "Registered agent" means a registered agent of a  
2 debtor designated under Section 9-525.]

3            (30) "Registered entity" means an organization  
4 organized under the law of a State and as to which the State  
5 maintains a public record showing the organization to have been  
6 organized.

7            (31) "Rule" means a rule adopted by [] pursuant to  
8 Section 9-528.

9            (32) "Secondary obligor" means an obligor any portion  
10 of whose obligation is secondary.

11           (33) "Secured party" means a person that holds a  
12 security interest or an agricultural lien. The term includes a  
13 consignor and a person to whom accounts, chattel paper, or  
14 payment intangibles have been sold. If a security interest [or  
15 agricultural lien] is created in favor of a trustee, indenture  
16 trustee, agent, collateral agent, or other representative, the  
17 representative is the secured party.

18           (34) "Security agreement" means an agreement that  
19 creates or provides for a security interest.

20           (35) "Sign" means to identify a record by means of a  
21 signature, mark, or other symbol with intent to authenticate it.

22           (36) "State" means a State of the United States, the  
23 District of Columbia, the Commonwealth of Puerto Rico, the United  
24 States Virgin Islands, or any territory or insular possession  
25 subject to the jurisdiction of the United States.

26           (37) "Support obligation" means a secondary obligation  
27 or letter of credit that supports the payment or performance of

1 an account, chattel paper, general intangible, document,  
2 [insurance policy,] instrument, or investment property.

3 (38) "Transmitting utility" means a person primarily  
4 engaged in the business of operating a railroad, subway, street  
5 railway, or trolley bus, transmitting electric or electronic  
6 communications, transmitting goods by pipeline or sewer, or  
7 transmitting or producing and transmitting electricity, steam,  
8 gas, or water.

9 (39) "United States" means the United States of  
10 America.

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

13	"Account"	Section 9-103.
14	"Accounting"	Section 9-209.
15	"Attach"	Section 9-203.
16	"Becomes Bound"	Section 9-203.
17	"Cash proceeds"	Section 9-313.
18	"Certificate of title"	Section 9-303.
19	"Commodity account"	Section 9-107.
20	"Commodity contract"	Section 9-107.
21	"Commodity customer"	Section 9-107.
22	"Commodity intermediary"	Section 9-107.
23	"Construction mortgage"	Section 9-331.
24	"Consumer goods"	Section 9-106.
25	"Control" (deposit account)	Section 9-109.
26	"Control" (investment property)	Section 9-108.
27	"Control" (letter of credit)	Section 9-110.

1	"Equipment"	Section 9-106.
2	"Farm products"	Section 9-106.
3	"General intangibles"	Section 9-103.
4	"Inventory"	Section 9-106.
5	"Inventory-proceeds"	Section 9-322.
6	"Investment property"	Section 9-107.
7	"Lien creditor"	Section 9-315.
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	
14	interest"	Section 9-105.
15	["Production of crops"	Section 9-105.]
16	"Purchase money security	
17	interest"	Section 9-104.
18	"Purchase money collateral"	Section 9-104.
19	"Purchase money obligation"	Section 9-104.
20	"Request for a list of	
21	collateral"	Section 9-209.
22	"Request for a statement of	
23	account"	Section 9-209.
24	"Request for an accounting"	Section 9-209.
25	"Transfer Statement"	Section 9-617.
26	"United States"	Section 9-301.



1 (c) The following definitions in other articles apply to  
2 this article:

3	"Broker"	Section 8-102.
4	"Certificated security"	Section 8-102.
5	"Check"	Section 3-104.
6	"Clearing corporation"	Section 8-102.
7	"Consignee"	Section [2-102].
8	"Consignment"	Section [2-102].
9	"Consignor"	Section [2-102].
10	"Contract for sale"	Section 2-106.
11	"Control"	Section 8-106.
12	"Customer"	Section 4-104.
13	"Delivery"	Section 8-301.
14	"Entitlement holder"	Section 8-102.
15	"Financial asset"	Section 8-102.
16	"Holder in due course"	Section 3-302.
17	"Lease"	Section 2A-103.
18	"Lease agreement"	Section 2A-103.
19	"Lease contract"	Section 2A-103.
20	"Leasehold interest"	Section 2A-103.
21	"Lessee"	Section 2A-103.
22	"Lessee in ordinary course 23 of business"	Section 2A-103.
24	"Lessor"	Section 2A-103.
25	"Lessor's residual interest"	Section 2A-103.
26	"Letter of credit"	Section 5-102.
27	"Note"	Section 3-104.

1	"Proceeds of a letter of credit"	Section 5-114.
2	"Sale"	Section 2-106.
3	"Securities intermediary"	Section 8-102.
4	"Security"	Section 8-102.
5	"Security certificate"	Section 8-102.
6	"Security entitlement"	Section 8-102.
7	"Uncertificated security"	Section 8-102.

8 (d) Article 1 contains general definitions and principles  
9 of construction and interpretation applicable throughout this  
10 article. For purposes of this article, "good faith," as used in  
11 Section 1-203, means honesty in fact and the observance of  
12 reasonable commercial standards of fair dealing.

13 **Reporters' Comments**

14 1. "Account Debtor." At the June, 1996, meeting, the  
15 Drafting Committee decided that Article 3, not Article 9, should  
16 govern obligations on negotiable instruments. This draft  
17 accomplishes the intended result by excluding obligors on  
18 negotiable instruments from the "account debtor" category. The  
19 principal effect of this change is that §§ 9-403 and 9-404,  
20 dealing with the rights of an assignee, do not apply to an  
21 assignee of chattel paper in which the obligation to pay is  
22 evidenced by a negotiable instrument. Rather, the assignee's  
23 rights are governed by Article 3.

24 2. "Instrument." The definition of "instrument" has been  
25 modified to make clear that it does not include rights to payment  
26 arising out of credit card transactions. The bracketed phrase  
27 refers to transactions in which the card itself is not used,  
28 e.g., purchases on credit over the telephone. The Drafting  
29 Committee should consider whether the language is necessary.

30 3. "Transmitting Utility." We have revised the definition of  
31 "transmitting utility" without intending to change its meaning.  
32 Its purpose is to designate a special class of debtors for whom  
33 separate filing rules are provided in Part 4, thereby obviating  
34 the many local fixture filings that would be necessary under the  
35 rules of § 9-501 for a far-flung public utility debtor. A  
36 transmitting utility may not be regulated or operating as such in  
37 a jurisdiction where fixtures are located. For example, a  
38 utility might own transmission lines in a jurisdiction, although

1 the utility generates no power and has no customers in the  
2 jurisdiction.

3 **SECTION 9-103. DEFINITIONS: "ACCOUNT"; "GENERAL**  
4 **INTANGIBLES"; "PAYMENT INTANGIBLE."** [former draft § 9-106]

5 (a) "Account" means a right to payment, whether or  
6 not earned by performance, for property that has been or is to be  
7 sold, leased, licensed, assigned, or otherwise disposed of, for  
8 services rendered or to be rendered, for a policy of insurance  
9 issued or to be issued, for a suretyship obligation incurred or  
10 to be incurred, for energy provided or to be provided, or for the  
11 use or hire of a vessel under a charter or other contract. The  
12 term does not include a right to payment evidenced by an  
13 instrument[,] [or] chattel paper[, or a deposit account].

14 (b) "General intangible" means any personal property other  
15 than goods, accounts, chattel paper, documents, instruments,  
16 investment property, letters of credit, deposit accounts, and  
17 money.

18 (c) "Payment intangible" means a general intangible under  
19 which the account debtor's principal obligation is to pay money.

20 **SECTION 9-104. DEFINITIONS: "PURCHASE MONEY SECURITY**  
21 **INTEREST"; "PURCHASE MONEY COLLATERAL"; PURCHASE MONEY**  
22 **OBLIGATION"; APPLICATION OF PAYMENTS; BURDEN OF ESTABLISHING**  
23 **PURCHASE MONEY SECURITY INTEREST.** [former draft § 9-107]

24 (a) A security interest in goods[, including fixtures,] is  
25 a "purchase money security interest" to the extent that the  
26 collateral ("purchase money collateral") secures an obligation  
27 incurred by an obligor as the price of the collateral or for

1 value given to enable the debtor to acquire rights in the  
2 collateral ("purchase money obligation") if the value is in fact  
3 so used.

4 (b) A purchase money security interest (subsection (a)) in  
5 inventory is a "purchase money security interest" also to the  
6 extent that the security interest secures a purchase money  
7 obligation incurred with respect to other inventory in which the  
8 secured party holds or held a purchase money security interest  
9 (subsection (a)).

10 (c) The interest of a consignor in goods that are the  
11 subject of a consignment is a purchase money security interest in  
12 inventory.

13 (d) This subsection does not apply to a consumer secured  
14 transaction. If the extent to which a security interest is a  
15 purchase money security interest depends on the application of a  
16 payment to a particular obligation, the payment is to be applied:

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

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

22 (3) in the absence of an agreement to a reasonable  
23 method and a timely manifestation of the obligor's intention,  
24 first to obligations that are not secured and then, if more than  
25 one obligation is secured, to obligations secured by purchase  
26 money security interests in the order in which those obligations  
27 were incurred.

1 (e) This subsection applies to a consumer secured  
2 transaction [and may not be varied by agreement]. If the extent  
3 to which a security interest is a purchase money security  
4 interest depends on the application of a payment to a particular  
5 obligation[, notwithstanding any contrary agreement,] the payment  
6 is to be applied first to obligations that are not secured and  
7 then, if more than one obligation is secured, to obligations  
8 secured by purchase money security interests in the order in  
9 which those obligations were incurred. [This subsection may not  
10 be varied by agreement.]

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

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

15 (2) collateral that is not purchase money collateral  
16 also secures the purchase money obligation; or

17 (3) the purchase money obligation has been renewed,  
18 refinanced, or restructured.

19 (g) If the status of a security interest as a purchase  
20 money security interest or the extent to which it is a purchase  
21 money security interest is placed in issue, the secured party  
22 claiming a purchase money security interest has the burden of  
23 establishing the extent to which the security interest is a  
24 purchase money security interest.

25 **Reporters' Comments**

26 The following are revised excerpts from Comment 3 to this  
27 section in the prior draft.

1       3. "Dual-Status" Rule; Allocation of Payments; Burden of  
2 Proof. This Article approves what some cases have called the  
3 "dual-status" rule, under which a security interest may be a  
4 purchase money security interest to some extent and a non-  
5 purchase money security interest to some extent. This rule is  
6 implicit in subsections (a) and (b) ("to the extent") and is made  
7 explicit in subsection (e). The Article rejects the  
8 "transformation" rule adopted by some cases, under which any  
9 cross collateralization, refinancing, or the like destroys the  
10 purchase money status entirely.

11       \* \* \*

12       By determining whether a security interest is a "purchase  
13 money security interest," the dual-status rule and allocation  
14 formula affect only issues under this Article--primarily  
15 perfection and priority. See, e.g., §§ 9-309(a)(7); 9-322.  
16 Whether a security interest is a "purchase money security  
17 interest" under other law, however, is determined by that law.  
18 For example, decisions under § 522(f) of the Bankruptcy Code have  
19 applied both the dual-status and the transformation rules. The  
20 Bankruptcy Code does not expressly adopt the state law definition  
21 of "purchase money security interest." Where federal law does  
22 not defer to this Article, this Article does not, and could not,  
23 determine a question of federal law.

24       **SECTION 9-105. DEFINITIONS: "PRODUCTION MONEY SECURITY**  
25 **INTEREST"; "PRODUCTION MONEY CROPS"; "PRODUCTION MONEY**  
26 **OBLIGATION"; ["PRODUCTION OF CROPS";] BURDEN OF ESTABLISHING**  
27 **PRODUCTION MONEY SECURITY INTEREST." [former draft § 9-107A]**

28       (a) A security interest in crops is a "production money  
29 security interest" to the extent that the collateral ("production  
30 money collateral") secures an obligation incurred by an obligor  
31 for new value given to enable the debtor to produce the crops  
32 ("production money obligation") if the value is in fact used for  
33 the production of crops.

34       [(b) The "production of crops" includes tilling and  
35 otherwise preparing land for growing, planting, cultivating,

1 fertilizing, protecting from damage or disease, irrigating,  
2 harvesting, and gathering crops.]

3 (c) If the extent to which a security interest is a  
4 production money security interest depends on the application of  
5 a payment to a particular obligation, the payment is to be  
6 applied:

7 (1) in accordance with any reasonable method of  
8 application to which the parties agree;

9 (2) in the absence of the parties' agreement to a  
10 reasonable method, in accordance with any intention of the  
11 obligor manifested at or before the time of payment; or

12 (3) in the absence of an agreement to a reasonable  
13 method and a timely manifestation of the obligor's intention,  
14 first to obligations that are not secured and then, if more than  
15 one obligation is secured, to obligations secured by production  
16 money security interests in the order in which those obligations  
17 were incurred.

18 (d) A production money security interest does not lose its  
19 status as such even though:

20 (1) the production money collateral also secures an  
21 obligation that is not a production money obligation;

22 (2) collateral that is not production money collateral  
23 also secures the production money obligation; or

24 (3) the production money obligation has been renewed,  
25 refinanced, or restructured.

26 (e) If the status of a security interest as a production  
27 money security interest or the extent to which it is a production

1 money security interest is placed in issue, the secured party  
2 claiming a production money security interest has the burden of  
3 establishing the extent to which the security interest is a  
4 production money security interest.

5 **SECTION 9-106. CLASSIFICATION OF GOODS: "CONSUMER GOODS";**  
6 **"EQUIPMENT"; "FARM PRODUCTS"; "INVENTORY." [former draft § 9-**  
7 **109]**

8 (a) "Consumer goods" means goods that are used or bought  
9 for use primarily for personal, family, or household purposes.

10 (b) "Equipment" means goods that are used or bought for  
11 use primarily in business, including farming or a profession, or  
12 by a debtor that is a non-profit organization or a governmental  
13 subdivision or agency. The term includes goods that are not  
14 included in the definitions of inventory, farm products, or  
15 consumer goods.

16 (c) "Farm products" means (i) crops grown, growing, or to  
17 be grown, including crops produced on trees, vines, and bushes,  
18 (ii) livestock, born or unborn, (iii) supplies used or produced  
19 in farming, livestock, or aquacultural operations, or (iv)  
20 products of crops or livestock in their unmanufactured states, in  
21 each case if the debtor is engaged in raising, cultivating,  
22 propagating, fattening, grazing, or other farming, livestock, or  
23 aquacultural operations. If goods are farm products they are  
24 neither equipment nor inventory. The terms "crops" and  
25 "livestock" include aquatic goods produced in aquacultural  
26 operations.



1 (d) "Inventory" means goods that are leased by a person,  
2 held by a person for sale or lease or to be furnished under  
3 contracts of service, furnished by a person under contracts of  
4 service, or raw materials, work in process, or materials used or  
5 consumed in a business. If goods are inventory they are not  
6 equipment.

7 **SECTION 9-107. DEFINITIONS: "COMMODITY ACCOUNT"; "COMMODITY**  
8 **CONTRACT"; "COMMODITY CUSTOMER"; "COMMODITY INTERMEDIARY";**  
9 **"INVESTMENT PROPERTY." [former draft § 9-115]**

10 (a) "Commodity account" means an account maintained by a  
11 commodity intermediary in which a commodity contract is carried  
12 for a commodity customer.

13 (b) "Commodity contract" means a commodity futures  
14 contract, an option on a commodity futures contract, a commodity  
15 option, or other contract that, in each case, is:

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

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

22 (c) "Commodity customer" means a person for whom a  
23 commodity intermediary carries a commodity contract on its books.

24 (d) "Commodity intermediary" means:

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

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

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

8           **SECTION 9-108. CONTROL OVER INVESTMENT PROPERTY. [former**  
9 **draft § 9-118]**

10          (a) "Control" with respect to a certificated security,  
11 uncertificated security, or security entitlement has the meaning  
12 specified in Section 8-106.

13          (b) A secured party has control over a commodity contract  
14 if, by agreement among the commodity customer, the commodity  
15 intermediary, and the secured party, the commodity intermediary  
16 has agreed that it will apply any value distributed on account of  
17 the commodity contract as directed by the secured party without  
18 further consent by the commodity customer. If a commodity  
19 customer grants a security interest in a commodity contract to  
20 its own commodity intermediary, the commodity intermediary as  
21 secured party has control.

22          (c) A secured party that has control over all security  
23 entitlements or commodity contracts carried in a securities  
24 account or commodity account has control over the securities  
25 account or commodity account.

1       **SECTION 9-109. CONTROL OVER DEPOSIT ACCOUNT. [former draft §**  
2       **9-109(a), (b)]**

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

4           (1) the secured party is the depository institution with  
5       which the deposit account is maintained;

6           (2) the depository institution with which the deposit  
7       account is maintained agrees in writing that, without further  
8       consent by the debtor, the depository institution will comply  
9       with instructions originated by the secured party directing  
10      disposition of the funds in the account; or

11          (3) the secured party becomes the depository  
12      institution's customer (Section 4-104) with respect to the  
13      deposit account.

14          (b) A secured party that has satisfied the requirements of  
15      subsection (a) (2) or (3) has control even if the debtor retains  
16      the right to direct the disposition of funds from the deposit  
17      account.

18       **SECTION 9-110. CONTROL OVER LETTER OF CREDIT AND PROCEEDS OF**  
19       **LETTER OF CREDIT. [former draft § 9-119]** A secured party has  
20      control over a letter of credit and proceeds of the letter of  
21      credit if:

22          (1) the issuer (Section 5-102(a)(9)) and any nominated  
23      person (Section 5-102(a)(11)) have consented to an assignment of  
24      proceeds of the letter of credit (Section 5-114(c)), or

25          (2) the secured party is a transferee beneficiary of the  
26      letter of credit [and the issuer has no right to refuse to  
27      recognize or carry out the transfer (Section 5-112(b))].



1 (Whether or not it should, arguably it does, inasmuch as it  
2 reasonably identifies the collateral.) We suggest that the  
3 Drafting Committee discuss and answer the question.

4 2. Investment Property. Identification of collateral in the  
5 manner suggested by the second sentence of subsection (c) (former  
6 §9-115(3))--i.e., "by specific listing, by category, by quantity,  
7 by a computational or allocational formula or procedure, or by  
8 any other method, if the identity of the collateral is  
9 objectively determinable"--ordinarily should suffice for any kind  
10 of collateral, not just investment property. The same can be  
11 said for much of the first sentence, as well. The only part of  
12 subsection (c) that seems unique to investment property is the  
13 somewhat opaque suggestion that the use of the wrong Article 8  
14 terminology does not render a description invalid (e.g., a  
15 security agreement intended to cover a debtor's "security  
16 entitlements" is sufficient if it refers to the debtor's  
17 "securities"). We suggest that the Drafting Committee consider  
18 deleting all of subsection (c) except that suggestion, which  
19 could be revised to make the point clearer.

20 SUBPART 3. APPLICABILITY OF ARTICLE

21 **SECTION 9-112. SCOPE OF ARTICLE. [former draft § 9-102]**

22 (a) Except as otherwise provided in Section 9-113 on  
23 excluded transactions, this article applies to:

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

27 (2) an agricultural lien;

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

30 (4) a consignment.

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

1           **SECTION 9-113. TRANSACTIONS EXCLUDED FROM ARTICLE. [former**  
2 **draft § 9-104]** This article does not apply to:

3           (1) a security interest subject to any statute, regulation,  
4 or treaty of the United States, to the extent that the statute,  
5 regulation, or treaty preempts this article;

6           (2) a landlord's lien;

7           (3) a lien given by statute or other rule of law for  
8 services or materials, except as otherwise provided in Section  
9 9-330 on priority of the lien;

10          (4) a transfer of a claim for wages, salary, or other  
11 compensation of an employee;

12          (5) a transfer by a government or governmental subdivision  
13 or agency;

14          (6) a sale of accounts, chattel paper, or payment  
15 intangibles as part of a sale of the business out of which they  
16 arose, or an assignment of accounts, chattel paper, or payment  
17 intangibles which is for the purpose of collection only, or an  
18 assignment of a right to payment under a contract to an assignee  
19 that is also obliged to perform under the contract, or an  
20 assignment of a single account or payment intangible to an  
21 assignee in whole or partial satisfaction of a preexisting  
22 indebtedness;

23          (7) a transfer of an interest in or claim under any policy  
24 of insurance, except[:

25           (A) a transfer by a healthcare provider of a right to  
26 payment arising out the furnishing of healthcare goods or  
27 services, and

1 (B)] as provided in Sections 9-313 and 9-319 with  
2 respect to proceeds and priorities in proceeds;

3 (8) a right represented by a judgment, other than a  
4 judgment taken on a right to payment that was collateral;

5 (9) a right of recoupment or set-off, except as provided in  
6 Section 9-337 with respect to the effectiveness of rights of  
7 recoupment or set-off against deposit accounts and in Section 9-  
8 404(a) with respect to defenses or claims of an account debtor;

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

12 (11) a transfer by an individual of any tort claim for  
13 damages resulting from an injury to an individual;

14 (12) a transfer of an interest in a deposit account  
15 maintained with a Federal Reserve Bank or maintained by a  
16 depository institution with another depository institution; or

17 (13) a transfer of an interest in a deposit account in a  
18 consumer secured transaction.

19 **[SECTION 9-114. APPLICABILITY OF ARTICLE ON BULK SALES.**

20 [MINOR STYLE CHANGES ONLY] **[former draft § 9-111]** The creation  
21 of a security interest is not a bulk sale under Article 6  
22 (Section 6-102).]

23 Legislative Note: States that adopt Article 6, Alternative A,  
24 should not adopt this section.

25 **SECTION 9-115. APPLICABILITY OF OTHER STATUTES. [former**  
26 **draft § 9-203(e)]** A transaction, although subject to this  
27 article, is also subject to \_\_\_\_\_ \*. In case of conflict

1 between this article and that statute, the statute controls.  
2 Failure to comply with an applicable statute has only the effect  
3 the statute specifies.

4 Legislative Note: At \* insert reference to any local  
5 statute regulating small loans, retail installment sales  
6 and the like. This section is designed to make it clear  
7 that certain transactions, although subject to this  
8 article, also must comply with other applicable  
9 legislation.

10 **SECTION 9-116. SECURITY INTERESTS ARISING UNDER ARTICLE ON**  
11 **SALES OR UNDER ARTICLE ON LEASES. [MINOR STYLE CHANGES ONLY]**

12 **[former draft § 9-113]** A security interest arising solely under  
13 the Article on Sales (Article 2) or the Article on Leases  
14 (Article 2A) is subject to the provisions of this article except  
15 that to the extent that and so long as the debtor does not have  
16 or does not lawfully obtain possession of the goods

17 (a) no security agreement is necessary to make the security  
18 interest enforceable;

19 (b) no filing is required to perfect the security interest;  
20 and

21 (c) the rights of the secured party on default by the  
22 debtor are governed (i) by the Article on Sales (Article 2) in  
23 the case of a security interest arising solely under such Article  
24 or (ii) by the Article on Leases (Article 2A) in the case of a  
25 security interest arising solely under that article.



PART 2

VALIDITY OF SECURITY AGREEMENT,  
ATTACHMENT OF SECURITY INTEREST,  
AND RIGHTS OF PARTIES TO SECURITY AGREEMENT  
SUBPART 1. VALIDITY AND ATTACHMENT

**SECTION 9-201. GENERAL VALIDITY OF SECURITY AGREEMENT.**

[MINOR STYLE CHANGES ONLY.]

(a) Except as otherwise provided by this Act, 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 validates any charge or practice illegal under any statute or regulation governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject the statute or regulation.

**SECTION 9-202. TITLE TO COLLATERAL IMMATERIAL.** Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, or payment intangibles, each provision of this article with regard to rights, obligations, and remedies applies whether title to collateral is in the secured party or in the debtor.

**SECTION 9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST; PROCEEDS; SUPPORT OBLIGATIONS; FORMAL REQUISITES.**  
[includes former draft § 9-115(b), (f)]

(a) Subject to Section 4-210 on the security interest of a collecting bank, Section 5-118 on the security interest of a

1 letter of credit issuer or nominated person, Section 9-206 on  
2 security interests in investment property, Section 9-116 on a  
3 security interest arising under the Article on Sales (Article 2)  
4 or the Article on Leases (Article 2A), and subsection (b) on new  
5 debtors, a security interest is not enforceable against the  
6 debtor or third parties with respect to the collateral and does  
7 not attach unless:

8 (1) the collateral is in the possession of the secured  
9 party (Section 9-311) pursuant to the debtor's agreement, the  
10 collateral is investment property or a deposit account and the  
11 secured party has control pursuant to the debtor's agreement, or  
12 the debtor has signed a security agreement that contains a  
13 description of the collateral and in addition, if the security  
14 interest covers [crops growing or to be grown or] timber to be  
15 cut, a description of the land concerned;

16 (2) value has been given; and

17 (3) the debtor has rights in [or the power to transfer  
18 rights in] the collateral.

19 (b) If a new debtor becomes bound as debtor by a security  
20 agreement entered into by another person, the agreement satisfies  
21 the requirement of subsection (a)(1) as to existing or after-  
22 acquired property of the new debtor to the extent the property is  
23 described in the agreement, and no other agreement is necessary  
24 to make a security interest in the property enforceable.

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

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

3           (2) the person becomes generally obligated for the  
4 obligations of the other person, including the obligation secured  
5 under the security agreement, and acquires or succeeds to all or  
6 substantially all of the assets of the other person.

7           (d) A security interest attaches when it becomes  
8 enforceable against the debtor with respect to the collateral.  
9 Attachment occurs as soon as all of the events specified in  
10 subsection (a) have occurred unless explicit agreement postpones  
11 the time of attaching.

12           (e) Unless otherwise agreed:

13           (1) a security agreement gives the secured party the  
14 rights to proceeds provided by Section 9-313;

15           (2) attachment of a security interest in collateral is  
16 also attachment of a security interest in a support obligation  
17 with respect to the collateral;

18           (3) attachment of a security interest in a securities  
19 account is also attachment of a security interest in all security  
20 entitlements carried in the securities account;

21           (4) attachment of a security interest in a commodity  
22 account is also attachment of a security interest in all  
23 commodity contracts carried in the commodity account; and

24           (5) attachment of a security interest in a right to  
25 payment or performance secured by a [mortgage on real estate]  
26 [lien on property] gives the secured party a security interest in  
27 the [mortgage] [lien].

**Reporters' Comments**

Subsection (a)(3) conditions attachment on the debtor's having "rights in [or the power to transfer rights in] the collateral." A debtor's limited rights in collateral, short of full ownership, are sufficient for a security interest to attach. However, in accordance with basic personal property conveyancing principles, the baseline rule is that a security interest attaches only to whatever rights a debtor may have, broad or limited as those rights may be. Moreover, certain exceptions to this baseline rule enable a debtor to transfer, and a security interest to attach to, greater rights than the debtor has. The bracketed phrase, "or the power to transfer rights in," accommodates those exceptions.

In some cases, a debtor may have power to transfer another person's rights to a class of transferees that excludes secured parties. See, e.g., § 2-403(2) (giving certain merchants power to transfer an entruster's rights to a buyer in ordinary course of business). Under those circumstances, the debtor would not have the power to create a security interest in the other person's rights. If the point is not clear from the bracketed phrase in the draft, the Drafting Committee may prefer something like the following formulation: "the debtor has rights in the collateral or has the power to transfer rights in the collateral to a secured party."

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

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

(b) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (Section 9-332) when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

(c) A security agreement may provide that collateral secures or that accounts, chattel paper, or payment intangibles are sold in connection with future advances or other value,

1 whether or not the advances or value are given pursuant to  
2 commitment.

3 **SECTION 9-205. USE OR DISPOSITION OF COLLATERAL WITHOUT**  
4 **ACCOUNTING PERMISSIBLE.** A security interest is not invalid or  
5 fraudulent against creditors by reason of liberty in the debtor  
6 to use, commingle, or dispose of all or part of the collateral,  
7 including returned or repossessed goods, or to collect,  
8 compromise, enforce, or otherwise deal with collateral, or to  
9 accept the return of collateral or make repossessions, or to use,  
10 commingle, or dispose of proceeds, or by reason of the failure of  
11 the secured party to require the debtor to account for proceeds  
12 or replace collateral. This section does not relax the  
13 requirements of possession for attachment, perfection, or  
14 enforcement of a security interest which depends upon possession  
15 of the collateral by the secured party.

16 **SECTION 9-206. SECURITY INTEREST ARISING IN PURCHASE OR**  
17 **DELIVERY OF FINANCIAL ASSET.** [MINOR STYLE CHANGES ONLY] [**former**  
18 **draft § 9-116]**

19 (a) If a person buys a financial asset through a  
20 securities intermediary in a transaction in which the buyer is  
21 obligated to pay the purchase price to the securities  
22 intermediary at the time of the purchase, and the securities  
23 intermediary credits the financial asset to the buyer's  
24 securities account before the buyer pays the securities  
25 intermediary, the securities intermediary has a security interest  
26 in the buyer's security entitlement securing the buyer's

1 obligation to pay. A security agreement is not required for  
2 attachment or enforceability of the security interest.

3 (b) If a certificated security, or other financial asset  
4 represented by a writing which in the ordinary course of business  
5 is transferred by delivery with any necessary indorsement or  
6 assignment, is delivered pursuant to an agreement between persons  
7 in the business of dealing with such securities or financial  
8 assets and the agreement calls for delivery versus payment, the  
9 person delivering the certificate or other financial asset has a  
10 security interest in the certificated security or other financial  
11 asset securing the seller's right to receive payment. A security  
12 agreement is not required for attachment or enforceability of the  
13 security interest.

14 SUBPART 2. RIGHTS AND DUTIES

15 **SECTION 9-207. RIGHTS AND DUTIES IF COLLATERAL IS IN SECURED**  
16 **PARTY'S POSSESSION.**

17 (a) If a security interest secures an obligation or a  
18 buyer of accounts, chattel paper, or payment intangibles is  
19 entitled by agreement to charge back uncollected collateral or  
20 otherwise to full or limited recourse against the debtor or  
21 against a secondary obligor, the secured party shall use  
22 reasonable care in the custody and preservation of collateral in  
23 the secured party's possession. In the case of an instrument or  
24 chattel paper, reasonable care includes taking necessary steps to  
25 preserve rights against prior parties unless otherwise agreed.

26 (b) Unless otherwise agreed and notwithstanding any  
27 contrary provision in Section 9-602, if a security interest

1 secures an obligation and collateral is in the secured party's  
2 possession:

3 (1) reasonable expenses, including the cost of any  
4 insurance and payment of taxes or other charges, incurred in the  
5 custody, preservation, use, or operation of the collateral are  
6 chargeable to the debtor and are secured by the collateral;

7 (2) the risk of accidental loss or damage is on the  
8 debtor to the extent of a deficiency in any effective insurance  
9 coverage;

10 (3) the secured party may hold as additional security  
11 any increase or profits, except money, received from the  
12 collateral, but money so received, unless remitted to the debtor,  
13 must be applied to reduce the secured obligation;

14 (4) the secured party shall keep the collateral  
15 identifiable but fungible collateral may be commingled; and

16 (5) the secured party may create a security interest in  
17 the collateral.

18 (c) A secured party is liable for any loss caused by the  
19 failure to meet an obligation imposed by subsection (a) or (b)  
20 but does not lose its security interest.

21 (d) If a security interest secures an obligation, a  
22 secured party may use or operate collateral for the purpose of  
23 preserving the collateral or its value or pursuant to an order of  
24 a court of appropriate jurisdiction or, except in the case of  
25 consumer goods, in the manner and to the extent provided in the  
26 security agreement.

1           **SECTION 9-208. DUTIES OF SECURED PARTY HAVING CONTROL OVER**  
2 **DEPOSIT ACCOUNT. [former draft § 9-117(d), (e)]**

3           (a) If there is no outstanding secured obligation and the  
4 secured party has no commitment to make advances, incur  
5 obligations, or otherwise give value:

6           (1) a secured party that has control over a deposit  
7 account under Section 9-109(a)(2), within 10 days after written  
8 demand by the debtor, shall send the depository institution with  
9 which the deposit account is maintained a written statement that  
10 releases the depository institution from any further obligation  
11 to comply with instructions originated by the secured party; and

12           (2) a secured party that has control over a deposit  
13 account under Section 9-109(a)(3), within 10 days after written  
14 demand by the debtor, shall pay the debtor all funds on deposit  
15 in the account.

16           (b) A secured party that fails to comply with subsection  
17 (a) is liable to the debtor for \$500 and, in addition, for any  
18 loss caused to the debtor by the failure.

19                           **Reporters' Comments**

20           This section imposes duties on a secured party that has  
21 control over a deposit account. The duty to terminate the  
22 secured party's control is analogous to the duty to file a  
23 termination statement, imposed by § 9-511. However, neither  
24 current law nor the draft imposes analogous duties on a secured  
25 party that has possession of collateral. Although section 9-208  
26 of both the current statute and the draft address directly the  
27 duties of a secured party in possession of collateral, neither  
28 requires the secured party to relinquish possession when the  
29 secured party ceases to hold a security interest. Should the  
30 draft impose duties similar to those provided in this section and  
31 in § 9-511 on secured parties in possession of collateral or  
32 secured parties having control over investment property or  
33 letters of credit? Alternatively, inasmuch as problems



1 apparently have not surfaced in the absence of such duties under  
2 current law, is this section necessary?

3       **SECTION 9-209. REQUEST FOR ACCOUNTING, LIST OF COLLATERAL, OR**  
4 **STATEMENT OF ACCOUNT. [former draft § 9-208]**

5           (a) In this section:

6               (1) "Accounting" means a writing that indicates the  
7 aggregate unpaid obligations as of a date not more than XX days  
8 earlier than the date of the writing[, ] [and] reasonably  
9 identifies the components of the obligations [, and indicates the  
10 [source] [nature] of the obligations and how payments have been  
11 applied towards satisfaction of the obligations];

12               (2) "Request for an accounting" means a writing,  
13 signed by a debtor [or secondary obligor], requesting that the  
14 recipient provide an accounting of the unpaid obligations secured  
15 by collateral;

16               (3) "Request for a list of collateral" means a writing,  
17 signed by a debtor [or secondary obligor], requesting that the  
18 recipient approve or correct a list of what the [debtor] [person]  
19 believes to be the collateral securing an obligation; and

20               (4) "Request for a statement of account" means a  
21 writing, signed by a debtor [or secondary obligor], requesting  
22 that the recipient approve or correct a statement indicating what  
23 the [debtor] [person] believes to be the aggregate amount of  
24 unpaid obligations secured by collateral as of a specified date.

25           (b) Subject to subsections (c), (d), and (e), a secured  
26 party [other than a buyer of accounts, chattel paper, or payment  
27 intangibles] shall comply with a request for an accounting, list

1 of collateral, or statement of account within [XX] days after  
2 receipt by sending to the [debtor] [person making the request] a  
3 written correction or approval or an accounting, as applicable.

4 (c) A secured party that claims a security interest in all  
5 of a particular type of collateral owned by the debtor may comply  
6 with a request for a list of collateral by sending to the  
7 [debtor] [person making the request] a written statement to that  
8 effect within [XX] days after receipt.

9 (d) A person that claims no interest in the collateral  
10 when it receives a request for a list of collateral shall comply  
11 with the request within [XX] days after receipt by sending to the  
12 [debtor] [person making the request] a written statement  
13 disclaiming any interest in the collateral and, if known to the  
14 recipient, containing the name and mailing address of any  
15 assignee of or successor to the recipient's security interest in  
16 the collateral.

17 (e) A person that claims no interest in the obligations  
18 when it receives a request for a statement of account or an  
19 accounting shall comply with the request within [XX] days after  
20 receipt by sending to the [debtor] [person making the request] a  
21 written statement disclaiming any interest in the obligations  
22 and, if known to the recipient, containing the name and mailing  
23 address of any assignee of or successor to the recipient's  
24 interest in the obligations.

25 (f) A person that fails to comply with a request under  
26 this section without reasonable excuse is liable for [\$XXX and]  
27 any loss caused to the [debtor] [person making the request] by

1 the noncompliance. As against a person reasonably misled by a  
2 secured party's failure to comply with a request for a list of  
3 collateral or a statement of account, the secured party may claim  
4 a security interest only as shown in the statement contained in  
5 the request. A recipient that never claimed an interest in the  
6 collateral or obligations that are the subject of a request under  
7 this section has a reasonable excuse for failure to comply with  
8 the request.

9 (g) A [debtor] [person] is entitled to an approval or  
10 correction or an accounting under this section once during any  
11 six-month period without charge. The secured party may require  
12 payment of a charge not exceeding \$XXX for each additional  
13 response to a request.

14 **Reporters' Comments**

15 1. This section was revised with a view toward resolving some  
16 of the issues that have arisen under former § 9-208 and towards  
17 making information concerning the secured indebtedness more  
18 readily available to debtors after default.

19 2. Bracketed language indicates issues that the Drafting  
20 Committee may wish to discuss. They include:

21 Should the secured party be obliged to respond to a  
22 secondary obligor?

23 Should the buyer of receivables be obliged to respond?

24 Should the reference be to "indebtedness," which appears  
25 in former § 9-208 or to "obligations," which appears in  
26 Part 6?

27 What should an accounting contain?

28 How promptly must the secured party respond?

29 What should be the consequences of noncompliance?

30 3. The Drafting Committee may wish to move the liability  
31 provisions to Part 6.

PART 3

PERFECTION OF SECURITY INTERESTS

SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY

**Reporters' Prefatory Comment**

Subpart 1 deals with the law governing perfection, the effect of perfection or nonperfection, and priority of security interests. Priority, in this context, subsumes all of the rules in Part 3, including "cut off" or "take free" rules such as §§ 9-315(b), (c), and (d), 9-316, and 9-328. This subpart does not address choice of law for other purposes. For example, the law applicable to issues such as attachment, validity, characterization (e.g., true lease or security interest), and enforcement would be governed by the rules in § 1-105; that governing law typically is specified in the security agreement.

Another jurisdiction's law may govern other third-party matters addressed in Article 9. See Part 4, Reporters' Prefatory Comment.

**SECTION 9-301. LAW GOVERNING PERFECTION AND PRIORITY OF CERTAIN NONPOSSESSORY SECURITY INTERESTS. [former draft § 9-103(a)(1)-(3)]** The following rules apply to a nonpossessory security interest in collateral other than goods covered by a certificate of title described in Section 9-303, deposit accounts, investment property, and minerals and related accounts described in Section 9-306:

(1) Except as otherwise provided in paragraphs (2), (3), and (4), during the time that a debtor is located in a jurisdiction, perfection, the effect of perfection or nonperfection, and the priority of a security interest in the collateral are governed by the local law of that jurisdiction.

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

1           (3) Except as otherwise provided in paragraph (4), while  
2 goods, documents, or instruments are located in a jurisdiction,  
3 the effect of perfection or nonperfection and the priority of a  
4 security interest in the collateral are governed by the local law  
5 of that jurisdiction.

6           (4) While the debtor is located in a jurisdiction not a  
7 part of the United States and that does not provide for  
8 perfection of a security interest by filing or recording, the law  
9 of the jurisdiction in the United States in which the debtor has  
10 its major executive office in the United States governs the  
11 perfection and the effect of perfection or nonperfection of the  
12 security interest through filing. In the alternative, if the  
13 debtor is located in a jurisdiction that is not a part of the  
14 United States or Canada and the collateral is accounts or general  
15 intangibles for money due or to become due, the security interest  
16 may be perfected by notification to the account debtor. As used  
17 in this paragraph, "United States" includes the District of  
18 Columbia, the Commonwealth of Puerto Rico, the United States  
19 Virgin Islands, and any territory or insular possession subject  
20 to the jurisdiction of the United States.

21                           **Reporters' Comments**

22           1. General. Paragraphs (2) and (3) are new. They contain  
23 exceptions to the general rule of paragraph (1), under which the  
24 law of the jurisdiction of the debtor's location governs  
25 perfection, the effect of perfection or nonperfection, and  
26 priority of a security interest.

27           2. Law Governing Perfection vs. Law Governing Priority.  
28 Paragraph (3) responds to criticism of previous drafts. Those  
29 drafts forced the jurisdiction of the situs of tangible  
30 collateral to defer to priority rules created by the jurisdiction  
31 in which the debtor is located. Thus, the priority of an

1 execution lien on goods located in Illinois might have been  
2 governed by priority rules enacted by the Delaware legislature.  
3 Paragraph (3) divorces questions of perfection from questions of  
4 "the effect of perfection or nonperfection and the priority of a  
5 security interest." Under paragraph (3), the rights of competing  
6 claimants to tangible collateral would be resolved by reference  
7 to the law of the jurisdiction in which the collateral is  
8 located. Although this bifurcated approach may introduce  
9 complexities, its appearance in prior drafts with respect to  
10 agricultural liens met with generally favorable reviews. See  
11 draft § 9-302(2), (3). A similar bifurcation applies to security  
12 interests in investment property under former § 9-103(6). See  
13 draft § 9-305. The principal efficiencies of moving from the  
14 location-of-collateral rule to a location-of-debtor rule concern  
15 where to file/search and what to file. The bifurcated approach  
16 generally preserves these benefits. If the Drafting Committee  
17 approves this approach, it may be possible to combine this  
18 section with § 9-302.

19 The draft applies the law of the situs to determine priority  
20 only with respect to goods, instruments, and documents. In this  
21 regard, the draft generally follows former § 9-103(1), which  
22 applies the law of the location of the collateral to documents,  
23 instruments, and "ordinary" (as opposed to "mobile") goods. The  
24 draft does not distinguish among types of goods. The  
25 ordinary/mobile goods distinction appears to address concerns  
26 about where to file and search, rather than concerns about  
27 priority. We see no reason to preserve this distinction under  
28 the bifurcated approach.

29 The Drafting Committee also may wish to consider whether to  
30 add a provision to address a change in the law governing  
31 priority. Cf. § 9-314 (perfection continues for 4 months  
32 following a change in which law determines perfection).

33 3. Fixtures. The problems created under the previous draft  
34 are illustrated most sharply by the treatment of fixtures. Under  
35 that draft, perfection and priority of a security interest in  
36 fixtures located in Arizona and owned by a Delaware corporation  
37 would be governed by the law of Delaware. Although Delaware law  
38 would (under both this draft and the previous draft) send one to  
39 a filing office in Arizona for the place to file a financing  
40 statement as a fixture filing, under the previous draft Delaware  
41 law nonetheless governed both perfection and priority. New  
42 Paragraph (2) contains a special rule for security interests  
43 perfected by a fixture filing; the law of the jurisdiction where  
44 the fixtures are located governs perfection. This special rule  
45 may be necessary to take account of local, nonuniform real estate  
46 filing and recording requirements that probably should control  
47 the formal requisites of a fixture filing.

1           **SECTION 9-302. LAW GOVERNING PERFECTION AND PRIORITY OF**  
2 **AGRICULTURAL LIENS AND CERTAIN POSSESSORY SECURITY INTERESTS.**

3 **[former draft § 9-103(b) (1)-(4)]** The following rules apply to a  
4 possessory security interest in collateral, other than goods  
5 covered by a certificate of title described in Section 9-303 and  
6 minerals described in Section 9-306, and to an agricultural lien  
7 on collateral:

8           (1) While collateral is located in a jurisdiction,  
9 perfection, the effect of perfection or nonperfection, and the  
10 priority of a security interest in the collateral are governed by  
11 the local law of that jurisdiction.

12           (2) Perfection of an agricultural lien on the collateral  
13 is governed by the local law of the jurisdiction in which the  
14 debtor is located.

15           (3) While collateral is located in a jurisdiction, the  
16 effect of perfection or nonperfection and the priority of an  
17 agricultural lien on the collateral are governed by the local law  
18 of that jurisdiction.

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

21 **[former draft § 9-103(c) (1)-(4)]**

22           (a) This section applies to a security interest in goods  
23 covered by a certificate of title.

24           (b) In this section:

25           (1) "certificate of title" means a certificate of title  
26 with respect to which a statute provides for the security

1 interest in question to be indicated on the certificate as a  
2 condition or result of perfection; and

3 (2) goods become "covered" by a certificate of title  
4 when an appropriate application for the certificate and the  
5 applicable fee are delivered to the appropriate authority.

6 (c) The absence of any other relationship between the  
7 jurisdiction under whose certificate the goods are covered and  
8 the goods or the debtor does not affect the applicability of this  
9 section to the goods.

10 (d) Perfection, the effect of perfection or  
11 non-perfection, and the priority of the security interest are  
12 governed by the local law of the jurisdiction under whose  
13 certificate the goods are covered from the time the goods become  
14 covered by the certificate until the earlier of the time the  
15 certificate becomes ineffective under the law of that  
16 jurisdiction or the time the goods become covered subsequently by  
17 a certificate of title from another jurisdiction. After that  
18 time, the goods are not covered by the certificate of title  
19 within the meaning of this section.

20 **SECTION 9-304. LAW GOVERNING PERFECTION AND PRIORITY OF**  
21 **SECURITY INTERESTS IN DEPOSIT ACCOUNTS. [former draft § 9-**  
22 **103(d)(1)-(2)]** Perfection, the effect of perfection or  
23 nonperfection, and the priority of a security interest in a  
24 deposit account are governed by the local law of the depository  
25 institution's jurisdiction. The following rules determine a  
26 depository institution's jurisdiction for purposes of this  
27 section:





1 commodity intermediary's jurisdiction, and in § 8-110(e)(1)  
2 (included in the Appendix to this draft).

3           **SECTION 9-305. LAW GOVERNING PERFECTION AND PRIORITY OF**  
4 **SECURITY INTERESTS IN INVESTMENT PROPERTY. [former draft § 9-**  
5 **103(f)]**

6           (a) Except as otherwise provided in subsection (b), the  
7 following rules apply to a security interest in investment  
8 property:

9           (1) While a security certificate is located in a  
10 jurisdiction, perfection, the effect of perfection or  
11 nonperfection, and the priority of a security interest in the  
12 certificated security represented thereby are governed by the  
13 local law of that jurisdiction.

14           (2) Perfection, the effect of perfection or  
15 nonperfection, and the priority of a security interest in an  
16 uncertificated security are governed by the local law of the  
17 issuer's jurisdiction as specified in Section 8-110(d).

18           (3) Perfection, the effect of perfection or non-  
19 perfection, and the priority of a security interest in a security  
20 entitlement or securities account are governed by the local law  
21 of the securities intermediary's jurisdiction as specified in  
22 Section 8-110(e).

23           (4) Perfection, the effect of perfection or non-  
24 perfection, and the priority of a security interest in a  
25 commodity contract or commodity account are governed by the local  
26 law of the commodity intermediary's jurisdiction. The following

1 rules determine a "commodity intermediary's jurisdiction" for  
2 purposes of this paragraph and Section 9-314:

3 (A) If an agreement between the commodity  
4 intermediary and commodity customer expressly specifies the  
5 commodity intermediary's jurisdiction for purposes of this part,  
6 this article, or this act, that jurisdiction is the commodity  
7 intermediary's jurisdiction.

8 (B) If an agreement between the commodity  
9 intermediary and commodity customer does not specify the  
10 commodity intermediary's jurisdiction as provided in subparagraph  
11 (A), but expressly specifies that the commodity account is  
12 maintained at an office in a particular jurisdiction, that  
13 jurisdiction is the commodity intermediary's jurisdiction.

14 (C) If an agreement between the commodity  
15 intermediary and commodity customer does not specify a  
16 jurisdiction as provided in subparagraphs (A) or (B), the  
17 commodity intermediary's jurisdiction is the jurisdiction in  
18 which is located the office identified in an account statement as  
19 the office serving the commodity customer's account.

20 (D) If an agreement between the commodity  
21 intermediary and commodity customer does not specify a  
22 jurisdiction as provided in subparagraphs (A) or (B) and an  
23 account statement does not identify an office serving the  
24 commodity customer's account as provided in subparagraph (C), the  
25 commodity intermediary's jurisdiction is the jurisdiction in  
26 which is located the chief executive office of the commodity  
27 intermediary.

1 (b) Perfection of a security interest by filing, automatic  
2 perfection of a security interest in investment property granted  
3 by a broker or securities intermediary, and automatic perfection  
4 of a security interest in a commodity contract or commodity  
5 account granted by a commodity intermediary are governed by the  
6 local law of the jurisdiction in which the debtor is located.

7 **Reporters' Comments**

8 Subsection (a) (4) (A) has been revised to provide more  
9 flexibility for the parties to select the security intermediary's  
10 jurisdiction. See also § 9-304(1) (depository institution's  
11 jurisdiction); § 8-110(e) (1) (securities intermediary's  
12 jurisdiction) (included in the Appendix to this draft).

13 **SECTION 9-306. LAW GOVERNING PERFECTION AND PRIORITY OF**  
14 **SECURITY INTERESTS IN MINERALS.** [MINOR STYLE CHANGES ONLY]  
15 [**former draft § 9-103(e)**] Perfection, the effect of perfection or  
16 nonperfection, and the priority of a security interest that is  
17 created by a debtor having an interest in minerals or the like,  
18 including oil and gas, before extraction, and which attaches to  
19 the collateral as extracted or which attaches to an account  
20 resulting from the sale of the collateral at the wellhead or  
21 minehead, are governed by the law of the jurisdiction in which  
22 the wellhead or minehead is located.

23 **SECTION 9-307. LOCATION OF DEBTOR.** [**former draft § 9-**  
24 **103(a) (4) - (5) ]**

25 (a) Except as otherwise provided in subsection (b), for  
26 purposes of this part:

27 (1) a registered entity is located in the  
28 jurisdiction of its organization; and



1 (b) An agricultural lien is perfected if it has become  
2 effective and all of the applicable requirements for perfection  
3 specified in Sections 9-309 and 9-313 have been met. If the  
4 steps are taken before the agricultural lien becomes effective,  
5 it is perfected when it becomes effective.

6 (c) If a security interest or agricultural lien is  
7 originally perfected in one manner permitted under this article  
8 and is later perfected in another manner under this article,  
9 without an intermediate period when it was unperfected, the  
10 security interest or agricultural lien is perfected continuously.

11 (d) Perfection of a security interest in an account,  
12 chattel paper, a document, an instrument, [an insurance policy,]  
13 a general intangible, or a security also perfects a security  
14 interest in a support obligation for the collateral.

15 (e) Perfection of a security interest in a securities  
16 account also perfects a security interest in all security  
17 entitlements carried in the securities account. Perfection of a  
18 security interest in a commodity account also perfects a security  
19 interest in all commodity contracts carried in the commodity  
20 account.

21 (f) Notwithstanding other law to the contrary, perfection  
22 of a security interest in a right to payment or performance,  
23 other than a right to payment evidenced by chattel paper, also  
24 perfects a security interest in a [mortgage on real estate] [lien  
25 on property] securing the right.

26 **SECTION 9-309. WHEN FILING REQUIRED TO PERFECT SECURITY**  
27 **INTEREST OR AGRICULTURAL LIEN; SECURITY INTERESTS AND**

1 **AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY.**

2 **[former draft § 9-302]**

3 (a) A financing statement must be filed to perfect all  
4 security interests and agricultural liens, other than:

5 (1) a security interest in collateral in the secured  
6 party's possession under Section 9-311;

7 (2) a security interest perfected under Section 9-  
8 314(a), (c), or (d);

9 (3) a security interest in instruments, certificated  
10 securities, chattel paper, or documents perfected without filing  
11 or possession under Section 9-310(d) or (e);

12 (4) a security interest in or agricultural lien on  
13 proceeds under Section 9-313(e);

14 (5) a security interest in a support obligation under  
15 Section 9-308(d);

16 (6) a security interest created by an assignment of a  
17 beneficial interest in a trust or a decedent's estate;

18 (7) a purchase money security interest in consumer  
19 goods; but subsection (d) applies to consumer goods that are  
20 subject to a statute or treaty described in subsection (c);

21 (8) an assignment of accounts or payment intangibles  
22 which does not alone or in conjunction with other assignments to  
23 the same assignee transfer a significant part of the assignor's  
24 outstanding accounts or payment intangibles ;

25 (9) a security interest of a collecting bank (Section  
26 4-210) or arising under the Article on Sales or the Article on  
27 Leases (see Section 9-116);

1           (10) an assignment for the benefit of all the creditors  
2 of the transferor, and subsequent transfers by the assignee  
3 thereunder;

4           (11) a security interest arising in the purchase or  
5 delivery of a financial asset under Section 9-206;

6           (12) a security interest in investment property created  
7 by a broker or securities intermediary;

8           (13) a security interest in a commodity contract or a  
9 commodity account created by a commodity intermediary;

10          (14) a security interest in a letter of credit and  
11 proceeds of the letter of credit which is perfected without  
12 filing under Section 9-312;

13          (15) a security interest in property subject to a  
14 statute, regulation, or treaty described in subsection (c);

15          (16) a security interest in a deposit account which is  
16 perfected without filing under Section 9-312; and

17          (17) a sale of a payment intangible.

18          (b) If a secured party assigns a perfected security  
19 interest, no filing under this article is required to continue  
20 the perfected status of the security interest against creditors  
21 of and transferees from the original debtor.

22          (c) The filing of a financing statement is not necessary  
23 or effective to perfect a security interest in property subject  
24 to:

25                 (1) a statute, regulation, or treaty of the United  
26 States whose requirements for a security interest's obtaining



1 priority over the rights of a lien creditor with respect to the  
2 property preempt subsection (a); [or]

3 (2) the following statutes of this State; [list any  
4 certificate-of-title statute covering automobiles, trailers,  
5 mobile homes, boats, farm tractors, or the like, which provides  
6 for a security interest to be indicated on the certificate as a  
7 condition or result of perfection, and any non-UCC central filing  
8 statute]; but during any period in which collateral is inventory  
9 held for sale or lease or leased by a person that is in the  
10 business of selling or leasing goods of that kind, the otherwise  
11 applicable filing provisions of this article apply to a security  
12 interest in that collateral created by that person as debtor[; or

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

18 (d) Compliance with the requirements prescribed by a  
19 statute, regulation, or treaty described in subsection (c) for  
20 obtaining priority over the rights of a lien creditor is  
21 equivalent to the filing of a financing statement under this  
22 article. Except as otherwise provided in Sections 9-311 and 9-  
23 314(c) for goods covered by a certificate of title, a security  
24 interest in property subject to a statute, regulation, or treaty  
25 described in subsection (c) can be perfected only by compliance  
26 with those requirements, and a security interest so perfected  
27 remains perfected notwithstanding a change in the use or transfer

1 of possession of the collateral. Except as otherwise provided in  
2 Section 9-314(c), duration and renewal of perfection of a  
3 security interest perfected by compliance with the requirements  
4 prescribed by the statute, regulation, or treaty are governed by  
5 the statute, regulation, or treaty. In other respects the  
6 security interest is subject to this article.

7 **Reporters' Comments**

8 1. Assignments of Perfected Security Interests. Subsection  
9 (b) concerns assignment of a perfected security interest. It  
10 provides that no filing is necessary in connection with an  
11 assignment of a perfected security interest by a secured party to  
12 an assignee in order to maintain perfection as against creditors  
13 and transferees of the debtor. Although subsection (b) addresses  
14 explicitly only the absence of an additional filing requirement,  
15 the same result normally will follow in the case of an assignment  
16 of a security interest perfected in a manner other than by  
17 filing, such as by control, by possession, or by compliance with  
18 a statute, regulation, or treaty under subsection (d). For  
19 example, so long as possession of collateral is maintained by an  
20 assignee or by the assignor or another person on behalf of the  
21 assignee, no further perfection steps need be taken on account of  
22 the assignment. Of course, additional action may be required for  
23 perfection of the assignee's interest as against creditors and  
24 transferees of the assignor.

25 2. Security interests created by broker, securities  
26 intermediary, or commodities intermediary. Subsections (a)(12)  
27 and (a)(13) replace former § 9-115(4)(c) and (d). The latter  
28 indicated that, under certain circumstances, a security interest  
29 created by a securities intermediary or commodity intermediary  
30 "is perfected when it attaches," and that "[t]he filing of a  
31 financing statement . . . has no effect for purposes of  
32 perfection or priority with respect to that security interest."  
33 No change in meaning is intended.

1           **SECTION 9-310. PERFECTION OF SECURITY INTERESTS IN**  
2 **INSTRUMENTS, CHATTEL PAPER, INVESTMENT PROPERTY, DOCUMENTS,**  
3 **MONEY, DEPOSIT ACCOUNTS, LETTERS OF CREDIT, AND GOODS COVERED BY**  
4 **DOCUMENTS; PERFECTION BY PERMISSIVE FILING; TEMPORARY PERFECTION**  
5 **WITHOUT FILING OR TRANSFER OF POSSESSION. [former draft § 9-304]**

6           (a) A security interest in instruments, chattel paper,  
7 investment property, or negotiable documents may be perfected by  
8 filing. Except as otherwise provided in Section 9-313(e) for  
9 cash proceeds:

10           (1) a security interest in money can be perfected only  
11 by the secured party's taking possession (Section 9-311);

12           (2) a security interest in a deposit account can be  
13 perfected only by control (Section 9-312); and

14           (3) except as otherwise provided in Section 9-308(d)  
15 for support obligations, a security interest in a letter of  
16 credit and proceeds of the letter of credit can be perfected only  
17 by control (Section 9-312).

18           (b) While goods are in the possession of a bailee (Section  
19 7-102(1)) that has issued a negotiable document (Section 7-  
20 104(1)) covering the goods, a security interest in the goods is  
21 perfected by perfecting a security interest in the document, and  
22 any security interest in the goods otherwise perfected during the  
23 period is subordinate to the security interest perfected in the  
24 document.

25           (c) A security interest in goods in the possession of a  
26 bailee (Section 7-102(1)) that has issued a non-negotiable  
27 document (Section 7-104(2)) covering the goods is perfected by

1 issuance of a document in the name of the secured party, by the  
2 bailee's receipt of notification of the secured party's interest,  
3 or by filing as to the goods.

4 (d) A security interest in instruments, certificated  
5 securities, or negotiable documents is perfected without filing  
6 or the taking of possession for a period of 20 days from the time  
7 it attaches to the extent that it arises for new value given  
8 under a written security agreement.

9 (e) A security interest remains perfected for 20 days  
10 without filing if a secured party having a perfected security  
11 interest in an instrument, a certificated security, a negotiable  
12 document, or goods in possession of a bailee other than one that  
13 has issued a negotiable document for the goods

14 (1) makes available to the debtor the goods or documents  
15 representing the goods for the purpose of ultimate sale or  
16 exchange or for the purpose of loading, unloading, storing,  
17 shipping, transshipping, manufacturing, processing, or otherwise  
18 dealing with them in a manner preliminary to their sale or  
19 exchange, but priority among conflicting security interests in  
20 the goods is subject to Section 9-322; or

21 (2) delivers the instrument or certificated security to  
22 the debtor for the purpose of ultimate sale or exchange or of  
23 presentation, collection, enforcement, renewal, or registration  
24 of transfer.

25 (f) After the 20-day period in subsections (d) and (e)  
26 expires, perfection depends upon compliance with this article.

1           **SECTION 9-311. WHEN POSSESSION BY SECURED PARTY PERFECTS**  
2 **SECURITY INTEREST WITHOUT FILING. [former draft § 9-305]**

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

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

13           (c) This subsection applies to collateral other than goods  
14 covered by a document. If the collateral is in the possession of  
15 a person other than the debtor, the secured party, or a lessee of  
16 the collateral from the debtor in the ordinary course of the  
17 debtor's business (Section 2A-103), the secured party takes  
18 possession when the person in possession acknowledges [in  
19 writing] that it holds possession for the secured party's  
20 benefit. If a person, other than the debtor, the secured party,  
21 or a lessee of the collateral from the debtor in the ordinary  
22 course of the debtor's business, takes possession of the  
23 collateral after having acknowledged [in writing] that it will  
24 hold possession of collateral for the secured party's benefit,  
25 the secured party takes possession when the person takes  
26 possession. [A security interest is perfected by possession when  
27 the secured party takes possession, without a relation back, and

1 continues only while the secured party retains possession, unless  
2 otherwise specified in this article.]

3 (d) A person in possession of collateral is not required  
4 to acknowledge that it holds possession for a secured party's  
5 benefit.

6 (e) If a person acknowledges that it holds possession for  
7 the secured party's benefit:

8 (1) the acknowledgment is effective under subsection  
9 (c) even if the acknowledgment violates the rights of a debtor;  
10 and

11 (2) unless the person otherwise agrees or other law  
12 otherwise provides, the person owes no duties to the secured  
13 party and is not required to confirm the acknowledgment to  
14 another person.

15 (f) A security interest may be perfected as otherwise  
16 provided in this article before or after a period of possession  
17 by a secured party.

18 **SECTION 9-312. PERFECTION BY CONTROL. [former draft § 9-**  
19 **305A]**

20 (a) A security interest in investment property, a deposit  
21 account, or a letter of credit and proceeds of the letter of  
22 credit may be perfected by control of the collateral under  
23 Section 9-108, 9-109, or 9-110.

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

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

4 **SECTION 9-313. "PROCEEDS"; SECURED PARTY'S RIGHTS ON**  
5 **DISPOSITION OF COLLATERAL; SECURED PARTY'S RIGHTS IN PROCEEDS.**  
6 **[former draft § 9-306]**

7 (a) "Proceeds" includes the following property:

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

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

12 (3) rights arising out of collateral;

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

16 (5) to the extent of the value of collateral and to the  
17 extent payable to the debtor or the secured party, insurance  
18 payable by reason of the loss or nonconformity of, defects in, or  
19 damage to the collateral.

20 (b) Money, checks, deposit accounts, and the like are  
21 "cash proceeds." All other proceeds are "noncash proceeds."

22 (c) Except as otherwise provided in this article, a  
23 security interest continues in collateral notwithstanding sale,  
24 lease, license, exchange, or other disposition thereof unless the  
25 secured party authorized the disposition free of the security  
26 interest in the security agreement or otherwise, and also  
27 attaches to any identifiable proceeds. Other law determines

1 whether an agricultural lien continues on collateral  
2 notwithstanding disposition or becomes effective as to proceeds.

3 (d) Proceeds that are commingled with other property are  
4 identifiable proceeds:

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

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

12 (e) A security interest in or agricultural lien on  
13 proceeds is a perfected security interest or agricultural lien if  
14 the interest in or lien on the original collateral was perfected.  
15 The security interest in or agricultural lien on proceeds ceases  
16 to be a perfected interest or lien and becomes unperfected on the  
17 21st day after the security interest attaches to the proceeds or  
18 the agricultural lien becomes effective as to the proceeds  
19 unless:

20 (1) a filed financing statement covers the original  
21 collateral and the proceeds are collateral in which a security  
22 interest may be perfected by filing in the office in which the  
23 financing statement has been filed and, if the proceeds are  
24 acquired with cash proceeds or funds from a deposit account, the  
25 description of collateral in the financing statement indicates  
26 the type of property constituting the proceeds;

27 (2) the proceeds are identifiable cash proceeds; or



1           (3) the security interest in or agricultural lien on the  
2 proceeds is perfected before the 21st day after the security  
3 interest attaches to the proceeds or the agricultural lien  
4 becomes effective as to the proceeds.

5           (f) Except as otherwise provided in subsection (e), a  
6 security interest in or agricultural lien on proceeds can be  
7 perfected only by the methods or under the circumstances  
8 permitted in this article for original collateral of the same  
9 type.

10          (g) If a filed financing statement covers the original  
11 collateral, a security interest in or an agricultural lien on  
12 proceeds which remains perfected under subsection (e)(1) becomes  
13 unperfected when the effectiveness of the filed financing  
14 statement lapses under Section 9-516 or is terminated under  
15 Section 9-511, but in no event before the 21st day after the  
16 security interest attaches to the proceeds or the agricultural  
17 lien becomes effective as to the proceeds.

18           **SECTION 9-314. PERFECTION OF SECURITY INTEREST OR**  
19 **AGRICULTURAL LIEN FOLLOWING CHANGE IN APPLICABLE LAW. [former**  
20 **draft § 9-103(a) (6), (b) (5), (c) (5), (d) (3)]**

21          (a) This subsection applies to an agricultural lien and to  
22 a nonpossessory security interest in collateral other than goods  
23 covered by a certificate of title (Section 9-303), deposit  
24 accounts, investment property, and minerals and related accounts  
25 described in Section 9-306. A security interest or agricultural  
26 lien perfected under the law of the jurisdiction in which the  
27 debtor is located remains perfected until the expiration of four

1 months after a change of the debtor's location to another  
2 jurisdiction, or until perfection would have ceased under the law  
3 of the first jurisdiction, whichever occurs first. If it becomes  
4 perfected under the law of the other jurisdiction before the end  
5 of that period, the security interest or agricultural lien  
6 continues perfected thereafter. If it does not become perfected  
7 under the law of the other jurisdiction before the end of that  
8 period, the security interest or agricultural lien becomes  
9 unperfected and is deemed never to have been perfected.

10 (b) This subsection applies to a possessory security  
11 interest in collateral, other than goods covered by a certificate  
12 of title (Section 9-303) and minerals described in Section 9-306.  
13 A security interest remains continuously perfected if:

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

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

19 (3) upon entry into the other jurisdiction the security  
20 interest is perfected under the law of the other jurisdiction.

21 [Subsection (c)--Alternative A]

22 (c) This subsection applies to goods covered by a  
23 certificate of title (Section 9-303). A security interest in  
24 goods which is perfected by any method under the law of another  
25 jurisdiction when the goods become covered by a certificate of  
26 title from this jurisdiction remains perfected until the earlier  
27 of the time the security interest would have become unperfected

1 under the law of the other jurisdiction had the goods not become  
2 so covered or the expiration of four months after the goods had  
3 become so covered. If it becomes perfected under Section 9-  
4 309(d) or 9-311 before the earlier of that time or the expiration  
5 of that period, the security interest continues perfected  
6 thereafter. If it does not become perfected under Section 9-  
7 309(d) or Section 9-311 before the earlier of that time or the  
8 expiration of that period, the security interest becomes  
9 unperfected and is deemed never to have been perfected.

10 [Subsection (c)--Alternative B]

11 (c) This subsection applies to goods covered by a  
12 certificate of title (Section 9-303). A security interest in  
13 goods which is perfected by any method under the law of another  
14 jurisdiction when the goods become covered by a certificate of  
15 title from this jurisdiction remains perfected until the security  
16 interest would have become unperfected under the law of the other  
17 jurisdiction had the goods not become so covered. However, if  
18 the applicable steps required for perfection under Section 9-  
19 309(d) or 9-311 are not taken before the earlier of the time the  
20 security interest would have become unperfected under the law of  
21 the other jurisdiction had the goods not become so covered or the  
22 expiration of four months after the goods had become so covered,  
23 as against a purchaser of the goods for value the security  
24 interest becomes unperfected and is deemed never to have been  
25 perfected.

26 (d) This subsection applies to deposit accounts [and  
27 investment property]. A security interest perfected under the

1 law of the depository institution's jurisdiction[, the securities  
2 intermediary's jurisdiction, or the commodity intermediary's  
3 jurisdiction, as applicable] remains perfected until the  
4 expiration of four months after a change of the [depository  
5 institution's] jurisdiction, or until perfection would have  
6 ceased under the law of the first jurisdiction, whichever occurs  
7 first. If it becomes perfected under the law of the other  
8 jurisdiction before the end of that period, the security interest  
9 continues perfected thereafter. If it does not become perfected  
10 under the law of the other jurisdiction before the end of that  
11 period, the security interest becomes unperfected and is deemed  
12 never to have been perfected.

13 [(e) This subsection applies to investment property. A  
14 security interest perfected under the law of the securities  
15 intermediary's jurisdiction or the commodity intermediary's  
16 jurisdiction, as applicable, remains perfected until the  
17 expiration of four months after a change of the intermediary's  
18 jurisdiction, or until perfection would have ceased under the law  
19 of the first jurisdiction, whichever occurs first. If it becomes  
20 perfected under the law of the other jurisdiction before the end  
21 of that period, the security interest continues perfected  
22 thereafter. If it does not become perfected under the law of the  
23 other jurisdiction before the end of that period, the security  
24 interest becomes unperfected and is deemed never to have been  
25 perfected.]

**Reporters' Comments**

1  
2 1. Retroactive Unperfection. The provisions corresponding to  
3 subsections (a), (c) (Alternative A), and (d) in the previous  
4 draft provided that when a security interest does not become  
5 perfected under the law of a new jurisdiction within the four-  
6 month period, "the security interest becomes unperfected and as  
7 against a purchaser of the [collateral] is deemed to have been  
8 unperfected at all previous times." In distinguishing between  
9 purchasers and others in this context, the previous draft  
10 followed former § 9-103(1)(d) and (3)(e). We are aware of only  
11 one justification for making loss of perfection retroactive as  
12 against purchasers, but not as against lien creditors: to  
13 eliminate the possibility that, if the four-month period were to  
14 expire during the debtor's bankruptcy proceeding, the security  
15 interest might be avoided under Bankruptcy Code § 544(a) or  
16 prepetition payments to the once-perfected secured party might be  
17 recovered under § 547. This protection comes at a price,  
18 however, inasmuch as it necessarily creates a potential for  
19 circular priorities. Given that problem, and on further  
20 reflection, we question whether the statute should relieve a  
21 secured party of the burden of perfecting under the law of the  
22 new jurisdiction insofar as priority over a lien creditor is  
23 concerned. Bankruptcy Code §§ 362(b) and 546(b), as amended by  
24 the Bankruptcy Reform Act of 1994, excuse the secured party from  
25 any need to seek relief from the automatic stay before taking  
26 postpetition actions necessary to continue perfection of a  
27 security interest.

28 2. Depository Institutions and Intermediaries. The bracketed  
29 language in subsection (d) and the brackets around subsection (e)  
30 raise the issue whether one subsection is adequate to address  
31 changes in the jurisdiction of a depository institution,  
32 securities intermediary, and commodity intermediary, or whether a  
33 separate subsection is needed for depository institutions. (A  
34 third possibility is to create three separate subsections--one  
35 for depository institutions, one for securities intermediaries,  
36 and one for commodity intermediaries--each of which would contain  
37 the same rule.)

38 **SUBPART 3. PRIORITY**

39 **SECTION 9-315. INTERESTS THAT TAKE PRIORITY OVER AND TAKE**  
40 **FREE OF UNPERFECTED SECURITY INTEREST OR AGRICULTURAL LIEN;**  
41 **DEFINITION: "LIEN CREDITOR." [former draft § 9-301]**

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

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

3           (2) a person that becomes a lien creditor before the  
4 security interest is perfected.

5           (b) Except as otherwise provided in subsection (e), a  
6 buyer of goods, instruments, documents, [a security certificate,]  
7 or chattel paper that is not a secured party takes free of a  
8 security interest if the buyer gives value and receives delivery  
9 of the collateral without knowledge of the security interest and  
10 before it is perfected.

11          (c) Except as otherwise provided in subsection (e), a  
12 lessee of goods takes free of a security interest if the lessee  
13 receives delivery of the collateral without knowledge of the  
14 security interest and before it is perfected.

15          (d) A buyer of accounts, general intangibles, or  
16 investment property [other than a security certificate] which is  
17 not a secured party takes free of a security interest if the  
18 buyer gives value without knowledge of the security interest and  
19 before it is perfected.

20          (e) Except as otherwise provided in Section 9-316, if a  
21 secured party files a financing statement with respect to a  
22 purchase money security interest before or within 20 days after  
23 the debtor receives delivery of the collateral, the security  
24 interest takes priority over the rights of a buyer, lessee, or  
25 lien creditor which arise between the time the security interest  
26 attaches and the time of filing.

1 (f) "Lien creditor" means a creditor that has acquired a  
2 lien on the property involved by attachment, levy, or the like.  
3 The term includes an assignee for benefit of creditors from the  
4 time of assignment, a trustee in bankruptcy from the date of the  
5 filing of the petition, and a receiver in equity from the time of  
6 appointment.

7 **Reporters' Comments**

8 1. Filed but Unattached Security Interests. Under subsection  
9 (a) a lien creditor's rights have priority over an unperfected  
10 security interest. Perfection requires attachment (§ 9-308) and  
11 attachment requires the giving of value (§ 9-203). It follows  
12 that, if a secured party has filed a financing statement but has  
13 not yet given value, an intervening lien creditor whose lien  
14 arises after filing but before attachment of the security  
15 interest, acquires rights that are senior to those of the secured  
16 party that later gives value. The same result occurs under  
17 current law. This result comports with the nemo dat concept.  
18 When the security interest attaches, the collateral is already  
19 subject to the judicial lien. The Drafting Committee may wish to  
20 clarify this result in the statute or it may wish to reverse this  
21 result. The special rule for future advances in § 9-320(b)  
22 affords priority to a discretionary advance made by a secured  
23 party within 45 days after the lien creditor's rights arise so  
24 long as the secured party is "perfected" when the lien creditor's  
25 lien arises--i.e., so long as the advance is not the first one  
26 and an earlier advance has been made. Should the first  
27 discretionary advance receive similar protection?

28 2. "His Seller" Rule. Should subsections (b), (c), and (d)  
29 be modified to provide that the buyer or lessee takes free of  
30 security interests created by the buyer's or lessee's seller or  
31 lessor only? Cf. § 9-316(b) (former 9-307(1)).

32 3. Security Interests of Consignors and Receivables Buyers.  
33 Subsection (a)(1) defers to § 9-319 for the priority rules among  
34 conflicting security interests. Subsection (a)(2) states the  
35 basic rule of priority between the rights of a lien creditor and  
36 an unperfected security interest--the lien creditor's rights are  
37 senior. Recall, however, that "security interest" is defined in  
38 § 1-201(37) to include the interest of a true consignor and the  
39 interest of a buyer of certain receivables (accounts, chattel  
40 paper, and payment intangibles). It is implicit from the  
41 priority rule of subsection (a)(2) that a consignee or a seller  
42 of receivables each has rights in the collateral that a lien  
43 creditor may reach, so long as the competing security interest of  
44 the consignor or buyer is unperfected. This is so even though

1 the debtor-consignee or debtor-seller may not have any rights in  
2 the collateral as between it and the consignor or buyer. The  
3 same implication arises from other priority rules, such as § 9-  
4 319, which provides that an unperfected security interest  
5 (including one held by a consignor or buyer of receivables) is  
6 subordinate to a perfected security interest. For example,  
7 consider a debtor that has sold receivables and has no further  
8 interest in them as between the debtor and the secured party-  
9 buyer. If the security interest held by the secured party-buyer  
10 were unperfected, the debtor-seller subsequently could create in  
11 favor of another secured party a security interest that, if  
12 perfected, would be senior to that of the secured party-buyer.

13 Section 9-114 of the 1996 Annual Meeting Draft, which appeared  
14 in brackets, addressed this issue directly, clearly, and  
15 succinctly. It provided:

16 **[SECTION 9-114. RIGHTS AND TITLE OF CONSIGNEE AND**  
17 **SELLER OF ACCOUNT OR CHATTEL PAPER WITH RESPECT TO**  
18 **CREDITORS AND PURCHASERS.**

19 (a) For purposes of determining the rights of  
20 creditors of, and purchasers of goods from, a consignee,  
21 while goods are in the possession of the consignee and the  
22 consignor's security interest is unperfected, the consignee  
23 has rights and title to the goods identical to those the  
24 consignor had or had power to transfer.

25 (b) For purposes of determining the rights of  
26 creditors of, and purchasers of an account or chattel paper  
27 from, a debtor that has sold an account or chattel paper,  
28 while the buyer's security interest is unperfected, the  
29 debtor has rights and title to the account or chattel paper  
30 identical to those the debtor sold.]

31 At its June, 1996, meeting the Drafting Committee voted to  
32 eliminate § 9-114 and requested the reporters to explain in the  
33 comments that the same results may be achieved by implication  
34 from a proper reading of Article 9's priority rules. We continue  
35 to prefer the statutory approach, in part for the reasons  
36 suggested above. It is direct, clear, and succinct. We suggest  
37 that the Drafting Committee reconsider its decision.

38 **SECTION 9-316. BUYERS OF GOODS IN ORDINARY COURSE OF**  
39 **BUSINESS. [former draft § 9-307]**

40 (a) This section does not affect a security interest in  
41 goods in the possession of the secured party under Section 9-311.



1 (b) A buyer in ordinary course of business [, other than a  
2 person buying farm products from a person engaged in farming  
3 operations,] takes free of a security interest created by the  
4 buyer's seller, even if the security interest is perfected and  
5 even if the buyer knows of its existence.

6 (c) A buyer of consumer goods takes free of a security  
7 interest, even if perfected, if the buyer buys without knowledge  
8 of the security interest, for value, and for the buyer's own  
9 personal, family, or household purposes, unless before the  
10 buyer's purchase the secured party filed a financing statement  
11 covering the goods. Insofar as it affects the priority of a  
12 security interest over a buyer of consumer goods under this  
13 section, the period of the effectiveness of a filing made in the  
14 jurisdiction in which the debtor is located is governed by the  
15 rules with respect to perfection in Section 9-314(a).

16 **Reporters' Comments**

17 Should subsection (c) be modified to provide that the buyer  
18 takes free of security interests created by the buyer's seller  
19 only? Cf. subsection (b) (former 9-307(1)).

20 **SECTION 9-317. LESSEES OF GOODS IN ORDINARY COURSE OF**  
21 **BUSINESS. [new; derived from § 2A-307(3)]** A lessee of goods in  
22 ordinary course of business takes the leasehold interest free of  
23 a security interest in the goods created by the lessor even  
24 though the security interest is perfected and the lessee knows of  
25 its existence.

1           **SECTION 9-318.   LICENSEES IN ORDINARY COURSE OF BUSINESS.**

2           [To be moved from Article 2B]

3                           **Reporters' Comments**

4           As of this date, the Article 2B Drafting Committee has not  
5 agreed upon the rules governing licenses and other transfers of  
6 intellectual property rights, including the creation of security  
7 interests in intellectual property. We have been communicating  
8 with the Reporter for Article 2B, Raymond Nimmer, in an effort to  
9 ensure that the provisions of Articles 2B and 9 are consistent.

10          We anticipate that rules having their principal effect on  
11 security interests in intellectual property will appear in  
12 Article 9. Although rules of general applicability to  
13 transferees or creditors are likely to appear in Article 2B, we  
14 expect that the Article 9 Drafting Committee will have an  
15 opportunity to review and comment upon them once they become  
16 known.

17           **SECTION 9-319.   PRIORITIES AMONG CONFLICTING SECURITY**  
18 **INTERESTS AND AGRICULTURAL LIENS IN THE SAME COLLATERAL.   [former**  
19 **draft § 9-312(a), (m), (n)]**

20           (a) Except as otherwise provided in this part, Section  
21 4-210 with respect to a security interest of a collecting bank,  
22 and Section 5-118 with respect to a security interest of an  
23 issuer or nominated person, priority among conflicting security  
24 interests and agricultural liens in the same collateral is  
25 determined according to the following rules:

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

1 (2) So long as conflicting security interests are  
2 unperfected, the first to attach has priority.

3 (b) For the purposes of subsection (a) a date of filing or  
4 perfection as to collateral is also a date of filing or  
5 perfection as to proceeds.

6 **Reporters' Comments**

7 This section has been revised in response to the Style  
8 Committee's mark-up. The draft eliminates the reference to  
9 certain other priority conflicts not covered by the general rule  
10 of this section, i.e., "cases of [production money security  
11 interests,] purchase money security interests, security interests  
12 in deposit accounts, and security interests in letters of credit  
13 that do not qualify for the special priorities in Sections 9-321,  
14 9-322, 9-325, and 9-326."

15 **SECTION 9-320. FUTURE ADVANCES. [former draft §§ 9-312(o),**  
16 **9-301(d), 9-307(d)]**

17 (a) This subsection applies only to a security interest  
18 that secures an obligation. For purposes of determining the  
19 priority of a security interest under Section 9-319(b), to the  
20 extent that the security interest secures an advance made [other  
21 than] [not] pursuant to commitment and made while the security  
22 interest is temporarily perfected under Section 9-310(d) or (e)  
23 and by no other method, perfection of the security interest dates  
24 from the time an advance is made.

25 (b) This subsection applies only to a security interest  
26 that secures an obligation. A security interest is subordinate  
27 to the rights of a person that becomes a lien creditor while the  
28 security interest is perfected only to the extent that it secures  
29 advances made more than 45 days after the person becomes a lien  
30 creditor, unless the advance is made without knowledge of the

1 lien or pursuant to a commitment entered into without knowledge  
2 of the lien.

3 (c) A buyer of goods other than a buyer in ordinary course  
4 of business takes free of a security interest to the extent that  
5 it secures advances made after the secured party acquires  
6 knowledge of the buyer's purchase, or more than 45 days after the  
7 purchase, whichever occurs first, unless the advance is made  
8 pursuant to a commitment entered into without knowledge of the  
9 buyer's purchase and before the expiration of the 45-day period.  
10 This subsection does not affect a security interest in goods in  
11 the possession of the secured party under Section 9-311.

12 (d) A lessee of goods other than a lessee of goods in  
13 ordinary course of business takes the leasehold interest free of  
14 a security interest to the extent that it secures advances made  
15 after the secured party acquires knowledge of the lease or more  
16 than 45 days after the lease contract becomes enforceable,  
17 whichever first occurs, unless the future advances are made  
18 pursuant to a commitment entered into without knowledge of the  
19 lease and before the expiration of the 45-day period.

20 **Reporters' Comments**

21 1. Competing Security Interests. This section collects all  
22 of the special rules dealing with "future advances." Subsection  
23 (a) replaces and clarifies former § 9-312(7). No substantive  
24 change is intended. Former subsection (7) was added by the 1972  
25 Revisions to Article 9 in order to override some decisions that  
26 subordinated future advances to intervening interests. Under a  
27 proper reading of the first-to-file-or-perfect rule of draft 9-  
28 319(b) (and former § 9-312(5)) it is abundantly clear the time  
29 that an advance is made plays no role in the determination of  
30 priorities among conflicting security interests except when the  
31 advance is the giving of value as the last step for attachment  
32 and perfection. Subsection (a), accordingly, states  
33 affirmatively the only other instance when the time of an advance

1 figures in the priority scheme. See UCC, 1972 Official Text, §  
2 9-312, Reasons for 1972 Change:

3 The proposed unified priority rule of subsection 9-312(5)  
4 would indicate that subsequent advances by the first-filed  
5 party have priority, and subsequent advances under a  
6 security interest perfected by possession likewise have  
7 priority over an intervening filed security interest.  
8 These priority rules are expressly stated in subsection  
9 (7). That proposal also deals with the rare case of the  
10 priority position of a subsequent advance made by a secured  
11 party whose security interest is temporarily perfected  
12 without either filing or possession, against an intervening  
13 secured party. Since there is no notice by the usual  
14 method of filing or possession of the existence of the  
15 security interest, the subsequent advances rank only from  
16 the actual date of making unless made pursuant to  
17 commitment.

18 The new formulation in subsection (a) also omits the ambiguous  
19 treatment in former subsection (7) of the situation where the  
20 initial advance is paid and a new ("future") advance is made  
21 subsequently: Was the new advance "made while a security  
22 interest is perfected by filing or the taking of possession"? We  
23 think so, but clarification seems worthwhile.

24 2. Competing Lien Creditors. Subsection (b) replaces former  
25 § 9-301(4). It addresses the problem considered by P.E.B.  
26 Commentary No. 2 and removes the ambiguity that necessitated the  
27 commentary. Former subsection (4) appears to state a general  
28 rule that a lien creditor has priority over a perfected security  
29 interest and is "subject to" the security interest "only" in  
30 specified circumstances. Because subsection (4) speaks to the  
31 making of an "advance," it arguably implies that to the extent a  
32 security interest secures non-advances (expenses, interest,  
33 etc.), it is junior to the lien creditor's interest. Draft  
34 subsection (b) solves the problem by providing that a security  
35 interest is subordinate only to the extent that the specified  
36 circumstances occur, thereby eliminating the erroneous  
37 implication.

38 3. Competing Buyers. Draft subsection (c) replaces former §  
39 9-307(3) and subsection (d) replaces former § 2A-307(4). These  
40 subsections contain minor style changes only.

1           **SECTION 9-321. PRIORITY OF PRODUCTION MONEY SECURITY**  
2 **INTERESTS AND AGRICULTURAL LIENS. [former draft § 9-312(b), (f),**  
3 **(k), (l)]**

4           (a) Except as otherwise provided in subsection (e), if the  
5 requirements of subsection (b) are met, a perfected production  
6 money security interest in production money crops has priority  
7 over a conflicting security interest in the same crops and,  
8 except as otherwise provided in Section 9-325, also has priority  
9 in their identifiable proceeds. A production money security  
10 interest has priority under this subsection only to the extent  
11 that the conflicting security interest secures obligations  
12 incurred more than XXX months before the production money secured  
13 party first gives new value to enable the debtor to produce the  
14 crops.

15           (b) A production money security interest has priority  
16 under subsection (a) if:

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

20                         [Paragraph (2)--Alternative A]

21                 (2) the production money secured party gives written  
22 notification to the holder of the conflicting security interest  
23 before the production money secured party first gives new value  
24 to enable the debtor to produce the crops if the holder had filed  
25 a financing statement covering the crops before the date of the  
26 filing made by the production money secured party; and

1 [Paragraph (2)--Alternative B]

2 (2) the production money secured party gives written  
3 notification to the holder of the conflicting security interest  
4 not less than 10 nor more than 30 days before the production  
5 money secured party first gives new value to enable the debtor to  
6 produce the crops if the holder had filed a financing statement  
7 covering the crops before the date of the filing made by the  
8 production money secured party; and

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

13 (c) Except as otherwise provided in subsection (d), if  
14 more than one security interest qualifies for priority in the  
15 same collateral under subsection (a), the security interests rank  
16 according to priority in time of filing under Section 9-319(b).

17 (d) If a statute under which an agricultural lien in  
18 collateral is created provides that the agricultural lien has  
19 priority over a conflicting security interest or agricultural  
20 lien in the same collateral, the statute governs priority if the  
21 agricultural lien is perfected.

22 (e) To the extent that a person holds both an agricultural  
23 lien and a production money security interest in the same  
24 collateral securing the same obligations, the rules of priority  
25 applicable to agricultural liens govern priority.

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

2           **[former draft § 9-312(c)-(e), (g)]**

3           (a) Except as otherwise provided in subsection (e), a  
4 perfected purchase money security interest in inventory has  
5 priority over a conflicting security interest in the same  
6 inventory and, except as otherwise provided in Section 9-325,  
7 also has priority in its identifiable cash proceeds to the extent  
8 the identifiable cash proceeds are received on or before the  
9 delivery of the inventory to a buyer if:

10           (1) the purchase money security interest is perfected  
11 when the debtor receives possession of the inventory [or a  
12 negotiable document covering the inventory];

13           (2) the purchase money secured party gives written  
14 notification to the holder of the conflicting security  
15 interest[,] if [the holder had filed a financing statement  
16 covering the same types of inventory] before the date of a filing  
17 made by the purchase money secured party or, if the purchase  
18 money security interest is temporarily perfected without filing  
19 or possession under Section 9-310(e), before the beginning of the  
20 20- day period [the holder had filed a financing statement  
21 covering the same types of inventory];

22           (3) the holder of the conflicting security interest  
23 receives the notification within five years before the debtor  
24 receives possession of the inventory [or a negotiable document  
25 covering the inventory]; and

26           (4) the notification states that the person giving the  
27 notice has or expects to acquire a purchase money security



1 interest in inventory of the debtor, describing the inventory by  
2 item or type.

3 (b) If a purchase money security interest in inventory has  
4 priority over a conflicting security interest under subsection  
5 (a), a security interest held by the purchase money secured party  
6 in chattel paper constituting proceeds of the inventory has  
7 priority over a conflicting security interest in the chattel  
8 paper if the purchase money secured party takes possession of the  
9 chattel paper in good faith, in the ordinary course of the  
10 secured party's business, and without knowledge that the security  
11 interest violates the rights of the holder of the conflicting  
12 security interest.

13 (c) Except as otherwise provided in subsection (e), a  
14 perfected purchase money security interest in livestock that are  
15 farm products has priority over a conflicting security interest  
16 in the same livestock and, except as otherwise provided in  
17 Section 9-325, also has priority in its identifiable proceeds  
18 [and identifiable products in their unmanufactured states] if:

19 (1) the purchase money security interest is perfected  
20 when the debtor receives possession of the livestock [or a  
21 negotiable document covering the livestock];

22 (2) the purchase money secured party gives written  
23 notification to the holder of the conflicting security interest  
24 if the holder had filed a financing statement covering the same  
25 types of livestock before the date of a the filing made by the  
26 purchase money secured party, or before the beginning of the 20

1 day period if the purchase money security interest is temporarily  
2 perfected without filing or possession under Section 9-310(e);

3 (3) the holder of the conflicting security interest  
4 receives the notification within six months before the debtor  
5 receives possession of the livestock [or a negotiable document  
6 covering the livestock]; and

7 (4) the notification states that the person giving the  
8 notice has or expects to acquire a purchase money security  
9 interest in livestock of the debtor, describing the livestock by  
10 item or type.

11 (d) Except as otherwise provided in subsection (e), a  
12 purchase money security interest in collateral other than  
13 inventory or livestock has priority over a conflicting security  
14 interest in the same collateral and, except as otherwise provided  
15 in Section 9-325, also has priority in its identifiable proceeds  
16 if the purchase money security interest is perfected when the  
17 debtor receives possession of the collateral [or a negotiable  
18 document covering the collateral] or within 20 days thereafter.

19 (e) If more than one security interest qualifies for  
20 priority in the same collateral under subsection (a), (c), or  
21 (d):

22 (1) a security interest securing an obligation incurred  
23 [by an obligor] as the price of the collateral has priority over  
24 a security interest securing an obligation incurred [by an  
25 obligor] for value given to enable the debtor to acquire rights  
26 in collateral, and

1 (2) in all other cases, Section 9-319(b) applies to the  
2 qualifying security interests.

3 **Reporters' Comments**

4 1. Possession of Negotiable Document of Title. In each  
5 provision of this section which refers to the debtor's receipt of  
6 possession of collateral, this draft adds a bracketed reference  
7 to the debtor's receipt of possession of negotiable document  
8 covering the collateral. Although this change was suggested to  
9 us, we are not convinced that it should be made. Under current  
10 law, if a debtor never receives possession of goods, but instead  
11 receives a negotiable document covering the goods, the period  
12 within which a purchase money secured party must file a financing  
13 statement in order to qualify for purchase money priority never  
14 begins to run. On the other hand, changing the rule may result  
15 in triggering the time period too soon. Moreover, a purchase  
16 money secured party normally would achieve priority without  
17 complying with this section if it becomes a holder of the  
18 document by due negotiation. See §§ 7-501(4); 7-502.

19 2. Timing of Notice to Competing Inventory Secured Party.  
20 Some courts have mistakenly read former § 9-312(3)(b) (carried  
21 forward in draft subsection (a)(2)) to require, as a condition of  
22 purchase money priority in inventory, that the purchase money  
23 secured party give the notification before it files a financing  
24 statement. Read correctly, the "before" clauses refer to the  
25 time that the holder of the conflicting security interest filed a  
26 financing statement. Moving the bracketed phrase in subsection  
27 (a)(2) so that it follows, rather than precedes, the "before"  
28 clauses may clarify this point. Alternatively, the addition of a  
29 comma before "if" may suffice. A third possibility is to put the  
30 thought in a separate sentence, e.g., "The condition in  
31 subsection (b)(2) need not be met unless the holder of the  
32 conflicting security interest had filed a financing statement  
33 covering the same types of inventory before the date of a filing  
34 made by the purchase money secured party or, if the purchase  
35 money security interest is temporarily perfected without filing  
36 or possession under Section 9-310(e), before the beginning of the  
37 20-day period." Subsection (c)(2) presents the identical issue  
38 but it has not been bracketed.

39 **SECTION 9-323. PRIORITY OF SECURITY INTERESTS IN TRANSFERRED**  
40 **COLLATERAL. [former draft § 9-312(h)]** If a debtor acquires  
41 property subject to a security interest created by another  
42 person, the security interest is perfected when the debtor  
43 acquires the property, and there is no period thereafter when it

1 is unperfected, any security interest created by the debtor is  
2 subordinate to the security interest created by the other person,  
3 notwithstanding anything to the contrary in this part. However,  
4 if the security interest created by the other person is  
5 unperfected when the debtor acquires the property or at any time  
6 thereafter, the other sections of this subpart govern, as  
7 applicable.

8 **SECTION 9-323A. PRIORITY OF SECURITY INTERESTS CREATED BY NEW**  
9 **DEBTOR. [former draft § 9-312(i)]** A security interest that is  
10 perfected by a filed financing statement that is effective solely  
11 under Section 9-510 in collateral in which a new debtor has or  
12 acquires rights is subordinate to a security interest in the same  
13 collateral that is perfected in another manner. However, if more  
14 than one security interest in the same collateral is subordinate  
15 under this subsection, the other rules stated in this subpart, as  
16 applicable, determine the priority of the subordinated security  
17 interests as among themselves.

18 **SECTION 9-324. PRIORITY OF SECURITY INTERESTS IN INVESTMENT**  
19 **PROPERTY. [former draft § 9-115(e)-(f)]** Priority among  
20 conflicting security interests in the same investment property is  
21 governed by the following rules:

22 (1) A security interest of a secured party that has  
23 control over investment property has priority over a security  
24 interest of a secured party that does not have control over the  
25 investment property.

1           (2) A possessory security interest in a security  
2 certificate in registered form has priority over a conflicting  
3 security interest perfected by a method other than control.

4           (3) Except as otherwise provided in paragraphs (4) and  
5 (5), conflicting security interests of secured parties each of  
6 whom has control rank equally.

7           (4) Except as otherwise agreed by the securities  
8 intermediary, a security interest in a security entitlement or a  
9 securities account granted to the debtor's own securities  
10 intermediary has priority over any security interest granted by  
11 the debtor to another secured party.

12           (5) Except as otherwise agreed by the commodity  
13 intermediary, a security interest in a commodity contract or a  
14 commodity account granted to the debtor's own commodity  
15 intermediary has priority over any security interest granted by  
16 the debtor to another secured party.

17           (6) Conflicting security interests granted by a broker, a  
18 securities intermediary, or a commodity intermediary which are  
19 perfected without control rank equally.

20           (7) In all other cases, priority among conflicting  
21 security interests in investment property is governed by Sections  
22 9-319(b) and (c) and 9-320(a).

23           **SECTION 9-325. PRIORITY OF SECURITY INTERESTS IN DEPOSIT**  
24 **ACCOUNTS. [former draft § 9-312(j)]** Priority among conflicting  
25 security interests in the same deposit account is governed by the  
26 following rules:

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

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

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

11 (4) A security interest perfected by control pursuant to  
12 Section 9-109(a) (3) has priority over a security interest held by  
13 the depositary institution with which the deposit account is  
14 maintained.

15 **SECTION 9-326. PRIORITY OF SECURITY INTERESTS IN LETTERS OF**  
16 **CREDIT. [former draft § 9-312(p)]** Priority among conflicting  
17 security interests in the same letter of credit and proceeds of  
18 the letter of credit is governed by the following rules:

19 (1) A security interest held by a secured party that has  
20 control over the letter of credit and proceeds of the letter of  
21 credit has priority over a conflicting security interest held by  
22 a secured party that does not have control.

23 (2) Except as otherwise provided in paragraph (3),  
24 security interests perfected by control rank equally.

25 (3) A security interest held by a transferee beneficiary  
26 has priority over a conflicting security interest held by another  
27 secured party.

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

2           **[former draft § 9-308]**

3           (a) A purchaser of chattel paper [or an instrument] has  
4 priority over a security interest in the chattel paper [or  
5 instrument] and, except as otherwise provided in Section 9-325,  
6 in [the proceeds of either] [its proceeds] if the purchaser, in  
7 good faith, in the ordinary course of the purchaser's business,  
8 and without knowledge that the purchase violates the rights of  
9 the secured party, gives new value and takes possession of the  
10 chattel paper [or instrument].

11           (b) For purposes of subsection (a), if chattel paper [or  
12 an instrument] indicates that it has been assigned to an  
13 identified assignee, a purchaser of the chattel paper [or  
14 instrument] has knowledge that the purchase violates the rights  
15 of the assignee.

16           [(c) A possessory security interest in an instrument has  
17 priority over a conflicting security interest perfected by  
18 another method.]

19                           **Reporters' Comments**

20           The brackets around references to instruments in subsections  
21 (a) and (b) and the bracketed subsection (c) raise the question  
22 whether possessory security interests in instruments should  
23 receive priority similar to that afforded possessory security  
24 interests in certificated securities under § 9-324(2). The  
25 Drafting Committee was not inclined to take that approach when  
26 the issue was discussed at its June, 1996, meeting. Since that  
27 time, we have learned that financiers of instruments secured by  
28 real estate are concerned about the implications of permitting  
29 perfection by filing for instruments. These financiers  
30 customarily take possession (or arrange for their custodians to  
31 take possession) of instruments they finance. They worry that  
32 they might be compelled to conduct UCC searches if their security  
33 interests were subject to the priority rule reflected by  
34 subsection (a). Alternatively, the section might be revised to

1 provide that a financing statement, even one that reflected the  
2 wrongfulness of creating a competing interest in the debtor's  
3 instruments, is never sufficient to constitute wrongful  
4 knowledge. We are inclined to favor the approach of subsection  
5 (c).

6       **SECTION 9-328. [PROTECTION] [RIGHTS] OF PURCHASERS OF**  
7 **INSTRUMENTS, DOCUMENTS, AND SECURITIES UNDER OTHER ARTICLES.**

8 **[former draft § 9-309]** Nothing in this article limits the rights  
9 of a holder in due course of a negotiable instrument (Section  
10 3-302), a holder to whom a negotiable document of title has been  
11 duly negotiated (Section 7-501), or a protected purchaser of a  
12 security (Section 8-303). These holders or purchasers take  
13 priority over an earlier security interest, even if perfected, to  
14 the extent provided in Articles 3, 7, and 8. Filing under this  
15 article does not constitute notice of the security interest to  
16 those holders or purchasers.

17                               **Reporters' Comments**

18       1. The holders and purchasers referred to in this section do  
19 not always take priority over a security interest. See, e.g., §  
20 7-503. Accordingly, this draft adds the clause. "to the extent  
21 provided in Articles 3, 7, and 8."

22       2. In some provisions, this draft distinguishes between  
23 claimants that take collateral free of a security interest (in  
24 the sense that the security interest no longer encumbers the  
25 collateral) and those that take an interest in the collateral  
26 that is senior to a surviving security interest. See, e.g., § 9-  
27 315. Whether a holder or purchaser referred to in this section  
28 takes free or is senior to a security interest depends on the  
29 whether the purchaser is a buyer of the collateral or takes a  
30 security interest in it. The term "priority" is meant to  
31 encompass both scenarios, as it does in § 9-327.



1           **SECTION 9-329.   TRANSFER OF MONEY; TRANSFER OF FUNDS FROM**  
2 **DEPOSIT ACCOUNT.   [former draft § 9-308A]**

3           (a) A transferee of money takes the money free of a  
4 security interest unless the transferee acts in collusion with  
5 the debtor in violating the rights of the secured party.

6           (b) A transferee of funds from a deposit account takes the  
7 funds free of a security interest in the deposit account unless  
8 the transferee acts in collusion with the debtor in violating the  
9 rights of the secured party.

10                           **Reporters' Comments**

11           1. Scope. This section is new. It affords broad protection  
12 to transferees who take funds from a deposit account and to those  
13 who take money. The term "transferee" is not defined; however,  
14 the debtor itself is not a transferee. Thus this section does  
15 not cover the case in which a debtor withdraws money (currency)  
16 from its deposit account or the case in which a depository  
17 institution debits an encumbered account and credits another  
18 account it maintains for the debtor.

19           A transfer of funds from a deposit account, to which  
20 subsection (b) applies, normally will be made by check, by funds  
21 transfer, or by debiting the debtor's deposit account and  
22 crediting another depositor's account. Consider the following  
23 example: Debtor maintains a deposit account with Bank A. The  
24 deposit account is subject to a security interest in favor of  
25 Lender. At Bank B's suggestion, Debtor moves the funds from the  
26 account at Bank A to Debtor's deposit account with Bank B.  
27 Unless Bank B acted in collusion with Debtor in violating  
28 Lender's rights (an unlikely scenario, where, as here, Lender  
29 allowed Debtor access to an account sufficient to transfer  
30 funds), Bank B takes the funds (the credits running in favor of  
31 Bank B) free from Lender's security interest. See subsection  
32 (b). However, inasmuch as the deposit account maintained with  
33 Bank B constitutes the proceeds of the deposit account at Bank A,  
34 Lender's security interest would attach to that account as  
35 proceeds. See § 9-313.

36           Subsection (b) also would apply if, in the previous example,  
37 Bank A debited Debtor's deposit account in exchange for the  
38 issuance of Bank A's cashier's check. Lender's security interest  
39 would attach to the cashier's check as proceeds of the deposit  
40 account, and the rules applicable to instruments would govern any  
41 competing claims to the cashier's check. See §§ 3-306; 9-328.

1 If Debtor withdraws money (currency) from an encumbered  
2 deposit account and transfers the money to a third party, then  
3 subsection (a), to the extent not displaced by federal law  
4 relating to money, applies. It contains the same rule as  
5 subsection (b).

6 Subsection (b) applies to transfers of funds from a deposit  
7 account; it does not apply to transfers of the deposit account  
8 itself or of an interest therein. For example, this section does  
9 not apply to the creation of a security interest in a deposit  
10 account. Competing claims to the deposit account itself are  
11 dealt with by other Article 9 priority rules. See §§ 9-315(a);  
12 9-325; 9-337; 9-338. Similarly, a merger normally would not  
13 result in a transfer of funds from a deposit account. Rather, it  
14 might result in a transfer of the deposit account itself. The  
15 normal rules applicable to transferred collateral would apply;  
16 this section would not.

17 2. Policy. Broad protection for transferees helps to ensure  
18 that security interests in deposit accounts do not impair the  
19 free flow of funds. It also minimizes the likelihood that a  
20 secured party will enjoy a claim to whatever the transferee  
21 purchases with the funds. Rules concerning recovery of payments  
22 traditionally have placed a high value on finality. The  
23 opportunity to upset a completed transaction, or even to place a  
24 completed transaction in jeopardy by bringing suit against the  
25 transferee of funds, should be severely limited. Although the  
26 giving of value usually is a prerequisite for receiving the  
27 ability to take free from third-party claims, where payments are  
28 concerned the law is even more protective. Thus, § 3-418(c)  
29 provides that, even where the law of restitution otherwise would  
30 permit recovery of funds paid by mistake, no recovery may be had  
31 from a person "who in good faith changed position in reliance on  
32 the payment." Rather than adopt this standard, this section  
33 eliminates all reliance requirements whatsoever. Payments made  
34 by mistake are relatively rare, but payments of funds from  
35 encumbered deposit accounts (e.g., deposit accounts containing  
36 collections from accounts receivable) occur with great  
37 regularity. In the mine run of cases, unlike payment by mistake,  
38 no one would object to these payments. In the vast proportion of  
39 cases, the transferee probably would be able to show a change of  
40 position in reliance on the payment. This section does not put  
41 the transferee to the burden of having to make this proof.

42 3. "Bad Actors." To deal with the question of the "bad  
43 actor," this section borrows "collusion" language from Article 8.  
44 See, e.g., §§ 8-115, 8-503(e). This is the most protective  
45 (i.e., least stringent) of the various standards now found in the  
46 UCC. Compare, e.g., § 1-201(9) ("without knowledge that the sale  
47 . . . is in violation of the . . . security interest"); § 1-  
48 201(19) ("honesty in fact in the conduct or transaction  
49 concerned"); § 3-302(a)(2)(v) ("without notice of any claim").  
50 This standard differs from that contained in § 9-308 (priority in

1 chattel paper or instrument) and § 9-502(f) (receipt of cash  
2 proceeds by enforcing junior secured party). The Drafting  
3 Committee may wish to reconsider these standards.

4 4. Other Remedies for Aggrieved Secured Party. The Drafting  
5 Committee also may wish to consider whether (and, if so, how) to  
6 address remedies that might be available to an aggrieved secured  
7 party, other than enforcement of its security interest. One  
8 approach might be to treat this issue in the statute itself. For  
9 example, the protection that § 8-503 affords to certain  
10 purchasers extends to immunize them from any action based on the  
11 property interest, "whether framed in conversion, replevin,  
12 constructive trust, equitable lien, or other theory." Another  
13 approach would address the issue in the official comments, as is  
14 done in Official Comment 9 to § 9-115 (addressing the relation of  
15 Article 9's priority rules to other law that affords a remedy for  
16 wrongful conduct). A third possibility is to leave development  
17 of the law to the courts without additional guidance.

18 5. Transferee Who Does Not Take Free. This section sets  
19 forth the circumstances under which certain transferees of money  
20 or funds take free of security interests. It does not determine  
21 the rights of a transferee who does not take free of a security  
22 interest. Consider the facts of the first example in Comment 1,  
23 but assume that, in wrongfully moving the funds from the deposit  
24 account at Bank A to Debtor's deposit account with Bank B, Debtor  
25 acts in collusion with Bank B. Bank B would not take the funds  
26 free of Lender's security interest under this section. If Debtor  
27 grants a security interest to Bank B, § 9-325 would govern the  
28 relative priorities of Lender and Bank B. Under § 9-325(3), Bank  
29 B's security interest in the Bank B deposit account would be  
30 senior to Lender's security interest in the deposit account as  
31 proceeds. However, Bank B's senior security interest would not  
32 protect Bank B against any liability to Lender that might arise  
33 from Bank B's wrongful conduct. As noted in Comment 1, the  
34 potential for collusion in violating a secured party's rights  
35 under these circumstances seems more theoretical than real.

36 **SECTION 9-330. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION**  
37 **OF LAW.** [MINOR STYLE CHANGES ONLY] [**former draft § 9-310**] If a  
38 person in the ordinary course of the person's business furnishes  
39 services or materials with respect to goods subject to a security  
40 interest, a lien upon goods in the possession of the person given  
41 by statute or rule of law for the materials or services takes

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

3 **SECTION 9-331. PRIORITY OF SECURITY INTERESTS IN FIXTURES.**  
4 **[former draft § 9-313(a)-(g)]**

5 (a) A mortgage is a construction mortgage to the extent  
6 that it secures an obligation incurred for the construction of an  
7 improvement on land including the acquisition cost of the land,  
8 if the recorded writing so indicates.

9 (b) A security interest under this article may be created  
10 in goods that are fixtures or may continue in goods that become  
11 fixtures, but no security interest exists under this article in  
12 ordinary building materials incorporated into an improvement on  
13 land.

14 (c) This article does not prevent creation of an  
15 encumbrance upon fixtures under real estate law.

16 (d) A perfected security interest in fixtures has priority  
17 over a conflicting interest of an encumbrancer or owner of the  
18 real estate if:

19 (1) the security interest is a purchase money security  
20 interest, the interest of the encumbrancer or owner arises before  
21 the goods become fixtures, the security interest is perfected by  
22 a fixture filing before the goods become fixtures or within ten  
23 days thereafter, and the debtor has an interest of record in the  
24 real estate or is in possession of the real estate;

25 (2) the security interest is perfected by a fixture  
26 filing before the interest of the encumbrancer or owner is of  
27 record, the security interest has priority over any conflicting

1 interest of a predecessor in title of the encumbrancer or owner,  
2 and the debtor has an interest of record in the real estate or is  
3 in possession of the real estate;

4 (3) the fixtures are readily removable factory or office  
5 machines, readily removable equipment that is not primarily used  
6 or leased for use in the operation of the real estate, or readily  
7 removable replacements of domestic appliances that are consumer  
8 goods, and before the goods become fixtures the security interest  
9 is perfected by any method permitted by this article; or

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

14 (e) A security interest in fixtures, whether or not  
15 perfected, has priority over a conflicting interest of an  
16 encumbrancer or owner of the real estate if:

17 (1) the encumbrancer or owner has consented in writing  
18 to the security interest or has disclaimed an interest in the  
19 goods as fixtures; or

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

22 (f) If the debtor's right to remove the goods as against  
23 the encumbrancer or owner terminates, the priority of the  
24 security interest under subsection (e) continues for a reasonable  
25 time.

26 (g) Notwithstanding paragraph (1) of subsection (d) but  
27 otherwise subject to subsections (d), (e), and (f), a security

1 interest in fixtures is subordinate to a construction mortgage  
2 recorded before the goods become fixtures if the goods become  
3 fixtures before the completion of the construction. To the  
4 extent that it is given to refinance a construction mortgage, a  
5 mortgage has this priority to the same extent as the construction  
6 mortgage.

7 (h) In cases not within subsections(b) through (g), a  
8 security interest in fixtures is subordinate to a conflicting  
9 interest of an encumbrancer or owner of the related real estate  
10 which is not the debtor.

11 **SECTION 9-332. ACCESSIONS.** [MINOR STYLE CHANGES ONLY]

12 [**former draft § 9-314**]

13 (a) A security interest in goods that attaches before they  
14 are installed in or affixed to other goods takes priority as to  
15 the goods installed or affixed (called in this section  
16 "accessions") over the claims of all persons to the whole except  
17 as stated in subsection (c) and subject to Section 9-333(a).

18 (b) A security interest that attaches to goods after they  
19 become part of a whole is valid against all persons subsequently  
20 acquiring interests in the whole, except as stated in subsection  
21 (c), but is invalid against any person with an interest in the  
22 whole at the time the security interest attaches to the goods  
23 that has not in writing consented to the security interest or  
24 disclaimed an interest in the goods as part of the whole.

25 (c) The security interests described in subsections (a)  
26 and (b) do not take priority over

1           (1) a subsequent purchaser for value of any interest in  
2 the whole;

3           (2) a creditor with a lien on the whole subsequently  
4 obtained by judicial proceedings; or

5           (3) a secured party with a prior perfected security  
6 interest in the whole to the extent that the secured party makes  
7 subsequent advances;

8 if the subsequent purchase is made, the lien by judicial  
9 proceedings obtained or the subsequent advance under the prior  
10 perfected security interest is made or contracted for without  
11 knowledge of the security interest and before it is perfected. A  
12 purchaser of the whole at a foreclosure sale other than a secured  
13 party with a perfected security interest purchasing at the  
14 secured party's own foreclosure sale is a subsequent purchaser  
15 under this section.

16           (d) When under subsections (a), (b), and (c) a secured  
17 party has an interest in accessions that has priority over the  
18 claims of all persons that have interests in the whole, the  
19 secured party may on default, subject to the provisions of Part  
20 5, remove the collateral from the whole, but the secured party  
21 shall reimburse any encumbrancer or owner of the whole that is  
22 not the debtor and that has not otherwise agreed for the cost of  
23 repair of any physical injury but not for any diminution in value  
24 of the whole caused by the absence of the goods removed or by any  
25 necessity for replacing them. A person entitled to reimbursement  
26 may refuse permission to remove until the secured party gives  
27 adequate security for the performance of this obligation.

1           **SECTION 9-333. PRIORITY IF GOODS ARE COMMINGLED OR PROCESSED.**

2 [MINOR STYLE CHANGES ONLY]   **[former draft § 9-315]**

3           (a) If a security interest in goods was perfected and  
4 subsequently the goods or a part thereof become part of a product  
5 or mass, the security interest continues in the product or mass  
6 if

7                 (1) the goods are so manufactured, processed, assembled  
8 or commingled that their identity is lost in the product or mass;  
9 or

10                (2) a financing statement covering the original goods  
11 also covers the product into which the goods have been  
12 manufactured, processed or assembled.

13           (b) In a case to which subsection (a)(2) applies, no  
14 separate security interest in that part of the original goods  
15 that has been manufactured, processed or assembled into the  
16 product may be claimed under Section 9-332.

17           (c) When under subsection (a) more than one security  
18 interest attaches to the product or mass, they rank equally  
19 according to the ratio that the cost of the goods to which each  
20 interest originally attached bears to the cost of the total  
21 product or mass.

22           **SECTION 9-334. PRIORITY OF SECURITY INTERESTS IN GOODS**  
23 **COVERED BY A CERTIFICATE OF TITLE. [former draft § 9-103(c)(6)]**

24           If, while a security interest in goods is perfected by any  
25 method under the law of another jurisdiction, this State issues a  
26 certificate of title (Section 9-303) that does not show that the  
27 goods are subject to the security interest or contain a statement



1 that they may be subject to security interests not shown on the  
2 certificate:

3 (1) a buyer of the goods, other than a person that is in  
4 the business of selling goods of that kind, takes free of the  
5 security interest to the extent that the buyer gives value and  
6 receives delivery of the goods after issuance of the certificate  
7 and without knowledge of the security interest; and

8 (2) the security interest is subordinate to a conflicting  
9 security interest in the goods that attaches, and is perfected  
10 under Section 9-309(d), after issuance of the certificate and  
11 without the conflicting secured party's knowledge of the security  
12 interest.

13 **[SECTION 9-335. PRIORITY OF SECURITY INTEREST PERFECTED BY**  
14 **EFFECTIVE FINANCING STATEMENT CONTAINING INCORRECT INFORMATION.**

15 **[former draft § 9-403(f)]** A security interest or agricultural  
16 lien perfected by a filed financing statement complying with  
17 Section 9-502(a) but containing information described in Section  
18 9-515(b) (5) that is incorrect is subordinate to the rights of a  
19 purchaser of the collateral which gives value in reasonable  
20 reliance upon the incorrect information.]

21 **SECTION 9-336. PRIORITY SUBJECT TO SUBORDINATION.** [MINOR  
22 STYLE CHANGES ONLY] **[former draft § 9-316]** Nothing in this  
23 article prevents subordination by agreement by any person  
24 entitled to priority.

25 SUBPART 4. RIGHTS OF DEPOSITARY INSTITUTION

1           **SECTION 9-337. EFFECTIVENESS OF RIGHT OF RECOUPMENT OR SET-**  
2 **OFF AGAINST DEPOSIT ACCOUNT. [former draft §§ 9-312A, 9-209]**

3           (a) Except as otherwise provided in subsection (c), a  
4           depository institution with which a deposit account is maintained  
5           may exercise against a secured party that holds a security  
6           interest in the deposit account any right of recoupment and any  
7           right of set-off.

8           (b) Except as otherwise provided in subsection (c), the  
9           application of this article to a security interest in a deposit  
10          account does not affect a right of recoupment or set-off of the  
11          secured party as to a deposit account maintained with the secured  
12          party.

13          (c) The exercise by a depository institution of a set-off  
14          against a deposit account is ineffective against a secured party  
15          that holds a security interest in the deposit account which is  
16          perfected by control under Section 9-109(a)(3).

17           **SECTION 9-338. DEPOSITORY INSTITUTION'S RIGHT TO DISPOSE OF**  
18 **FUNDS IN DEPOSIT ACCOUNT. [former draft § 9-318A]** Except as

19          otherwise provided in Section 9-337(c), and unless the depository  
20          institution otherwise agrees [in writing], a depository  
21          institution's rights and duties with respect to a deposit account  
22          maintained with the depository institution are not terminated,  
23          suspended, or modified by:

24           (1) the creation or perfection of a security interest in  
25          the deposit account;

26           (2) the depository institution's knowledge of the security  
27          interest; or

1 (3) the depository institution's receipt of instructions  
2 from the secured party.

3 **SECTION 9-339. DEPOSITORY INSTITUTION'S RIGHT TO REFUSE TO**  
4 **ENTER INTO OR DISCLOSE EXISTENCE OF CONTROL AGREEMENT. [former**  
5 **draft § 9-117(c)]** This article does not require a depository  
6 institution to enter into an agreement of the type described in  
7 Section 9-109(a)(2) even if its customer so requests or directs.  
8 A depository institution that has entered into such an agreement  
9 is not required to confirm the existence of the agreement to  
10 another person unless requested to do so by its customer.

11 PART 4

12 RIGHTS OF THIRD PARTIES

13 **Reporters' Prefatory Comment**

14 Part 3, Subpart 3, deals with priorities. This part deals  
15 with several other issues affecting third parties (i.e., parties  
16 other than the debtor and the secured party). Under current law,  
17 there is some uncertainty as to which jurisdiction's law  
18 (usually, which jurisdiction's version of Article 9) applies to  
19 the matters that this part addresses. These matters are not  
20 governed by the laws specified in Part 3, Subpart 1, since the  
21 matters do not relate to perfection, the effect of perfection or  
22 nonperfection, or priority.

23 It would be odd if a designation of applicable law by a debtor  
24 and secured party were to control some of these matters.  
25 Consider an example that may arise under current law. Former §  
26 9-318(4) makes ineffective terms in certain contracts that  
27 restrict assignment of the right to payment under the contracts.  
28 Under California's nonuniform version of Article 9, security  
29 interests in most insurance policies are within the scope of the  
30 article. Under New York's (and most states') version, security  
31 interests in insurance policies are excluded. If an insurance  
32 policy provides that it is governed by the law of New York, it  
33 would seem appropriate for New York's law to determine whether a  
34 term restricting assignment of the policy is effective. Since  
35 New York's Article 9 does not cover an assignment of the policy,  
36 New York's § 9-318(4) would not appear to render ineffective the  
37 restriction on assignment. Now assume that the owner of the

1 policy, a California resident, assigns it as security to a  
2 California bank, and the security agreement provides that it is  
3 governed by the law of California. Does California's § 9-318(4)  
4 then render the restriction in the policy ineffective? We are  
5 inclined to think it should not, but the answer is uncertain.

6 To the extent that jurisdictions adopt identical versions of  
7 this part and the courts interpret it consistently, the inability  
8 to identify the applicable law may be inconsequential. To the  
9 extent that nonuniform amendments and inconsistent  
10 interpretations occur, however, determining the applicable law  
11 may be significant. We think it plausible to assume that some  
12 nonuniformity in the rules and applicability of Part 4 will  
13 persist as the new version of Article 9 is submitted to and  
14 adopted by the states.

15  
16 The Drafting Committee may wish to consider whether the  
17 statute should include a choice-of-law rule for the matters (or  
18 some of them) covered by this part. Alternatively, the Drafting  
19 Committee may believe that the comments should be revised to  
20 provide some guidance as to the applicable law. Or, the Drafting  
21 Committee may prefer to leave the draft as it is, thereby leaving  
22 courts completely free to determine the applicable law on a case-  
23 by-case basis in accordance with § 1-105 and non-UCC principles.

24 **SECTION 9-401. ALIENABILITY OF DEBTOR'S RIGHTS.** [MINOR STYLE  
25 CHANGES ONLY] [**former draft § 9-311**] A debtor's rights in  
26 collateral may be voluntarily or involuntarily transferred  
27 notwithstanding any provision in the security agreement  
28 prohibiting a transfer or making a transfer a default.

29 **SECTION 9-402. SECURED PARTY NOT OBLIGATED ON CONTRACT OF**  
30 **DEBTOR.** [MINOR STYLE CHANGES ONLY] [**former draft § 9-317**]

31 The existence of a security interest or agricultural lien or  
32 of authority given to a debtor to dispose of or use collateral,  
33 without more, does not impose contract or tort liability upon a  
34 secured party for the debtor's acts or omissions.

1           **SECTION 9-403. AGREEMENT NOT TO ASSERT DEFENSES AGAINST**  
2 **ASSIGNEE. [former draft § 9-206]**

3           (a) This section is subject to other law that establishes  
4 a different rule for consumer account debtors.

5           (b) Except as otherwise provided in subsection (c), an  
6 agreement between an account debtor and an assignor not to assert  
7 against an assignee any claim or defense that the account debtor  
8 may have against the assignor is enforceable by an assignee that  
9 takes an assignment for value (Section 3-303(a)), in good faith,  
10 without notice of a claim of a property or possessory right to  
11 the property assigned, and without notice of a defense or claim  
12 in recoupment of the type that may be asserted against a person  
13 entitled to enforce a negotiable instrument under Section 3-  
14 305(a).

15           (c) An agreement of the kind described in subsection (b)  
16 is not enforceable with respect to defenses of a type that may be  
17 asserted against a holder in due course of a negotiable  
18 instrument under Section 3-305(b).

19                           **Reporters' Comments**

20           1. Scope. This section has been expanded to apply to all  
21 account debtors, not just those who buy or lease goods. The term  
22 "consumer account debtor" is left undefined. We will seek the  
23 advice of the Subcommittee on Consumer Transactions before  
24 drafting a definition.

25           2. Relationship to Other Law. The reference to "other law,"  
26 in subsection (a) encompasses administrative rules and  
27 regulations; the reference it replaces ("statute or decision")  
28 arguably would not. However, because Federal Trade Commission  
29 Rule 433 (the so-called "anti-holder-in-due-course" rule)  
30 requires creditors to preserve defenses by including a notice in  
31 the agreement between the assignor and the account debtor, and  
32 does not directly render waiver-of-defense agreements  
33 ineffective, § 9-403 may not be "subject to" the FTC rule within

1 the meaning of subsection (a). Regardless, we believe that a  
2 creditor taking an assignment with knowledge that the  
3 documentation does not comply with the FTC rule would not be in  
4 good faith and would not qualify for protection under subsection  
5 (b).

6 This section does not displace other law to the extent that  
7 the other law permits an assignee who takes an assignment with  
8 notice of a claim of a property or possessory right, a defense,  
9 or a claim in recoupment to enforce an agreement made with the  
10 assignor not to assert claims and defenses. This section also  
11 does not displace an assignee's right to assert that an account  
12 debtor is estopped from asserting a claim or defense. Nor does  
13 this section displace other law with respect to waivers of  
14 potential future claims and defenses that are the subject of an  
15 agreement between the account debtor and the assignee. Finally,  
16 this section does not displace § 1-107, concerning waiver of a  
17 breach that allegedly already has occurred.

18 3. Relationship to Article 3. Former § 9-206(1) was designed  
19 to treat certain assignees of receivables like holders in due  
20 course of negotiable instruments. It left open certain issues,  
21 e.g., whether the section incorporates the special Article 3  
22 definition of "value" in § 3-303 or the generally applicable  
23 definition in § 1-201(44). In 1990, the definition of "holder in  
24 due course" (§ 3-302) and the articulation of the rights of a  
25 holder in due course (§§ 3-305 and 3-306) were revised  
26 substantially. This section has been reformulated to track more  
27 closely the rules of §§ 3-302, 3-305, and 3-306.

28 At its June, 1996, meeting, the Drafting Committee decided  
29 that Article 3 should govern the obligation to pay a negotiable  
30 instrument. To accomplish this result, § 9-102(a)(1) has been  
31 revised to provide that when chattel paper is composed in part of  
32 a negotiable instrument, an obligor on the instrument is not an  
33 "account debtor." This section does not determine the  
34 circumstances under which and the extent to which a person who is  
35 obligated on chattel paper of this kind is disabled from  
36 asserting claims and defenses. Rather, Article 3 must be  
37 consulted. See, e.g., §§ 3-305; 3-306.

38 4. Relationship to Terms of Assigned Property. Former § 9-  
39 206(2) has been deleted as unnecessary. This Article does not  
40 regulate the terms of the account, chattel paper, or general  
41 intangible that is assigned, except insofar as the account,  
42 chattel paper, or general intangible itself creates a security  
43 interest (as often is the case with chattel paper). Thus,  
44 Article 2, and not this Article, determines whether a seller of  
45 goods makes or effectively disclaims warranties, even if the sale  
46 is secured. Similarly, other law, and not this Article,  
47 determines the effectiveness of an account debtor's undertaking  
48 to pay notwithstanding, and not to asset, any defenses or claims  
49 against an assignor--e.g., a "hell or high water" provision in

1 the underlying agreement that is assigned. If other law gives  
2 effect to this undertaking, then, under principles of nemo dat,  
3 it would be enforceable by the assignee (secured party). If  
4 other law prevents the assignor from enforcing the undertaking,  
5 this section nevertheless might permit the assignee to do so.  
6 The right of the assignee to enforce would depend upon whether,  
7 under the particular facts, the account debtor's undertaking  
8 fairly could be construed as an agreement that falls within the  
9 scope of this section and whether the assignee meets the  
10 requirements of this section.

11 **SECTION 9-404. RIGHTS ACQUIRED BY ASSIGNEE; DEFENSES AGAINST**  
12 **ASSIGNEE; MODIFICATION OF CONTRACT; DISCHARGE OF ACCOUNT DEBTOR;**  
13 **NOTIFICATION OF ASSIGNMENT; IDENTIFICATION AND PROOF OF**  
14 **ASSIGNMENT; TERM PROHIBITING ASSIGNMENT INEFFECTIVE. [former**  
15 **draft § 9-318]**

16 (a) Unless an account debtor has made an enforceable  
17 agreement not to assert defenses or claims, and subject to  
18 subsection (b), the rights of an assignee are subject to:

19 (1) all the terms of the contract between the account  
20 debtor and assignor and any defense or claim in recoupment  
21 arising from the transaction that gave rise to the contract; and

22 (2) any other defense or claim of the account debtor  
23 against the assignor which accrues before the account debtor  
24 receives notification of the assignment.

25 (b) The claim of an account debtor may be asserted against  
26 an assignee under subsection (a) only to reduce the amount owing  
27 when the action is brought.

28 (c) To the extent that the right to payment or a part  
29 thereof under an assigned contract has not been fully earned by  
30 performance, and notwithstanding notification of the assignment,  
31 any modification of or substitution for the contract made in good

1 faith and in accordance with reasonable commercial standards is  
2 effective against an assignee unless the account debtor has  
3 otherwise agreed but the assignee acquires corresponding rights  
4 under the modified or substituted contract. The assignment may  
5 provide that the modification or substitution is a breach by the  
6 assignor.

7 (d) This subsection is subject to subsections (e), (f),  
8 and (g). An account debtor on an account, chattel paper, or a  
9 payment intangible may discharge its obligation by paying the  
10 assignor until but not after the account debtor receives  
11 notification that the amount due or to become due has been  
12 assigned and that payment is to be made to the assignee. After  
13 receipt of notification, the account debtor may discharge its  
14 obligation by paying the assignee.

15 (e) An assignee may not send a notification under  
16 subsection (d) that notifies an account debtor to make less than  
17 the full amount of any installment payment to the assignee,  
18 regardless of whether only a portion of the account, chattel  
19 paper, or general intangible has been assigned to that assignee,  
20 a portion has been assigned to another assignee, or the account  
21 debtor knows that the assignment to that assignee is limited.

22 (f) A notification is ineffective under subsection (d):

23 (1) if it does not reasonably identify the rights  
24 assigned;

25 (2) to the extent that an agreement between an account  
26 debtor and a seller of a payment intangible limits the account



1 debtor's duty to pay a person other than the seller and the  
2 limitation is effective under other law; or

3 (3) at the option of an account debtor, if it is sent  
4 in violation of subsection (f).

5 (g) If requested by the account debtor, the assignee must  
6 seasonably furnish reasonable proof that the assignment has been  
7 made. Unless the assignee does so, the account debtor may  
8 discharge its obligation by paying the assignor even if the  
9 account debtor has received [an effective] [a] notification under  
10 subsection (d).

11 (h) This subsection does not apply to the sale of a  
12 payment intangible. Except as otherwise provided in Sections 2A-  
13 303 and 9-405, a term in any contract between an account debtor  
14 and an assignor is ineffective if it prohibits, restricts, or  
15 requires the account debtor's consent to assignment of an  
16 account, chattel paper, or a payment intangible.

17 **Reporters' Comments**

18 When chattel paper composed in part of a negotiable  
19 instrument, the obligor on the instrument is not an "account  
20 debtor." Article 3 governs the rights of the assignee of the  
21 chattel paper with respect to the issues this section addresses.  
22 See, e.g., § 3-601 (dealing with discharge of an obligation to  
23 pay a negotiable instrument).

24 **SECTION 9-405. RESTRICTIONS ON CREATION OR ENFORCEMENT OF**  
25 **SECURITY INTEREST IN LEASEHOLD INTEREST OR IN LESSOR'S RESIDUAL**  
26 **INTEREST. [derived from § 2A-303]**

27 (a) As used in this section, "creation of a security  
28 interest" includes the sale of a lease contract that is subject  
29 to this article.

1 (b) A provision in a lease agreement which (i) prohibits  
2 the creation or enforcement of a security interest in an interest  
3 of a party under the lease contract or in the lessor's residual  
4 interest in the goods, or (ii) makes such a transfer an event of  
5 default, is not enforceable unless, and then only to the extent  
6 that, there is an actual transfer by the lessee of the lessee's  
7 right of possession or use of the goods in violation of the  
8 provision or an actual delegation of a material performance of  
9 either party to the lease contract in violation of the provision.  
10 Neither the granting nor the enforcement of a security interest  
11 in (i) the lessor's interest under the lease contract or (ii) the  
12 lessor's residual interest in the goods is a transfer that  
13 materially impairs the prospect of obtaining return performance  
14 by, materially changes the duty of, or materially increases the  
15 burden or risk imposed on, the lessee within the purview of  
16 Section 2A-303(5) unless, and then only to the extent that, there  
17 is an actual delegation of a material performance of the lessor.

18 **Reporters' Comments**

19 Inasmuch as these provisions deal explicitly with the creation  
20 of a security interest, we are inclined to think they belong in  
21 Article 9. Marion Benfield, the Reporter for Article 2A,  
22 disagrees and would keep the provisions in Article 2A. We expect  
23 that both Drafting Committees will consider the issue.

24 In any event, it is likely that some revision of these  
25 provisions will be appropriate.

1           **SECTION 9-406. RESTRICTIONS ON ASSIGNMENT OF CERTAIN GENERAL**  
2 **INTANGIBLES INEFFECTIVE. [former draft § 9-318B]**

3           (a) Subsection (b) applies to a security interest in a  
4 payment intangible only if the security interest arises out of a  
5 sale of the payment intangible.

6           (b) A term in a general intangible, including a contract,  
7 permit, license, or franchise, between an account debtor and a  
8 debtor that prohibits, restricts, or requires the account  
9 debtor's consent to the assignment or transfer of or creation,  
10 attachment, or perfection of a security interest in the general  
11 intangible, is ineffective to the extent that (i) the term would  
12 impair the creation, attachment, or perfection of a security  
13 interest, or (ii) the creation, attachment, or perfection of the  
14 security interest would cause a default, breach, right of  
15 recoupment, claim, defense, termination, right of termination, or  
16 remedy under the general intangible.

17           (c) A term in a statute or governmental rule or regulation  
18 that prohibits, restricts, or requires the consent of a  
19 government or governmental body or official to the assignment or  
20 creation of a security interest in a general intangible,  
21 including a contract, permit, license, or franchise, between an  
22 account debtor and a debtor is ineffective to the extent that (i)  
23 the term would impair the creation, attachment, or perfection of  
24 a security interest, or (ii) the creation, attachment, or  
25 perfection of the security interest would cause a default,  
26 breach, claim, defense, termination, right of termination, or  
27 remedy under the general intangible.

1 (d) To the extent that a term in a general intangible,  
2 statute, rule, or regulation is ineffective under subsection (b)  
3 or (c) but is effective under other law, the creation,  
4 attachment, or perfection of a security interest in the general  
5 intangible (i) is not enforceable against the account debtor,  
6 (ii) imposes no duties or obligations on the account debtor, and  
7 (iii) does not require the account debtor to recognize the  
8 security interest, pay or render performance to the secured  
9 party, or accept payment or performance from the secured party.

10 (e) This section controls over any inconsistent provisions  
11 of the following statutes, rules, and regulations:

12 [List here any statutes, rules, and regulations containing  
13 provisions inconsistent with this section.]

14 PART 5

15 FILING

16 SUBPART 1. PLACE OF FILING, CONTENTS AND

17 EFFECTIVENESS OF FINANCING STATEMENT

18 **SECTION 9-501. PLACE OF FILING. [former draft § 9-401]**

19 (a) Except as otherwise provided in subsection (b), if the  
20 law of this State governs perfection of a security interest  
21 (Sections 9-301 through 9-307), the place to file a financing  
22 statement to perfect the security interest is:

23 (1) the office designated for the filing or recording  
24 of a mortgage on the real estate, if the collateral is timber to  
25 be cut or is minerals or the like, including oil and gas, or

1 accounts subject to Section 9-306, or the financing statement is  
2 filed as a fixture filing and the collateral is goods that are or  
3 are to become fixtures; [and]

4 [(2) the office of the debtor's registered agent, if  
5 the debtor has designated a registered agent under Section 9-525;  
6 and]

7 (3) the office of [] in all other cases, including if  
8 the goods are or are to become fixtures and the financing  
9 statement is not filed as a fixture filing.

10 (b) Subject to Section 9-309(c), the place to file a  
11 financing statement to perfect a security interest in collateral,  
12 including fixtures, of a transmitting utility is the office of  
13 []. This financing statement constitutes a fixture filing as to  
14 the described collateral that is or is to become fixtures.

15 Legislative Note: The State should designate the filing  
16 office where the brackets appear. The filing office may be  
17 that of a governmental official (e.g., the Secretary of State)  
18 or a private party that maintains the state's filing system  
19 (see Section 9-526).

20 **SECTION 9-502. CONTENTS OF FINANCING STATEMENT; MORTGAGE AS**  
21 **FINANCING STATEMENT; TIME OF FILING FINANCING STATEMENT. [former**  
22 **draft § 9-402(a), (b), (m)]**

23 (a) A financing statement is sufficient only if it gives  
24 the names and mailing addresses of the debtor and the secured  
25 party or a representative of the secured party and contains a  
26 statement indicating the collateral covered by the financing  
27 statement. If the financing statement covers timber to be cut or

1 covers minerals or the like, including oil and gas, or accounts  
2 subject to Section 9-306, or if the financing statement is filed  
3 as a fixture filing and the collateral is goods that are or are  
4 to become fixtures, the financing statement also must show that  
5 it covers this type of collateral, recite that it is to be filed  
6 [for record] in the real estate records, contain a description of  
7 the real estate [sufficient if it were contained in a mortgage of  
8 the real estate to give constructive notice of the mortgage under  
9 the law of this State], and, if the debtor does not have an  
10 interest of record in the real estate, show the name of a record  
11 owner.

12 Legislative Note: Language in brackets is optional. Where  
13 the state has any special recording system for real estate  
14 other than the usual grantor-grantee index (as, for  
15 instance, a tract system or a title registration or Torrens  
16 system) local adaptations of subsection (a) and Section  
17 9-520(b) may be necessary. See Mass. Gen. Laws Chapter  
18 106, Section 9-410.

19 (b) A real estate mortgage is effective as a financing  
20 statement filed as a fixture filing from the date of its  
21 recording only if:

- 22 (1) the mortgage indicates the goods that it covers;  
23 (2) the goods are or are to become fixtures related to  
24 the real estate described in the mortgage;  
25 (3) the mortgage complies with the requirements for a  
26 financing statement in this section other than a recital that it  
27 is to be filed in the real estate records; and

1 (4) the mortgage is [duly] recorded.

2 (c) A financing statement may be filed before a security  
3 agreement is made or a security interest otherwise attaches.

4 **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY. [former**  
5 **draft § 9-402(c)-(f)]**

6 (a) A financing statement sufficiently gives the name of  
7 the debtor:

8 (1) if the debtor is a registered entity, only if the  
9 financing statement gives the name of the debtor as shown on the  
10 public records of the debtor's jurisdiction of organization;

11 (2) if the debtor is a decedent's estate, only if the  
12 financing statement gives the name of the decedent and indicates  
13 that the debtor is an estate;

14 (3) if the debtor is a trust, only if the financing  
15 statement gives the name, if any, specified for the trust in its  
16 organic documents or, if no name is specified, gives the name of  
17 the settlor and additional information sufficient to distinguish  
18 the debtor from other trusts having one or more of the same  
19 settlors and indicates, in the debtor's name or otherwise, that  
20 the debtor is a trust; and

21 (4) in other cases, only if it gives the individual or  
22 organization name of the debtor.

23 (b) A financing statement that sufficiently gives the name  
24 of the debtor is not rendered ineffective by the absence of a  
25 trade or other name or names of partners, members, or associates.

26 (c) A financing statement may give the name of more than  
27 one debtor, may give, as an additional debtor, a trade or other

1 name for the debtor, and may give the name of more than one  
2 secured party.

3 (d) The failure to indicate the representative capacity of  
4 a secured party or a representative of a secured party does not  
5 affect the sufficiency of a financing statement.

6 **Reporters' Comments**

7 Section 1-201(28) defines the term "organization," which  
8 appears in subsection (a)(4), very broadly, to include all legal  
9 and commercial entities as well as associations that lack the  
10 status of a legal entity. If the organization has a name, that  
11 name is the correct name to put on a financing statement. If the  
12 organization does not have a name, then the financing statement  
13 should name the individuals or other entities who comprise the  
14 organization.

15 **SECTION 9-504. INDICATION OF COLLATERAL. [former draft § 9-**  
16 **402(g)]** A description of the collateral, an indication of the  
17 type of collateral, or a statement to the effect that the  
18 financing statement covers all assets or all personal property is  
19 sufficient to indicate the collateral that is covered by a  
20 financing statement.

21 **SECTION 9-505. FILING AND COMPLIANCE WITH OTHER STATUTES AND**  
22 **TREATIES FOR CONSIGNMENTS, LEASES, BAILMENTS, AND OTHER**  
23 **TRANSACTIONS. [former draft § 9-408]** A consignor, lessor, or  
24 bailor of goods or a buyer of a payment intangible may file a  
25 financing statement, or may comply with a statute or treaty  
26 described in Section 9-309(c), using the terms "consignor,"  
27 "consignee," "lessor," "lessee," "bailor," "bailee," "owner,"  
28 "registered owner", "buyer," "seller," or the like, instead of  
29 the terms "debtor" and "secured party." This part applies to a  
30 financing statement and, as appropriate, to compliance that is



1 equivalent to filing a financing statement under Section 9-  
2 309(d), but the filing or compliance is not of itself a factor in  
3 determining whether the collateral secures an obligation.  
4 However, if it is determined for another reason that the  
5 collateral secures an obligation, a security interest held by the  
6 consignor, lessor, bailor, owner, or buyer which attaches to the  
7 collateral is perfected by the filing or compliance.

8 **SECTION 9-506. EFFECT OF MINOR ERRORS. [former draft § 9-**  
9 **402(h)]** A financing statement substantially complying with the  
10 requirements of this part is effective, even if it contains minor  
11 errors that are not seriously misleading. A financing statement  
12 that fails to give the correct name of the debtor in accordance  
13 with Section 9-503(a) is seriously misleading unless a search of  
14 the records of the filing office conducted [in accordance with a  
15 rule adopted pursuant to Section 9-528] under the debtor's  
16 correct name would disclose the financing statement, in which  
17 case the incorrect name does not render the financing statement  
18 seriously misleading.

19 **SECTION 9-507. EFFECT OF CERTAIN CHANGES ON EFFECTIVENESS OF**  
20 **FINANCING STATEMENT. [former draft § 9-402(i)-(k)]**

21 (a) If a debtor so changes its name that a filed financing  
22 statement becomes seriously misleading:

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

26 (2) the financing statement is not effective to perfect  
27 a security interest in collateral acquired by the debtor more

1 than four months after the change, unless an amendment to the  
2 financing statement that renders the financing statement not  
3 seriously misleading is filed within four months after the  
4 change.

5 (b) A filed financing statement remains effective with  
6 respect to collateral that is sold, exchanged, leased, licensed,  
7 or otherwise disposed of and in which a security interest  
8 continues under Section 9-313(c), even if the secured party knows  
9 of or consents to the disposition.

10 (c) Except as otherwise provided in subsection (a) and  
11 Section 9-510, a financing statement is not rendered ineffective  
12 if, after the financing statement is filed, the information  
13 contained in the financing statement becomes inaccurate and  
14 seriously misleading.

15 **SECTION 9-508. AUTHORIZATION OF FINANCING STATEMENT;**  
16 **LIABILITY FOR UNAUTHORIZED FILING. [former draft § 9-402(n)-(p)]**

17 (a) A person may not file an initial financing statement  
18 or an amendment that adds collateral covered by a financing  
19 statement unless:

20 (1) the debtor authorizes the filing in a signed writing  
21 or in a signed record in another medium authorized by the debtor  
22 in a signed writing; or

23 (2) the person holds an agricultural lien at the time of  
24 filing and the financing statement covers only collateral in  
25 which the person holds an agricultural lien.

26 (b) By signing a written security agreement, a debtor  
27 authorizes the secured party to file an initial financing

1 statement and an amendment covering the collateral described in  
2 the security agreement.

3 (c) A person that files an initial financing statement or  
4 an amendment that adds collateral and that claims an agricultural  
5 lien in the collateral covered by the financing statement shall  
6 send a copy of the financing statement or the amendment to the  
7 debtor not later than the 10th day after the filing. The person  
8 shall send the copy to the most recent mailing address of the  
9 debtor known to the person.

10 (d) A person that files an initial financing statement or  
11 an amendment in violation of subsection (a) or that fails to send  
12 a copy of a financing statement or amendment to the debtor in  
13 accordance with subsection (c) is liable to the debtor for \$500  
14 and any loss thereby sustained by the debtor.

15 **SECTION 9-509. AMENDMENT OF FINANCING STATEMENT. [former**  
16 **draft § 9-402(1)]** Subject to Section 9-513, a secured party of  
17 record may add or release collateral covered by a financing  
18 statement or otherwise amend the information contained in a  
19 financing statement by filing an amendment that identifies the  
20 initial financing statement by the date of filing and the file  
21 number assigned pursuant to Section 9-520(a) or by another method  
22 prescribed by rule. An amendment does not extend the period of  
23 effectiveness of a financing statement. If an amendment adds  
24 collateral, it is effective as to the added collateral only from  
25 the date of filing of the amendment.

1           **SECTION 9-510. EFFECTIVENESS OF FINANCING STATEMENT IF NEW**  
2 **DEBTOR BECOMES BOUND BY SECURITY AGREEMENT. [former draft § 9-**  
3 **402A]**

4           (a) Except as otherwise provided in subsections (b) and  
5 (c), a filed financing statement naming an original debtor is  
6 effective to perfect a security interest in collateral in which a  
7 new debtor has or acquires rights to the extent that the  
8 financing statement would have been effective if the original  
9 debtor acquired rights in the collateral.

10           (b) If a filed financing statement that is effective under  
11 subsection (a) is seriously misleading with respect to the name  
12 of the new debtor:

13                 (1) the financing statement is effective to perfect a  
14 security interest in collateral acquired by the new debtor  
15 before, and within four months after, the new debtor becomes  
16 bound under Section 9-203(c); and

17                 (2) the financing statement is not effective to perfect  
18 a security interest in collateral acquired by the new debtor more  
19 than four months after the new debtor becomes bound under Section  
20 9-203(c) unless an amendment that renders the financing statement  
21 not seriously misleading is filed before the expiration of that  
22 time.

23           (c) This section does not apply to collateral as to which  
24 a filed financing statement remains effective against the new  
25 debtor under Section 9-507(b).

1           **SECTION 9-511. TERMINATION STATEMENT. [former draft § 9-404]**

2           (a) A termination statement for a financing statement is a  
3 record that is signed by the secured party of record, identifies  
4 the financing statement by file number and date of filing or by  
5 another method prescribed by rule, and states either that it is a  
6 termination statement or that the identified financing statement  
7 is no longer effective.

8           (b) A secured party of record for a financing statement  
9 may file a termination statement for the financing statement.

10          (c) If a financing statement covers [consumer goods],  
11 within one month or within 10 days after written demand by the  
12 debtor after there is no outstanding secured obligation and no  
13 commitment to make an advance, incur an obligation, or otherwise  
14 give value, the secured party of record shall file with the  
15 filing office a termination statement for the financing  
16 statement. In other cases, if there is no outstanding secured  
17 obligation and no commitment to make an advance, incur an  
18 obligation, or otherwise give value, or if a financing statement  
19 covers accounts, chattel paper, or payment intangibles that have  
20 been sold but as to which the account debtor other person  
21 obligated has discharged its obligation, the secured party of  
22 record for a financing statement, within 10 days after written  
23 demand by the debtor, shall send the debtor a termination  
24 statement for the financing statement or file the termination  
25 statement with the filing office. A secured party of record that  
26 fails to file or send a termination statement as required by this

1 subsection is liable to the debtor for \$500 and any loss thereby  
2 sustained by the debtor.

3 (d) Subject to Section 9-513, upon the filing of a  
4 termination statement with the filing office under subsection  
5 (b), the financing statement to which the termination statement  
6 relates becomes ineffective.

7 **SECTION 9-512. ASSIGNMENT OF RIGHTS UNDER FINANCING**  
8 **STATEMENT. [former draft § 9-405(a)-(c)]**

9 (a) Except as otherwise provided in subsection (c), an  
10 initial financing statement may reflect an assignment of all of  
11 the secured party's rights under the financing statement with  
12 respect to some or all of the collateral by giving in the  
13 financing statement the name and mailing address of the assignee.  
14 Upon filing, the assignee named in an assignment filed under this  
15 subsection is a secured party of record for the financing  
16 statement. An assignment in an initial financing statement may  
17 state that the rights under the financing statement are being  
18 assigned only with respect to the portion of the collateral  
19 covered by the financing statement that is indicated in the  
20 assignment; otherwise, the rights under the financing statement  
21 are assigned of record with respect to all of the collateral  
22 covered by the financing statement.

23 (b) Except as otherwise provided in subsection (c), a  
24 secured party of record may assign of record all or part of the  
25 secured party's rights under a financing statement by filing in  
26 the filing office an amendment that identifies the initial  
27 financing statement by file number and the date of filing or by

1 another method prescribed by rule and gives the names of the  
2 secured party of record and the debtor and the name and mailing  
3 address of the assignee. Upon filing, the assignee named in an  
4 amendment filed under this subsection is a secured party of  
5 record for the financing statement.

6 (c) An assignment of record of a security interest in a  
7 fixture covered by a real estate mortgage that is effective as a  
8 fixture filing under Section 9-502(b) may be made only by an  
9 assignment of record of the mortgage in the manner provided by  
10 other law of this State.

11 **SECTION 9-513. MULTIPLE SECURED PARTIES OF RECORD. [former**  
12 **draft § 9-406]**

13 (a) If there is more than one secured party of record for  
14 a financing statement, each secured party of record may file an  
15 amendment, continuation statement, or termination statement  
16 concerning its rights under the financing statement.

17 (b) A filing by one secured party of record does not  
18 affect the rights under the financing statement of another  
19 secured party of record.

20 **SECTION 9-514. SUCCESSOR OF SECURED PARTY. [former draft §**  
21 **9-406A]** A person that succeeds to substantially all of the  
22 rights of a secured party by operation of law and itself becomes  
23 a secured party may act under this part without disclosing its  
24 status as a successor or may act in its own name as the disclosed  
25 successor of a secured party.

1           **SECTION 9-515. WHAT CONSTITUTES FILING A RECORD;**  
2           **EFFECTIVENESS OF FILING. [former draft § 9-403(a)-(b), (e), (g)]**

3           (a) Except as otherwise provided in subsection (b),  
4 presentation of a record to a filing office and tender of the  
5 filing fee or acceptance of the record by the filing office  
6 constitutes filing.

7           (b) Filing does not occur with respect to a record that a  
8 filing office refuses to accept because:

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

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

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

15                     (A) in the case of an initial financing statement,  
16 the record gives no name for a debtor or the filing office is  
17 unable to read or decipher the names given; or

18                     (B) in other cases, the record does not identify the  
19 initial financing statement as required by this part or the  
20 filing office is unable to read or decipher the identification;

21                 (4) the filing office is unable to determine the secured  
22 party of record because the record does not give a name for the  
23 secured party of record or the filing office is unable to read or  
24 decipher the name given;

25                 (5) in the case of an initial financing statement, the  
26 statement does not:



1 (A) indicate whether the debtor is an individual or  
2 an organization; or

3 (B) if the financing statement indicates that the  
4 debtor is an organization, indicate the type of organization,  
5 give a jurisdiction of organization for the debtor, or give an  
6 organizational identification number for the debtor or indicate  
7 that the debtor has none; or

8 (6) in the case of an assignment in an initial financing  
9 statement under Section 9-512(a) or an amendment filed under  
10 Section 9-512(b), the record does not give a name for the  
11 assignee.

12 (c) Except as otherwise provided in Section 9-335, a filed  
13 financing statement complying with Section 9-502(a) is effective,  
14 even if some or all of the information described in subsection  
15 (b) (5) is not given or is incorrect.

16 (d) A record that is presented to the filing office with  
17 tender of the filing fee but which the filing office refuses to  
18 accept for a reason other than one set forth in subsection (b) is  
19 effective as a filed record except as against a purchaser of the  
20 collateral which gives value in reliance upon the absence of the  
21 record in the files.

22 **SECTION 9-516. DURATION AND EFFECTIVENESS OF FINANCING**  
23 **STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT. [former draft §**  
24 **9-403(j)-(k), (l) (2d & 3d sentences), (m)]**

25 (a) Except as otherwise provided in subsections (c) and  
26 (d), a filed financing statement is effective for a period of  
27 five years after the date of filing. The effectiveness of a

1 filed financing statement lapses on the expiration of the five-  
2 year period unless before the lapse a continuation statement is  
3 filed pursuant to subsection (b) [, notwithstanding the  
4 commencement of insolvency proceedings by or against the debtor].  
5 Upon lapse, a financing statement becomes ineffective and any  
6 security interest or agricultural lien that was perfected by the  
7 financing statement becomes unperfected, unless the security  
8 interest [or agricultural lien] is perfected without filing. If  
9 the security interest becomes unperfected upon lapse, it is  
10 deemed never to have been perfected as against a purchaser of the  
11 collateral for value.

12 (b) A continuation statement may be filed by a secured  
13 party of record for a financing statement only within six months  
14 before the expiration of the five-year period specified in  
15 subsection (a).

16 (c) Subject to Section 9-513, upon timely filing of a  
17 continuation statement, the effectiveness of the initial  
18 financing statement is continued for five years after the last  
19 date on which the financing statement was effective, whereupon  
20 the financing statement lapses in the same manner as provided in  
21 subsection (a) unless before the lapse another continuation  
22 statement is filed pursuant to this subsection. Succeeding  
23 continuation statements may be filed in the same manner to  
24 continue the effectiveness of the initial financing statement.

25 (d) If a debtor is a transmitting utility and a filed  
26 financing statement so states, the financing statement is  
27 effective until a termination statement is filed. A real estate

1 mortgage that is effective as a fixture filing under Section  
2 9-502(b) remains effective as a fixture filing until the mortgage  
3 is released or satisfied of record or its effectiveness otherwise  
4 terminates as to the real estate.

5 **SECTION 9-517. CONTENTS OF CONTINUATION STATEMENT. [former**  
6 **draft § 9-403(1) (1st sentence)]** A continuation statement must  
7 identify the initial financing statement by file number and the  
8 date of filing or by another method prescribed by rule and state  
9 that it is a continuation statement or that it is filed to  
10 continue the effectiveness of the financing statement.

11 **SECTION 9-518. EFFECT OF INDEXING ERRORS. [former draft § 9-**  
12 **403(q) - (r)]**

13 (a) Except as otherwise provided in subsection (b), the  
14 failure of the filing office to index a record correctly does not  
15 affect the effectiveness of the record.

16 (b) A filed but improperly indexed record is ineffective  
17 against a purchaser of the collateral that gives value in  
18 reliance upon the apparent absence of the record in the files.

19 **SECTION 9-519. CLAIM CONCERNING INACCURATE OR WRONGFULLY**  
20 **FILED RECORD; FAILURE TO SEND OR FILE TERMINATION STATEMENT.**  
21 **[former draft § 9-415]**

22 (a) If a person believes [in good faith] that a record  
23 indexed under the person's name with the filing office is  
24 inaccurate or was wrongfully filed, the person may file with the  
25 filing office a correction statement with respect to the record  
26 or financing statement.

1           (b) If a person believes [in good faith] that the secured  
2 party of record for a financing statement indexed under the  
3 person's name has failed to comply with its duty to file or send  
4 to the person a termination statement for the financing statement  
5 under Section 9-511, the person may file with the filing office a  
6 termination request with respect to the financing statement.

7           (c) A correction statement or termination request must  
8 identify the record or the initial financing statement to which  
9 it relates by the date of filing and the file number assigned  
10 under Section 9-520(a) or by another method prescribed by rule.  
11 A correction statement must give the basis for the person's  
12 belief that a record is inaccurate or was wrongfully filed and  
13 the manner in which the record should be amended in order to cure  
14 any inaccuracy. A termination request must give the basis for  
15 the person's belief that the secured party of record for a  
16 financing statement indexed under the person's name has failed to  
17 comply with its duty to file or send to the person a termination  
18 statement for the financing statement.

19           (d) Upon filing, a correction statement or a termination  
20 request becomes a part of the record or financing statement to  
21 which it relates, but neither the correction statement nor the  
22 termination request otherwise affects the record or financing  
23 statement.

24           SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE

1           **SECTION 9-520. NUMBERING, MAINTAINING, AND INDEXING RECORDS.**  
2           **[former draft §§ 9-403(n)-(p), 9-405(d)-(e)]**

3           (a) Except as otherwise provided in subsections (b) and  
4           (d), for each record filed with the filing office, the filing  
5           office shall:

6                     (1) assign a file number to the record;

7                     (2) create a record that bears the file number and the  
8           date and time of filing;

9                     (3) maintain the filed record for public inspection;

10                    (4) index the filed record according to the name of the  
11           debtor in such a manner that each initial financing statement is  
12           interrelated to all filed records relating to it; and

13                    (5) note in the index the file number and the date and  
14           time of filing.

15           (b) If a financing statement covers timber to be cut or  
16           covers minerals or the like, including oil and gas, or accounts  
17           subject to Section 9-306, or is filed as a fixture filing, [it  
18           must be filed for record and] the filing office shall index it  
19           under the names of the debtor and any owner of record shown on  
20           the financing statement as if they were the mortgagors under a  
21           mortgage of the real estate described, and, to the extent that  
22           the law of this State provides for indexing of mortgages under  
23           the name of the mortgagee, under the name of the secured party as  
24           if the secured party were the mortgagee thereunder, or, if  
25           indexing is by description, as if the financing statement were a  
26           mortgage of the real estate described.

1 (c) In the case of a fixture filing, or a financing  
2 statement covering timber to be cut, or covering minerals or the  
3 like, including oil and gas, or accounts subject to Section  
4 9-306, the filing office shall index an assignment filed under  
5 Section 9-512(a) or an amendment filed under Section 9-512(b)  
6 under the name of the assignor as grantor and, to the extent that  
7 the law of this State provides for indexing the assignment of a  
8 real estate mortgage under the name of the assignee, the filing  
9 office shall index the assignment or the amendment under the name  
10 of the assignee.

11 (d) The filing office shall perform the acts required by  
12 subsections (a), (b), and (c) at the time and in the manner  
13 prescribed by rule, but not later than two business days after  
14 the filing office receives the record in question.

15 Legislative Note: In states in which writings will not  
16 appear in the real estate records and indices unless  
17 actually recorded the bracketed language in subsection (b)  
18 should be used.

19 **SECTION 9-521. ACCEPTANCE AND REFUSAL TO ACCEPT RECORD.**

20 **[former draft § 9-403(c)-(d), (h)-(i)]**

21 (a) A filing office may refuse to accept a record for  
22 filing only for a reason set forth in Section 9-515(b).

23 (b) If a filing office refuses to accept a record for  
24 filing, it shall communicate the fact of and reason for its  
25 refusal to the person that presented the record. The  
26 communication must be made at the time and in the manner

1 prescribed by rule, but in no event more than two business days  
2 after the filing office receives the record.

3 (c) The filing office may not refuse to accept a written  
4 initial financing statement in the following form except for a  
5 reason set forth in Section 9-515(b):

1

[INSERT FINANCING STATEMENT FORM]



1

[INSERT ADDENDUM FORM]

1           (d) The filing office may not refuse to accept a written  
2 record in the following form except for a reason set forth in  
3 Section 9-515(b):

1

[INSERT ["CHANGE"] FORM]

1           **SECTION 9-522. LAPSED FINANCING STATEMENTS. [former draft §**  
2 **9-403(1) (last 3 sentences)** The filing office may cause the  
3 files to reflect the fact that a financing statement has lapsed  
4 under Section 9-516(a) or has become ineffective under Section 9-  
5 511. Except to the extent that a statute governing disposition  
6 of public records provides otherwise, immediately upon lapse the  
7 filing office may destroy any written record evidencing the  
8 financing statement. If the filing office destroys a written  
9 record evidencing a financing statement, it shall maintain  
10 another record of the financing statement which is recoverable by  
11 using the file number of the destroyed record.

12           **SECTION 9-523. INFORMATION FROM FILING OFFICE; SALE OR**  
13 **LICENSE OF RECORDS. [former draft § 9-407]**

14           (a) If a person filing a written record furnishes a copy  
15 to the filing office, the filing office upon request shall note  
16 upon the copy the file number and date and time of the filing of  
17 the original and deliver or send the copy to the person.

18           (b) The filing office shall communicate the following  
19 information to any person who requests it:

20           (1) whether there is on file on a date and time  
21 specified by the filing office, but not a date earlier than three  
22 business days before the filing office receives the request, any  
23 financing statement that designates a particular debtor or, if  
24 the request so states, designates a particular debtor at the  
25 address specified in the request, and has neither lapsed under  
26 Section 9-516(a) nor become ineffective under Section 9-511;

1           (2) the date and time of filing of each financing  
2 statement; and

3           (3) the information contained in each financing  
4 statement.

5           (c) In complying with its duty under subsection (b), the  
6 filing office may communicate the information in any medium.  
7 However, if requested, the filing office shall communicate the  
8 information by issuing its written certificate.

9           (d) The filing office shall perform the acts required by  
10 subsections (a) and (b) at the time and in the manner prescribed  
11 by rule, but not later than two business days after the filing  
12 office receives the request.

13           (e) At least weekly, the [insert appropriate official or  
14 governmental agency] [filing office] shall sell or license to the  
15 public on a nonexclusive basis, in bulk, copies of all records  
16 filed with it under this part, in every medium from time to time  
17 available to the filing office.

18           **SECTION 9-524. DELAY BY FILING OFFICE. [former draft § 9-**  
19 **411]** Delay by the filing office beyond the time limits  
20 prescribed in this part is excused if:

21           (1) the delay is caused by interruption of communication or  
22 computer facilities, war, emergency conditions, failure of  
23 equipment, or other circumstances beyond control of the filing  
24 office; and

25           (2) the filing office exercises reasonable diligence under  
26 the circumstances.

1           **[SECTION 9-525. REGISTERED AGENT. [former draft § 9-409]]**

2           [Intentionally omitted]

3           **SECTION 9-526. ASSIGNMENT OF FUNCTIONS TO PRIVATE CONTRACTOR.**

4           **[former draft § 9-410]** The [insert appropriate official or  
5 governmental agency] [filing office] may contract with a private  
6 person to perform some or all of its functions under this part,  
7 other than the adoption of rules under Section 9-528. A contract  
8 under this section is subject to [insert reference to any  
9 applicable statute that regulates government contracting and  
10 procurement].

11           **SECTION 9-527. FEES. [former draft § 9-412]**

12           (a) The fee for filing and indexing a [record under this  
13 part] [financing statement, amendment, continuation statement, or  
14 termination statement] [and for marking a written copy furnished  
15 by the secured party to show the time and place of filing] is \$  
16 \_\_\_\_\_ if the record is communicated in writing and \$ \_\_\_\_\_ if  
17 the record is communicated by another medium authorized by rule,  
18 [plus in each case, if the financing statement is subject to the  
19 second sentence of Section 9-502(a), \$ \_\_\_\_\_]. The fee for  
20 each name more than one required to be indexed is \$ \_\_\_\_\_.

21 [The fee for filing a written record in a form other than as set  
22 forth in Sections 9-521(c) and (d) may not be less than the fee  
23 charged for filing a written record of the same kind in the form  
24 set forth in those sections.] [With reference to a mortgage  
25 filed as a financing statement a fee is not required other than  
26 the regular recording and satisfaction fees with respect to the  
27 mortgage.]

1 (b) The fee for responding to a request for information  
2 from the filing office, including for [issuing a certificate  
3 showing] [communicating] whether there is on file any financing  
4 statement naming a particular debtor, is \$ \_\_\_\_ if the request is  
5 communicated in writing and \$ \_\_\_\_ if the request is communicated  
6 by another medium authorized by rule.

7 **SECTION 9-528. ADMINISTRATIVE RULES. [former draft § 9-413]**

8 (a) The [insert appropriate official or governmental  
9 agency] [filing office] shall adopt rules to carry out the  
10 provisions of this article. The rules [must be adopted in  
11 accordance with the [insert any applicable state administrative  
12 procedure act] and] must be consistent with this article.

13 (b) To keep the rules and practices of the filing office  
14 in harmony with the rules and practices of filing offices in  
15 other jurisdictions that enact substantially this part, and to  
16 keep the technology used by the filing office compatible with the  
17 technology used by filing offices in other jurisdictions that  
18 enact substantially this part, the filing office, so far as is  
19 consistent with the purposes, policies, and provisions of this  
20 article, shall:

21 (1) before adopting, amending, and repealing rules,  
22 consult with filing offices in other jurisdictions that enact  
23 substantially this part and consult the most recent version of  
24 the Model Rules promulgated by the International Association of  
25 Corporate Administrators or any successor organization; and

26 (2) in adopting, amending, and repealing rules, take  
27 into consideration the rules and practices of, and the technology

1 used by, filing offices in other jurisdictions that enact  
2 substantially this part.

3       **SECTION 9-529. DUTY TO REPORT. [former draft § 9-414]** The  
4 [insert appropriate official or governmental agency] [filing  
5 office] shall report [annually on or before \_\_\_\_\_] to the  
6 [Governor and Legislature] on the operation of the filing office.  
7 The report must contain a statement of the extent to which the  
8 filing office has complied with the time limits prescribed in  
9 this part and the reasons for any noncompliance, a statement of  
10 the extent to which the rules are not in harmony with the rules  
11 of filing offices in other jurisdictions that enact substantially  
12 this part and the reasons for these variations, and a statement  
13 of the extent to which the rules are not in harmony with the most  
14 recent version of the Model Rules promulgated by the  
15 International Association of Corporate Administrators or any  
16 successor organization and the reasons for these variations.

17                                   PART 6

18                                   DEFAULT

19           SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

20       **SECTION 9-601. RIGHTS AND REMEDIES AFTER DEFAULT; JUDICIAL**  
21 **ENFORCEMENT; CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, OR**  
22 **PAYMENT INTANGIBLES. [former draft § 9-501(a)-(b), (h), (j)]**

23           (a) After default, a secured party has the rights and  
24 remedies provided in this part and, except as otherwise provided  
25 in Section 9-602(a), those provided by agreement of the parties.  
26 A secured party may reduce the claim to judgment, foreclose, or  
27 otherwise enforce the claim, security interest, or agricultural



1 lien by any available judicial procedure. If the collateral is  
2 documents, a secured party may proceed either as to the documents  
3 or as to the goods they cover. [A secured party in possession  
4 has the rights, remedies, and duties provided in Section 9-207.]  
5 The rights and remedies referred to in this subsection are  
6 cumulative and may be exercised simultaneously.

7 (b) Except as otherwise provided in subsection (d) and  
8 Section 9-605, after default, a debtor and an obligor have the  
9 rights and remedies provided in this part [and] [,] by agreement  
10 of the parties[, and in Section 9-207].

11 (c) If a secured party has reduced its claim to judgment,  
12 the lien of any levy which may be made upon the collateral by  
13 virtue of an execution based upon the judgment relates back to  
14 the earliest of the date of perfection of the security interest  
15 or agricultural lien in the collateral, the date of filing a  
16 financing statement covering the collateral, or any date  
17 specified in a statute under which the agricultural lien was  
18 created. A sale pursuant to the execution is a foreclosure of  
19 the security interest or agricultural lien by judicial procedure  
20 within the meaning of this section. A secured party may purchase  
21 at the sale and thereafter hold the collateral free of any other  
22 requirements of this article.

23 (d) Except as otherwise provided in Sections 9-607(d), 9-  
24 608(b), and 9-614(d), the duties of a secured party under this  
25 part do not apply to a secured party that is a consignor or is a  
26 buyer of accounts, chattel paper, or payment intangibles.

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

2           **[former draft § 9-501(c)-(d)]**

3           (a) To the extent that they give rights to a debtor or an  
4 obligor and impose duties on a secured party, the rules stated in  
5 the sections referred to below may not be waived or varied by a  
6 debtor or by a consumer obligor, except as specifically provided  
7 in Section 9-623:

8           (1) Section 9-607(c), which deals with collection and  
9 enforcement of collateral;

10          (2) Sections 9-610(b), 9-611, and 9-613, which deal with  
11 disposition of collateral;

12          (3) Section 9-609 insofar as it imposes upon a secured  
13 party that takes possession of collateral without judicial  
14 process the duty to do so without breach of the peace;

15          (4) Sections 9-607(d) and 9-614(c) insofar as they deal  
16 with application or payment of noncash proceeds of collection,  
17 enforcement, or disposition;

18          (5) Sections 9-607(d), 9-608(a), and 9-614(d) insofar as  
19 they require accounting for or payment of surplus proceeds of  
20 collateral;

21          (6) Sections 9-618, 9-619, or 9-290, which deal with  
22 acceptance of collateral in satisfaction of obligation;

23          (7) Section 9-621, which deals with redemption of  
24 collateral;

25          (8) Section 9-622, which deals with reinstatement of  
26 obligations;

1 (9) Sections 9-624, 9-625, and 9-628, which deal with  
2 the secured party's liability for failure to comply with this  
3 article;

4 (10) Section 9-404(f)(3), which deals with an account  
5 debtor's right to ignore certain notifications; and

6 (11) Section 9-209, which deals with requests for an  
7 accounting, list of collateral, and statement of account.

8 (b) Notwithstanding Section 1-102(3), an obligor other  
9 than a consumer obligor may waive or vary the rules referred to  
10 in subsection (a) to the extent and in the manner provided by  
11 other law.

12 **SECTION 9-603. AGREEMENT ON STANDARDS CONCERNING RIGHTS AND**  
13 **DUTIES. [former draft § 9-501(e)]** The parties may determine by  
14 agreement the standards by which the fulfillment of the debtor's  
15 or obligor's rights and the secured party's duties, other than  
16 duties concerning taking possession of collateral without breach  
17 of the peace under Section 9-609, is to be measured if[, in a  
18 consumer secured transaction, the standards are not unreasonable,  
19 and if, in any other transaction,] the standards are not  
20 manifestly unreasonable.

21 **SECTION 9-604. PROCEDURE IF SECURITY AGREEMENT COVERS REAL**  
22 **[ESTATE] [PROPERTY] OR FIXTURES. [former draft § 9-501(f)-(g)]**

23 (a) If a security agreement covers both real [estate] and  
24 personal property, a secured party may proceed:

25 (1) under this part as to the personal property without  
26 prejudicing any rights and remedies with respect to the real  
27 [estate] [property]; or

1           (2) as to both the real [estate] and the personal  
2 property in accordance with the rights and remedies with respect  
3 to the real [estate] [property], in which case the other  
4 provisions of this part do not apply.

5           (b) If a security agreement covers goods that are or  
6 become fixtures, a secured party, subject to subsection (c), may  
7 proceed under this part or in accordance with the rights and  
8 remedies with respect to real [estate] [property], in which case  
9 the other provisions of this part do not apply.

10          (c) If a secured party with a security interest in  
11 fixtures has priority over all owners and encumbrancers of the  
12 real estate, the secured party may, on default, subject to the  
13 other provisions of this part, remove the collateral from the  
14 real estate. The secured party shall reimburse any encumbrancer  
15 or owner of the real estate that is not the debtor and that has  
16 not otherwise agreed for the cost of repair of any physical  
17 injury, but not for any diminution in value of the real estate  
18 caused by the absence of the goods removed or by any necessity of  
19 replacing them. A person entitled to reimbursement may refuse  
20 permission to remove until the secured party gives adequate  
21 [security] [assurance] for the performance of the obligation to  
22 reimburse.

23          **SECTION 9-605. UNKNOWN DEBTOR OR SECONDARY OBLIGOR. [former**  
24 **draft § 9-501(i)]** Unless a secured party knows that a person is  
25 a debtor or a secondary obligor, knows the identity of the  
26 person, and knows how to communicate with the person, the secured  
27 party owes no duty under this article to the person or to a

1 secured party or lienholder that has filed a financing statement  
2 against the person.

3 **SECTION 9-606. TIME OF DEFAULT FOR AGRICULTURAL LIEN.**

4 **[former draft § 9-501(k)]** For purposes of this part, a default  
5 occurs in connection with an agricultural lien at the earlier of  
6 the time provided by agreement of the parties and the time at  
7 which the secured party becomes entitled to enforce the lien in  
8 accordance with the statute under which it was created.

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

10 **[former draft § 9-502(a)-(d)]**

11 (a) If so agreed, and in any event on default, a secured  
12 party may:

13 (1) notify an account debtor or other person obligated  
14 on collateral to make payment or otherwise render performance to  
15 or for the benefit of the secured party, whether or not a debtor  
16 had been making collections on or enforcing the collateral;

17 (2) take any proceeds to which the secured party is  
18 entitled under Section 9-313; and

19 (3) enforce the obligations of an account debtor or  
20 other person obligated on collateral[, including by exercising  
21 the rights and remedies of the debtor with respect to the  
22 obligation of the account debtor or other person obligated on  
23 collateral to make payment or otherwise render performance to the  
24 debtor, and with respect to any property that secures the  
25 obligations of the account debtor or other person obligated on  
26 the collateral].

1           [(b) In order to exercise under subsection (a)(3) the  
2 rights of a debtor to enforce nonjudicially any [mortgage/deed of  
3 trust] covering real [estate] [property], a secured party may  
4 [file/record] in the office in which the [mortgage/deed of trust]  
5 is [filed/recorded] a copy of the security agreement that  
6 entitles the secured party to exercise those rights and an  
7 affidavit signed by the secured party stating that a default has  
8 occurred and that the secured party is entitled to enforce  
9 nonjudicially the [mortgage/deed of trust].]

10           (c) If so agreed, and in any event on default:

11           (1) a secured party that holds a security interest in a  
12 deposit account perfected by control under Section 9-109(a)(1)  
13 may apply the funds in the account to the obligation secured by  
14 the deposit account, and

15           (2) a secured party that holds a security interest in a  
16 deposit account perfected by control under Section 9-109(a)(2) or  
17 (a)(3) may instruct the depository institution to pay the funds  
18 in the account to or for the benefit of the secured party.

19           (d) A secured party that is entitled [by agreement] to  
20 charge back uncollected collateral or otherwise to full or  
21 limited recourse against the debtor or against a secondary  
22 obligor and that undertakes to collect from or enforce an  
23 obligation of an account debtor or other person obligated on  
24 collateral shall proceed in a commercially reasonable manner.  
25 The secured party may deduct from the collections reasonable  
26 expenses of collection and enforcement, including reasonable  
27 attorney's fees and legal expenses incurred by the secured party.

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**Reporters' Comments**

This section permits a secured party to collect and enforce obligations included in collateral in its capacity as a secured party. It is not necessary for a secured party first to become the owner of the collateral pursuant to a disposition or acceptance.

**SECTION 9-608. APPLICATION OF PROCEEDS OF COLLECTION OR ENFORCEMENT; LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS.**  
**[former draft § 9-502(e), (g)]**

(a) If a security interest or agricultural lien secures payment or performance of an obligation the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds (Section 9-313) of collection or enforcement under this section in the following order to:

(A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives a written notification of demand for proceeds before distribution of the proceeds is completed.

1           (2) If requested by a secured party, a holder of a  
2 subordinate security interest or other lien shall furnish  
3 reasonable proof of the interest or lien within a reasonable  
4 time. Unless the holder does so, the secured party need not  
5 comply with the holder's demand under paragraph (1)(C).

6           (3) A secured party need not apply or pay over for  
7 application the noncash proceeds (Section 9-313) of collection  
8 and enforcement under this section. A secured party that applies  
9 or pays over for application noncash proceeds shall do so in a  
10 commercially reasonable manner.

11           (4) A secured party shall account to and pay a debtor  
12 for any surplus notwithstanding any agreement to the contrary,  
13 and, unless otherwise agreed, the obligor is liable for any  
14 deficiency. Recovery of a deficiency under this subsection is  
15 subject to Section 9-625.

16           (b) If the underlying transaction is a sale of accounts,  
17 chattel paper, or payment intangibles, the debtor is entitled to  
18 any surplus, and the obligor is liable for any deficiency, only  
19 if its agreement so provides. Recovery of a deficiency under  
20 this subsection is subject to Section 9-625.

21           **SECTION 9-609. SECURED PARTY'S RIGHT TO TAKE POSSESSION AFTER**  
22 **DEFAULT.** [MINOR STYLE CHANGES ONLY] [former draft § 9-503]

23 Unless otherwise agreed, a secured party has the right on default  
24 to take possession of the collateral. In taking possession, a  
25 secured party may proceed without judicial process if the taking  
26 can be done without breach of the peace or may proceed by action.  
27 If a security agreement so provides, a secured party may require



1 a debtor to assemble the collateral and make it available to the  
2 secured party at a place to be designated by the secured party  
3 which is reasonably convenient to both parties. Without removal,  
4 a secured party may render equipment unusable, and may dispose of  
5 collateral on a debtor's premises under Section 9-610.

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

7 **[former draft § 9-504(a), (f)]**

8 (a) A secured party after default may sell, lease,  
9 license, or otherwise dispose of any or all of the collateral in  
10 its then condition or following any commercially reasonable  
11 preparation or processing. Unless effectively [excluded]  
12 [disclaimed] or modified, a contract for sale, lease, license, or  
13 other disposition includes the warranties relating to title,  
14 possession, quiet enjoyment, and the like which by operation of  
15 law accompany a voluntary disposition of property of the kind  
16 subject to the contract. A secured party may [exclude]  
17 [disclaim] or modify warranties under this section in the  
18 contract for disposition by giving a purchaser a written  
19 statement that contains specific language [excluding]  
20 [disclaiming] or modifying the warranties. Language in a written  
21 statement is sufficient to [exclude] [disclaim] warranties under  
22 this section if it states "There is no warranty relating to  
23 title, possession, quiet enjoyment, or the like in this  
24 disposition," or words of similar import.

25 (b) Every aspect of a disposition of collateral, including  
26 the method, manner, time, place, and terms, must be commercially  
27 reasonable. If commercially reasonable, a secured party may

1 dispose of collateral by public or private proceedings, by one or  
2 more contracts, as a unit or in parcels, and at any time and  
3 place and on any terms. A secured party may buy at a public  
4 sale. A secured party may buy at a private sale only if the  
5 collateral is of a kind customarily sold on a recognized market  
6 or is of a kind that is the subject of widely distributed  
7 standard price quotations.

8 **SECTION 9-611. PERSONS ENTITLED TO NOTIFICATION BEFORE**  
9 **DISPOSITION OF COLLATERAL. [former draft § 9-504(g)-(h)]**

10 (a) The "notification date" is the earlier of the date on  
11 which a secured party sends to the debtor and any secondary  
12 obligor written notification of a disposition and the date on  
13 which the debtor and any secondary obligor waive the right to  
14 notification.

15 (b) A secured party shall send to a debtor and any  
16 secondary obligor reasonable written notification of disposition  
17 under Section 9-613, unless collateral is perishable or threatens  
18 to decline speedily in value or is of a type customarily sold on  
19 a recognized market. In the case of consumer goods, another  
20 notification need not be sent. In other cases a secured party  
21 shall send written notification of disposition to:

22 (1) any other person from whom the secured party has  
23 received, before the notification date, written notification of a  
24 claim of an interest in the collateral;

25 (2) any other secured party that, [XX] days before the  
26 notification date, held a security interest or agricultural lien  
27 in the collateral perfected by the filing of a financing

1 statement that identified the collateral, was indexed under the  
2 debtor's name as of that date, and was filed in the office in  
3 which to file a financing statement against the debtor covering  
4 the collateral as of that date (Sections 9-301 through 9-307 and  
5 9-501); and

6 (3) any other secured party that, [XX] days before the  
7 notification date, held a security interest in the collateral  
8 perfected by compliance with a statute or treaty described in  
9 Section 9-309(c).

10 (c) A secured party complies with the notification  
11 requirement specified in subsection (b) (2) if:

12 (1) not later than [XX] days before the notification  
13 date, the secured party requests, in a commercially reasonable  
14 manner, information concerning financing statements indexed under  
15 the debtor's name in the office indicated in subsection (b) (2);  
16 and

17 (2) before the notification date, either the secured  
18 party did not receive a response to the request for information  
19 or the secured party received a response to the request for  
20 information and the secured party sent written notification to  
21 each secured party named in that response and whose financing  
22 statement covered the collateral.

23 **SECTION 9-612. TIMELINESS OF NOTIFICATION BEFORE DISPOSITION**  
24 **OF COLLATERAL. [former draft § 9-504(j)]** Unless otherwise  
25 agreed, a notification of disposition sent after default and, in  
26 a consumer secured transaction, [21] days or more, and, in other  
27 transactions, 10 days or more, before the earliest time of

1 disposition set forth in the notification is sent within a  
2 reasonable time before the disposition. Whether a notification  
3 sent less than [21] or 10 days, as applicable, before the  
4 earliest time of disposition set forth in the notification  
5 nevertheless is sent within a reasonable time is a question of  
6 fact to be determined in each case.

7 **SECTION 9-613. CONTENTS AND FORM OF NOTIFICATION PRIOR TO**  
8 **DISPOSITION OF COLLATERAL. [former draft § 9-504(k)-(l)]**

9 (a) Except in a consumer secured transaction, the  
10 following rules apply:

11 (1) Unless otherwise agreed, the contents of a  
12 notification of disposition are sufficient if the notification:

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

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

16 (C) states the method of intended disposition;

17 (D) states that the debtor [or secondary obligor] is  
18 entitled to an accounting of the unpaid indebtedness (Section 9-  
19 209) and states the charge, if any for an accounting; and

20 (E) states the time and place of a public sale or  
21 the time after which any other disposition is to be made, whether  
22 or not the notification contains additional information.

23 (2) Whether a notification that lacks any of the  
24 information set forth in paragraph (1) is nevertheless sufficient  
25 is a question of fact in each case.

26 (3) A particular phrasing of the notification is not  
27 required. A notification substantially complying with the



[End of Form]

(b) In a consumer secured transaction, the following rules apply:

(1) A notification of disposition must contain the following information:

(A) the information specified in Section 9-613(a)(1);

(B) a description of any liability for a deficiency of the person to which the notification is sent;

(C) the amount that must be paid to the secured party to redeem the obligation secured under Section 9-621;

(D) the amount that must be paid to the secured party to reinstate the obligation secured under Section 9-622; and

(E) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required. A notification substantially complying with the requirements of this subsection is sufficient, even if it contains minor errors that are not seriously misleading.

(3) The following form of notification, when completed, contains sufficient information:

**Notice of Our Plan to Sell Property**

To:           [Name of debtor or obligor to whom the  
notification is sent]

1 From: [Name, address, and telephone number of secured  
2 party]

3 Name of Debtor(s): [Include only if debtor(s) are not  
4 an addressee]

5 [You] [name of obligor, if different] owe(s) us money on  
6 a debt and [you have] [has] not paid it to us on time. We have  
7 [your] [the debtor's] [describe collateral] because we took  
8 it from [you] [the debtor] or [you] [the debtor] voluntarily gave  
9 it to us. [You] [name of debtor, if different] agreed to let  
10 us do that when [you] [name of obligor, if different]  
11 created the debt.

12 [For a public disposition:]

13 We plan to sell [or lease or license, as applicable] the \_\_  
14 [describe collateral] [to the highest qualified bidder] in  
15 public. The sale [or lease or license, as applicable] will be  
16 held as follows:

17 Day and Date:

18 Time: \_\_\_\_\_

19 Place: \_\_\_\_\_

20 You can bring bidders to the sale if you want.

21 [For a private disposition:]

22 We will sell [or lease or license, as applicable] the \_\_  
23 [describe collateral] privately sometime after [day and  
24 date].

25 The money that we get from the sale [or lease or license, as  
26 applicable] (after paying our costs) will be paid on the debt  
27 that [you] [name of obligor, if different] owe(s) to us.

1 [Include the following sentence only if the addressee is  
2 obligated on the secured debt.] IF WE GET LESS MONEY THAN YOU  
3 OWE, YOU WILL STILL OWE US THE DIFFERENCE, and we may sue you and  
4 take part of your wages or other property. [Include the  
5 following sentence only if the addressee is a debtor.] If we get  
6 more money than [you] [name of obligor, if different]  
7 owe(s) to us, [you] [name of obligor, if different] will  
8 get the extra money.

9 You can stop the sale [and get] [and the debtor will get] the  
10 property back. To do this, [you] [name of obligor, if  
11 different] must:

12 **[Alternative A]**

13 Pay us \$                      before the sale. That will pay off the  
14 debt plus our costs and [You] [name of obligor, if  
15 different] will not owe us any more money;

16 [add the following paragraph if applicable] OR  
17 Pay us our costs of retaking the property, all regular  
18 payments that are overdue, and all late charges. That amount  
19 is now about \$                     , but that amount may change. To  
20 learn the exact amount, call us at [telephone number].  
21 You would have to make this payment by [date]. If you  
22 make the payment, [You] [name of obligor, if different]  
23 will have to keep on making the rest of the regular [monthly]  
24 payments.

25 **[Alternative B]**

26 Pay us the full amount of the debt plus our costs before the  
27 sale. Then [You] [name of obligor, if different] will



1 not owe us any more money. To learn the exact amount you must  
2 pay, call us at [telephone number]. ;

3 [add the following paragraph if applicable] OR

4 Pay us our costs of retaking the property, all regular  
5 payments that are overdue, and all late charges. To learn the  
6 exact amount you must pay, call us at [telephone number].

7 You would have to make this payment by [date]. If you  
8 make the payment, [You] [name of obligor, if different]  
9 will have to keep on making the rest of the regular [monthly]  
10 payments.

11 If you want us to explain to you in writing how we have  
12 figured the amount that you owe us, you may call us at =  
13 [telephone number]. [We will charge you \$                     ] for  
14 the explanation.]

15 [End of Form]

16 **SECTION 9-614. APPLICATION OF PROCEEDS OF DISPOSITION;**  
17 **LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS. [former draft §**  
18 **9-504 (b) - (e) ]**

19 (a) A secured party shall apply or pay over for  
20 application the cash proceeds (Section 9-313) of disposition in  
21 the following order to:

22 (1) the reasonable expenses of retaking, holding,  
23 preparing for disposition, processing, and disposing, and, to the  
24 extent provided for by agreement and not prohibited by law,  
25 reasonable attorney's fees and legal expenses incurred by the  
26 secured party;

1           (2) the satisfaction of obligations secured by the  
2 security interest or agricultural lien under which the  
3 disposition is made;

4           (3) the satisfaction of obligations secured by any  
5 subordinate security interest in or other lien on the collateral  
6 if the secured party receives a written notification of demand  
7 for proceeds before distribution of the proceeds is completed.

8           (b) If requested by a secured party, a holder of a  
9 subordinate security interest or other lien shall furnish  
10 reasonable proof of the interest or lien within a reasonable  
11 time. Unless the holder does so, the secured party need not  
12 comply with the holder's demand under subsection (a)(1).

13           (c) A secured party need not apply or pay over for  
14 application noncash proceeds (Section 9-313) of disposition under  
15 this section. A secured party that applies or pays over for  
16 application noncash proceeds shall do so in a commercially  
17 reasonable manner.

18           (d) If the security interest under which a disposition is  
19 made secures payment or performance of an obligation, the secured  
20 party shall account to and pay a debtor for any surplus, and,  
21 unless otherwise agreed, the obligor is liable for any  
22 deficiency. If the underlying transaction is a sale of accounts,  
23 chattel paper, or payment intangibles, the debtor is entitled to  
24 any surplus, and the obligor is liable for any deficiency, only  
25 if its agreement so provides. Recovery of any deficiency under  
26 this subsection is subject to Section 9-625.

1 (e) A secured party that receives cash proceeds of  
2 disposition in good faith and without knowledge that the receipt  
3 violates the rights of the holder of a security interest or other  
4 lien that is not subordinate to the security interest or  
5 agricultural lien under which the collection or enforcement is  
6 made:

7 (1) takes the cash proceeds free of the security  
8 interest or other lien;

9 (2) is not obligated to apply the proceeds of  
10 disposition to the satisfaction of obligations secured by the  
11 security interest or other lien; and

12 (3) is not obligated to account to or pay the holder of  
13 the security interest or other lien for any surplus.

14 **SECTION 9-615. RIGHTS OF TRANSFEREE OF COLLATERAL. [former**  
15 **draft § 9-504(n)-(o)]**

16 (a) A secured party's disposition of collateral after  
17 default transfers to a transferee for value all of a debtor's  
18 rights in the collateral and discharges the security interest  
19 under which the disposition is made and any subordinate security  
20 interest or other lien [other than liens created under] [here  
21 should be listed acts or statutes providing for liens, if any,  
22 that are not to be discharged]. The transferee takes free of  
23 those rights and interests, even if the secured party fails to  
24 comply with the requirements of this article or of any judicial  
25 proceedings:

26 (1) in a public sale, if the transferee has no  
27 knowledge of any defects in the sale, does not buy in collusion

1 with the secured party, other bidders, or the person conducting  
2 the sale, and acts in good faith; or

3 (2) in any other case, if the transferee acts in good  
4 faith.

5 (b) If a transferee does not take free of the rights and  
6 interests described in subsection (a), the transferee takes the  
7 collateral subject to the debtor's rights in the collateral and  
8 subject to any security interest or agricultural lien under which  
9 the disposition is made and any subordinate security interest or  
10 other lien. Except as otherwise provided in this subsection or  
11 elsewhere in this article, the disposition does not discharge any  
12 security interest or other lien.

13 **SECTION 9-616. RIGHTS AND DUTIES OF CERTAIN PERSONS LIABLE TO**  
14 **SECURED PARTY. [former draft § 9-504(p)]**

15 (a) A person that is liable to a secured party under a  
16 guaranty, indorsement, repurchase agreement, or the like acquires  
17 the rights and [assumes] [becomes obligated to perform] the  
18 duties of the secured party if the person:

19 (1) receives an assignment of a secured obligation from  
20 the secured party;

21 (2) receives a transfer of collateral from the secured  
22 party [and agrees to accept the rights and assume the duties of  
23 the secured party]; or

24 (3) is subrogated to the rights of a secured party.

25 (b) An assignment, transfer, or subrogation described  
26 subsection (a) is not a disposition of collateral under this

1 article and does not relieve the secured party of its duties  
2 under this article.

3 **SECTION 9-617. TRANSFER OF RECORD OR LEGAL TITLE. [former**  
4 **draft § 9-504(q)]**

5 (a) In this section, "transfer statement" means a written  
6 statement signed by a secured party stating:

7 (1) that the debtor has defaulted in connection with an  
8 obligation secured by specified collateral;

9 (2) that the secured party has exercised its post-  
10 default remedies with respect to the collateral;

11 (3) that by reason of the exercise a transferee has  
12 acquired the rights of the debtor in the collateral; and

13 (4) the name and mailing address of the secured party,  
14 the debtor, and the transferee.

15 (b) A transfer statement entitles the transferee to the  
16 transfer of record of all rights of the debtor in the collateral  
17 specified in the statement in any official filing, recording,  
18 registration, or certificate-of-title system covering the  
19 collateral. If a transfer statement is presented with the  
20 applicable fee and request form to the official or office  
21 responsible for maintaining the system, the official or office  
22 must accept the transfer statement, promptly amend its records to  
23 reflect the transfer, and, if applicable, issue a new appropriate  
24 certificate of title in the name of transferee.

25 (c) A transfer of the record or legal title to collateral  
26 to a secured party is not of itself a disposition of collateral

1 under this article and does not of itself relieve the secured  
2 party of its duties under this article.

3 **SECTION 9-618. ACCEPTANCE OF COLLATERAL IN FULL OR PARTIAL**  
4 **SATISFACTION OF OBLIGATION; COMPULSORY DISPOSITION OF COLLATERAL.**  
5 **[former draft § 9-505(a)-(e), (k)-(l)]**

6 (a) In this section and in Section 9-619, "proposal" means  
7 a written statement by a secured party containing the terms on  
8 which the secured party is willing to accept collateral in full  
9 or partial satisfaction of the obligation it secures.

10 (b) A secured party may accept collateral in full or  
11 partial satisfaction of the obligation it secures only if:

12 (1) the debtor consents to the acceptance under  
13 subsection (d);

14 (2) the secured party does not receive, within the time  
15 set forth in subsection (e), a written notification of objection  
16 to the proposal from a person to whom the secured party was  
17 required to send a proposal under Section 9-619 from any other  
18 person holding an interest in the collateral subordinate to the  
19 security interest that is the subject of the proposal; and

20 (3) in a consumer secured transaction in which  
21 collateral is of a type in which a security interest can be  
22 perfected by possession under Section 9-311, the collateral is in  
23 the possession of the secured party when the debtor consents to  
24 the acceptance.

25 (c) A purported or apparent acceptance of collateral under  
26 this section is ineffective unless the secured party consents to  
27 the acceptance in a signed writing or sends [written notification

1 of] a proposal to the debtor and the conditions of subsection (b)  
2 are met.

3 (d) For purposes of this section:

4 (1) a debtor consents to an acceptance of collateral in  
5 partial satisfaction of the obligation it secures only if the  
6 debtor so agrees in a writing signed after default; and

7 (2) a debtor consents to an acceptance of collateral in  
8 full satisfaction of the obligation it secures only if the debtor  
9 so agrees in a writing signed after default or the secured party:

10 (A) sends to the debtor after default a proposal  
11 that is unconditional or subject only to a condition that  
12 collateral not in the possession of the secured party be  
13 preserved or maintained;

14 (B) in the proposal, proposes to accept collateral  
15 in full satisfaction of the obligation it secures; and

16 (C) does not receive a written notification of  
17 objection from the debtor within 20 days after the proposal is  
18 sent.

19 (e) To be effective under subsection (b) (2), a  
20 notification of objection must be received by the secured party:

21 (1) in the case of a person to whom the proposal has  
22 been sent pursuant to Section 9-619, within 20 days after  
23 notification is sent to that person; and

24 (2) in other cases, within 20 days after the last  
25 notification is sent pursuant to 9-619 or, if a notification is  
26 not sent, before the debtor consents to the acceptance under  
27 subsection (d).

1 (f) If 60 percent of the cash price has been paid in the  
2 case of a purchase money security interest in consumer goods or  
3 60 percent of the principal amount of the obligation secured has  
4 been paid in the case of another security interest in consumer  
5 goods, and the debtor has not consented to an acceptance, a  
6 secured party that has taken possession of collateral shall  
7 dispose of the collateral pursuant to Section 9-610 within 90  
8 days after taking possession or within any extended period to  
9 which all secondary obligors have agreed by signing a statement  
10 to that effect after default.

11 (g) In a consumer secured transaction, a secured party may  
12 accept collateral only in full satisfaction, and not in partial  
13 satisfaction, of the obligation it secures.

14 **Reporters' Comments**

15 Regarding the 60% test in subsection (f), see the Reporters'  
16 Comments to § 9-622.

17 **SECTION 9-619. NOTIFICATION OF PROPOSAL TO ACCEPT COLLATERAL.**

18 **[former draft § 9-505(f)-(g)]**

19 (a) Except in a consumer secured transaction, a secured  
20 party that wishes to accept collateral in partial satisfaction of  
21 the obligation it secures shall send [written notification of]  
22 its proposal to any secondary obligor, and a secured party that  
23 wishes to accept collateral in full or partial satisfaction of  
24 the obligation it secures shall send [written notification of]  
25 its proposal also to:



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

4 (2) any other secured party or lienholder that, [XX]  
5 days before the debtor consented to the acceptance, held a  
6 security interest in or other lien on the collateral perfected  
7 [or evidenced] by the filing of a financing statement that  
8 identified the collateral, was indexed under the debtor's name as  
9 of that date, and was filed in the office or offices in which to  
10 file a financing statement against the debtor covering the  
11 collateral as of that date (Sections 9-301 through 9-307 and 9-  
12 501); and

13 (3) any other secured party [or lienholder] that, [21]  
14 days before the debtor consented to the acceptance, held a  
15 security interest in [or other lien on] the collateral perfected  
16 [or evidenced] by compliance with a statute or treaty described  
17 in Section 9-309(c).

18 (b) In a consumer secured transaction, a secured party  
19 that wishes to accept collateral in satisfaction of the  
20 obligation it secures shall send [written notification of] its  
21 proposal to any person from whom the secured party has received,  
22 before the debtor consented to the acceptance, written  
23 notification of a claim of an interest in the collateral.

24 **SECTION 9-620. EFFECT OF ACCEPTANCE OF COLLATERAL. [former**  
25 **draft § 9-505(h)-(i)]**

26 (a) A secured party's acceptance of collateral in full or  
27 partial satisfaction of the obligation it secures:

1 (1) discharges the obligation to the extent consented to  
2 by the debtor;

3 (2) transfers to the secured party all of a debtor's  
4 rights in the collateral;

5 (3) discharges the security interest or agricultural  
6 lien that is the subject of the debtor's consent and any  
7 subordinate security interest or other lien; and

8 (4) terminates any other subordinate interest.

9 (b) A subordinate interest is discharged or terminated  
10 under subsection (a) whether or not the secured party is required  
11 to send or does send notification to the holder thereof.

12 However, any person to whom the secured party was required to  
13 send, but did not send, notification has the remedy provided by  
14 Section 9-624(b).

15 **SECTION 9-621. RIGHT TO REDEEM COLLATERAL. [former draft §**  
16 **9-506(a)]** At any time before a secured party has collected  
17 collateral under Section 9-607, disposed of collateral or entered  
18 into a contract for its disposition under Section 9-610, or  
19 accepted collateral in full or partial satisfaction of the  
20 obligation it secures under Section 9-618, the debtor, any  
21 secondary obligor, or any other secured party or lienholder may  
22 redeem the collateral by tendering fulfillment of all obligations  
23 secured by the collateral as well as the reasonable expenses and  
24 attorney's fees of the type described in Section 9-614(a)(1).

1           **SECTION 9-622. REINSTATEMENT OF OBLIGATION SECURED WITHOUT**  
2 **ACCELERATION. [former draft § 9-506(b)-(e)]**

3           (a) If 60 percent of the cash price has been paid in the  
4 case of a purchase money security interest in consumer goods or  
5 60 percent of the principal amount of the obligation secured has  
6 been paid in the case of another consumer secured transaction, a  
7 debtor or a secondary obligor that is a consumer obligor may cure  
8 a default consisting only of the failure to make a required  
9 payment and may reinstate the secured obligation without  
10 acceleration by tendering the unpaid amount of the secured  
11 obligation due at the time of tender, without acceleration,  
12 including charges for delinquency, default, or deferral, and  
13 reasonable expenses and attorney's fees of the type described in  
14 Section 9-614(a) (1).

15           (b) A tender of payment under subsection (a) is  
16 ineffective to cure a default or reinstate a secured obligation  
17 unless made before the later of:

18           (1) 21 days after the secured party sends a notification  
19 of disposition under Section 9-611(b) to the debtor and any  
20 consumer obligor who is a secondary obligor; and

21           (2) the time the secured party disposes of collateral or  
22 enters into a contract for its disposition under Section 9-610 or  
23 accepts collateral in full satisfaction of the obligation it  
24 secures under Section 9-618.

25           (c) A tender of payment under subsection (a) restores to  
26 the debtor and a consumer obligor who is a secondary obligor  
27 their respective rights as if the default had not occurred and

1 all payments had been made when scheduled, including the debtor's  
2 right, if any, to possess the collateral. Promptly upon the  
3 tender, the secured party shall take all steps necessary to cause  
4 any judicial process affecting the collateral to be vacated and  
5 any pending action based on the default to be dismissed.

6 (d) A secured obligation may be reinstated under  
7 subsection (a) only once.

8 (e) [The debtor's rights under this subsection may not be  
9 waived or varied by agreement.]

#### 10 **Reporters' Comments**

11 1. Reinstatement. This section provides a one-time right to  
12 reinstatement of a debt following a default. It applies only in  
13 a consumer secured transaction in which 60 percent or more of the  
14 cash price or secured obligation has been paid. Application of  
15 the 60 percent test is straightforward when an item of collateral  
16 secures only its purchase price or a single obligation. In the  
17 less typical case in which an item of collateral secures several  
18 obligations, its application is more difficult. In the interest  
19 of avoiding unnecessary statutory complexity, however, the  
20 statute leaves it to the [agreement of the parties and the]  
21 courts to work out sensible approaches. For example, if an item  
22 secures its own purchase money debt as well as other obligations,  
23 the 60 percent test should take into account only the purchase  
24 money debt. The debtor could elect to cure a default on that  
25 debt which, in turn, also would cure defaults on other debt  
26 arising out of "cross-defaults" based on the purchase money debt.  
27 On the other hand, if an item secures several non-purchase money  
28 obligations, the 60 percent test should be applied to the  
29 aggregate amount of the obligations at the time of the debtor's  
30 or secondary obligor's tender.

31 2. Waiver or Variance. The debtor's rights under this  
32 section may not be waived or varied by agreement. This section  
33 overrides any contrary agreement adversely affecting the debtor's  
34 rights, such as a provision for a higher finance charge following  
35 a reinstatement. However, this section does not prevent a  
36 secured party from making an enforceable agreement granting the  
37 debtor additional reinstatement rights, which may be more  
38 generous than those that this section provides.

1           **SECTION 9-623. WAIVER OR AGREEMENT BY CONSUMER DEBTOR OR**  
2 **OBLIGOR. [former draft §§ 9-504(i), 9-505(j), (m), 9-506(f)]**

3           (a) Subject to subsection (c), a debtor or a consumer  
4 obligor may waive the right to notification of disposition of  
5 collateral under Section 9-611, the right to redeem the  
6 collateral under Section 9-621, or the right to reinstate a  
7 secured obligation under Section 9-622 only by signing a  
8 statement to that effect after default.

9           (b) Subject to subsection (c), a consumer obligor may  
10 waive the obligor's rights and the secured party's duties under  
11 Section 9-618 or 9-619 only by signing a statement to that effect  
12 after default.

13           [(c) In a consumer secured transaction, a statement signed  
14 by the debtor or a consumer obligor is ineffective under  
15 subsection (a) or (b) unless the secured party establishes by  
16 clear and affirmative evidence that the debtor or consumer  
17 obligor expressly agreed to its terms.]

18           SUBPART 2. NONCOMPLIANCE WITH THIS ARTICLE.

19           **SECTION 9-624. REMEDIES FOR SECURED PARTY'S FAILURE TO COMPLY**  
20 **WITH THIS ARTICLE. [former draft § 9-507(a)-(b), (g)]**

21 1.           (a) If it is established that a secured party is not  
22 proceeding in accordance with this article, a court may order  
23 or restrain collection, enforcement, or disposition of  
24 collateral on appropriate terms and conditions.

25           (b) A secured party is liable for damages in the amount of  
26 any loss caused by a failure to comply with this article. Except  
27 as otherwise provided in Section 9-627, a person that, at the

1 time of the failure, was a debtor, was a secondary obligor, or  
2 held a security interest in or other lien on the collateral has a  
3 right to recover damages for its loss under this subsection. A  
4 debtor whose deficiency is eliminated under Section 9-625 may  
5 recover damages for the loss of any surplus, but a debtor or  
6 consumer obligor whose deficiency is eliminated or reduced under  
7 Section 9-625 may not otherwise recover under this subsection for  
8 noncompliance with [Section 9-607, 9-608, 9-609, 9-610, 9-611, 9-  
9 612, 9-613, or 9-614] [the provisions of this part relating to  
10 collection, enforcement, disposition, or acceptance].

11 (c) Except as otherwise provided in Section 9-627, in a  
12 consumer secured transaction, a person that was a debtor at the  
13 time a secured party failed to comply with this part has a right  
14 to recover from the noncomplying secured party an amount equal to  
15 the interest or finance charges plus 10 percent of the principal  
16 amount of the obligation, less the sum of any amount by which any  
17 consumer obligor's personal liability for a deficiency is  
18 eliminated or reduced under Section 9-625 and any amount for  
19 which the secured party is liable under subsection (b).

#### 20 **Reporters' Comments**

21 1. Scope. Subsections (a) and (b) no longer are limited to  
22 noncompliance with provisions of this part of Article 9; rather  
23 they apply to noncompliance with any provision of this article.  
24 The change makes this section applicable to noncompliance with §§  
25 9-207 (duties of secured party in possession of collateral); 9-  
26 208 (duties of secured party having control over deposit  
27 account); 9-209 (duty to comply with request for accounting,  
28 etc.); 9-508(a) (duty to refrain from filing unauthorized  
29 financing statement) § 9-508(c) (duty to send copy of financing  
30 statement and certain amendments); 9-511(c) (duty to provide  
31 termination statement). The Drafting Committee may wish to  
32 relocate the other remedial provisions to this section.

1 Subsection (c), which gives a minimum damage recovery in  
2 consumer secured transactions, continues to apply only to  
3 noncompliance with the provisions of this part. The Drafting  
4 Committee may wish to consider whether violations of other duties  
5 should give rise to minimum damages other than those already  
6 provided for in §§ 9-208, 9-209, 9-508, and 9-511.

7 2. Minimum Damages. Regarding calculation of the principal  
8 amount of the obligation, see the Reporters' Comments to § 9-622.

9 [SECTION 9-625--ALTERNATIVE A

10 ("Absolute Bar" Rule for Consumer Secured Transactions;  
11 "Rebuttable Presumption" Rule for Other Transactions)]

12 **SECTION 9-625. ACTION IN WHICH DEFICIENCY OR SURPLUS IS IN**  
13 **ISSUE. [former draft § 9-507(c)]** In an action in which the  
14 amount of a deficiency or surplus is in issue the following rules  
15 apply:

16 (1) A secured party need not establish compliance with  
17 [Section 9-607, 9-608, 9-609, 9-610, 9-611, 9-612, 9-613, or 9-  
18 614] [the provisions of this part relating to collection,  
19 enforcement, disposition, or acceptance] unless the debtor or a  
20 secondary obligor places the secured party's compliance in issue,  
21 in which case the secured party has the burden of establishing  
22 that the collection, enforcement, disposition, or acceptance was  
23 conducted in accordance with [Section 9-607, 9-608, 9-609, 9-610,  
24 9-611, 9-612, 9-613, or 9-614, as applicable] [the applicable  
25 provisions of this part].

26 (2) Except as otherwise provided in Section 9-627, if a  
27 secured party fails to meet the burden of establishing that the  
28 collection, enforcement, disposition, or acceptance was conducted  
29 in accordance with [Section 9-607, 9-608, 9-609, 9-610, 9-611, 9-

1 612, 9-613, or 9-614] [the provisions of this part relating to  
2 collection, enforcement, disposition, or acceptance]:

3 (A) In a consumer secured transaction for which no  
4 other collateral remains to secure the obligation, neither the  
5 debtor nor a secondary obligor is liable for a deficiency.

6 (B) In other cases, the liability of a debtor or a  
7 secondary obligor for a deficiency is limited to an amount by  
8 which the sum of the secured obligation, expenses, and attorney's  
9 fees exceeds the greater of the [actual] proceeds of the  
10 collection, enforcement, disposition, or acceptance or the amount  
11 of proceeds that would have been realized had the noncomplying  
12 secured party proceeded in accordance with [Section 9-607, 9-608,  
13 9-609, 9-610, 9-611, 9-612, 9-613, or 9-614] [the provisions of  
14 this part relating to collection, enforcement, disposition, or  
15 acceptance]. However, the amount that would have been realized  
16 is equal to the sum of the secured obligation, expenses, and  
17 attorney's fees unless the secured party meets the burden of  
18 establishing that the amount is less than that sum.

19 (C) In a consumer secured transaction, any liability  
20 under paragraph (B) is not a personal liability of a consumer  
21 obligor but may be satisfied only by enforcing a security  
22 interest or other consensual lien against property securing the  
23 obligation.



1 [SECTION 9-625 --ALTERNATIVE B

2 ("Rebuttable Presumption" Rule for All Transactions)]

3 **SECTION 9-625. ACTION IN WHICH DEFICIENCY OR SURPLUS IS IN**  
4 **ISSUE. [former draft § 9-507(c)]** In an action in which the  
5 amount of a deficiency or surplus is in issue the following rules  
6 apply:

7 (1) A secured party need not establish compliance with  
8 [Section 9-607, 9-608, 9-609, 9-610, 9-611, 9-612, 9-613, or 9-  
9 614] [the provisions of this part relating to collection,  
10 enforcement, disposition, or acceptance] unless the debtor or a  
11 secondary obligor places the secured party's compliance in issue,  
12 in which case the secured party has the burden of establishing  
13 that the collection, enforcement, disposition, or acceptance was  
14 conducted in accordance with [Section 9-607, 9-608, 9-609, 9-610,  
15 9-611, 9-612, 9-613, or 9-614, as applicable] [the applicable  
16 provisions of this part].

17 (2) Except as otherwise provided in Section 9-627, if a  
18 secured party fails to meet the burden of establishing that the  
19 collection, enforcement, disposition, or acceptance was conducted  
20 in accordance with [Section 9-607, 9-608, 9-609, 9-610, 9-611, 9-  
21 612, 9-613, or 9-614,] [the provisions of this part relating to  
22 collection, enforcement, disposition, or acceptance,] the  
23 liability of a debtor or a secondary obligor for a deficiency is  
24 limited to an amount by which the sum of the secured obligation,  
25 expenses, and attorney's fees exceeds the greater of the [actual]  
26 proceeds of the collection, enforcement, disposition, or  
27 acceptance or the amount of proceeds that would have been

1 realized had the noncomplying secured party proceeded in  
2 accordance with [Section 9-607, 9-608, 9-609, 9-610, 9-611, 9-  
3 612, 9-613, or 9-614] [the provisions of this part relating to  
4 collection, enforcement, disposition, or acceptance]. However,  
5 the amount that would have been realized is equal to the sum of  
6 the secured obligation, expenses, and attorney's fees unless the  
7 secured party meets the burden of establishing that the amount is  
8 less than that sum.

9 **SECTION 9-626. DETERMINATION OF WHETHER CONDUCT WAS**  
10 **COMMERCIALY REASONABLE. [former draft § 9-507(d)-(f)]**

11 (a) The fact that a greater amount could have been  
12 obtained by a collection, enforcement, disposition, or acceptance  
13 at a different time or in a different method from that selected  
14 by the secured party is not of itself sufficient to preclude the  
15 secured party from establishing that the collection, enforcement,  
16 disposition, or acceptance was made in a commercially reasonable  
17 manner.

18 (b) A disposition of collateral is made in a commercially  
19 reasonable manner if the disposition is made:

20 (1) in the usual manner on any recognized market  
21 therefor;

22 (2) at the price current in any recognized market at the  
23 time of the disposition; or

24 (3) otherwise in conformity with reasonable commercial  
25 practices among dealers in the type of property that was the  
26 subject of the disposition.

1 (c) A collection, enforcement, disposition, or acceptance  
2 that has been approved in any judicial proceeding or by any  
3 [court appointed] bona fide creditors' committee[, ] [or] [court  
4 appointed] representative of creditors[, or assignee for the  
5 benefit of creditors] is commercially reasonable. However,  
6 approval need not be obtained, and lack of approval does not mean  
7 that the collection, enforcement, disposition, or acceptance is  
8 not commercially reasonable.

9 **SECTION 9-627. NONLIABILITY OF SECURED PARTY IN CERTAIN**  
10 **CIRCUMSTANCES; LIABILITY OF SECONDARY OBLIGOR. [former draft §**  
11 **9-507 (i) - (k) ]**

12 (a) Unless a secured party knows that a person is a debtor  
13 or a secondary obligor, knows the identity of the person, and  
14 knows how to communicate with the person:

15 (1) the secured party is not liable to the person or to  
16 a secured party or lienholder that has filed a financing  
17 statement against the person for failure to comply with this  
18 article; and

19 (2) the secured party's failure to comply with this  
20 article does not affect the liability of the person for a  
21 deficiency.

22 (b) A secured party is not liable to any person and a  
23 person's liability for a deficiency is not affected because of  
24 any act or omission, other than the failure to send a  
25 notification required by Section 9-611(b) (2), that occurs before  
26 the secured party knows that the person is a debtor or a

1 secondary obligor or knows that the person has a security  
2 interest or other lien in the collateral.

3 (c) A secured party is not liable to any person and a  
4 person's liability for a deficiency is not affected because of  
5 any act or omission arising out of the secured party's reasonable  
6 belief that a transaction is not a consumer secured transaction  
7 [or that goods are not consumer goods] if the secured party's  
8 belief is based on its reasonable reliance on a debtor's  
9 representation concerning the purpose for which collateral was to  
10 be used, acquired, or held, or an obligor's representation  
11 concerning the purpose for which a secured obligation was  
12 incurred.

13 (d) A secured party is not liable to any person under  
14 Section 9-624(c) if the secured party meets the burden of  
15 establishing that its failure to comply with this [part]  
16 [article] was not intentional and resulted from a good-faith  
17 error notwithstanding the secured party's maintenance of  
18 procedures reasonably adapted to avoid the failure. [Examples of  
19 a good-faith error include clerical, calculation, computer  
20 malfunction and programing, and printing errors, except that an]  
21 [An] error of legal judgment concerning the secured party's  
22 rights and duties under this [part] [article] is not a good faith  
23 error.



1       **SECTION 9-702. SAVINGS CLAUSE.**

2           [To be added]

**APPENDIX**

**SECTION 1-201. GENERAL DEFINITIONS.** Subject to additional definitions contained in the subsequent Articles of this Act which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Act:

\* \* \*

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells minerals or the like, including oil and gas, at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a pre-existing contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Section [2-XXX] may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

\* \* \*

1           (32) "Purchase" includes taking by sale, discount,  
2 negotiation, mortgage, pledge, lien, security interest, issue or  
3 re-issue, gift, or any other voluntary transaction creating an  
4 interest in property.

5           \* \* \*

6           (37) "Security interest" means . . . The term also  
7 includes any interest of a consignor and a buyer of accounts,  
8 chattel paper, or a payment intangible in a transaction that is  
9 subject to Article 9. The special property interest of a buyer  
10 of goods on identification of those goods to a contract for sale  
11 under Section 2-401 is not a "security interest", but a buyer may  
12 also acquire a "security interest" by complying with Article 9.

13           \* \* \*

14           **SECTION [2-102]. DEFINITIONS.**

15           (a) In this article:

16           \* \* \*

17           (x) "Consignee" means a person to which goods are  
18 delivered in a consignment.

19           (y) "Consignment" means a transaction, regardless of  
20 its form, in which a person delivers goods to a merchant for the  
21 purpose of sale if the merchant deals in goods of that kind under  
22 a name other than the name of the person making delivery.

23 However, a transaction is not a "consignment" if:

24           (A) the value of the goods is \$[1,000] or less at  
25 the time of delivery;

26           (B) the goods are consumer goods immediately prior  
27 to delivery;



1 (C) the person to which the goods are delivered is  
2 an auctioneer or is generally known by its creditors to be  
3 substantially engaged in selling the goods of others; or

4 (D) the transaction, regardless of its form, creates  
5 a security interest that secures an obligation.

6 (z) "Consignor" means a person that delivers goods to a  
7 consignee in a consignment.

8 \* \* \*

9 **SECTION [2-406]. SALE ON APPROVAL AND SALE OR RETURN; SPECIAL**  
10 **INCIDENTS.**

11 (a) If delivered goods conform to the contract and may be  
12 returned by the buyer, the transaction is:

13 (1) a "sale on approval" if the goods are delivered  
14 primarily for use; or

15 (2) a "sale or return" if the goods are delivered  
16 primarily for resale.

17 \* \* \*

18 (e) Goods held on approval are not subject to claims of a  
19 buyer's creditors until acceptance.

20 (f) [Goods held on sale or return are subject to claims of  
21 a buyer's creditors while in the buyer's possession.

22 (g)] While goods are in the possession of a consignee, the  
23 rights of creditors of, and purchasers of the goods from, the  
24 consignee are governed by Article 9.

25 **Reporters' Comment [2-406]**

26 The revisions to this section accommodate the inclusion of the  
27 rules for consignments in Article 9. Bracketed subsection (f)

1 may not be necessary, inasmuch as a sale or return is a true sale  
2 of goods until the goods are returned.

3       **SECTION 5-118. SECURITY INTEREST IN DOCUMENTS, INSTRUMENTS,**  
4 **AND CERTIFICATED SECURITIES ACCOMPANYING PRESENTATION AND**  
5 **PROCEEDS.**

6           (a) An issuer or a nominated person has a security  
7 interest in a negotiable document, instrument, or certificated  
8 security and its proceeds:

9           (1) if the document, instrument, or security certificate  
10 representing the certificated security is delivered to the issuer  
11 or nominated person and delivery is a requirement of a  
12 presentation under the letter of credit; and

13           (2) to the extent that the issuer has given value by  
14 honoring a presentation or nominated person has given value in  
15 connection with the letter of credit.

16           (b) So long as and to the extent that an issuer or  
17 nominated person has not been reimbursed or has not otherwise  
18 recovered the value given with respect to a security interest  
19 under subsection (a) the security interest continues and is  
20 subject to Article 9, but:

21           (1) no security agreement is necessary to make the  
22 security interest enforceable under Section 9-203(a)(1);

23           (2) if the security interest is perfected it has  
24 priority over conflicting perfected security interests in the  
25 collateral or its proceeds.

1           **SECTION 8-106. CONTROL.**

2           \* \* \*

3                           **[Revised] Official Comment**

4           1. The concept of "control" plays a key role in various  
5 provisions dealing with the rights of purchasers, including  
6 secured parties. See Sections 8-303 (protected purchasers);  
7 8-503(e) (purchasers from securities intermediaries); 8-510  
8 (purchasers of security entitlements from entitlement holders);  
9 ~~9-115(4)~~ 9-312 (perfection of security interests); ~~9-115(5)~~ 9-324  
10 (priorities among conflicting security interests).

11           Obtaining "control" means that the purchaser has taken  
12 whatever steps are necessary, given the manner in which the  
13 securities are held, to place itself in a position where it can  
14 have the securities sold, without further action by the owner.

15           \* \* \*

16           Example 8. Able & Co. a securities dealer, holds a wide  
17 range of securities through its account at Clearing  
18 Corporation. Able enters into an arrangement with Alpha Bank  
19 pursuant to which Alpha provides financing to Able secured by  
20 securities identified as the collateral on lists provided by  
21 Able to Alpha on a daily or other periodic basis. Able,  
22 Alpha, and Clearing Corporation enter into an agreement under  
23 which Clearing Corporation agrees that if at any time Alpha  
24 directs Clearing Corporation to do so, Clearing Corporation  
25 will transfer any securities from Able's account at Alpha's  
26 instructions. Because Clearing Corporation has agreed to act  
27 on Alpha's instructions with respect to any securities carried  
28 in Able's account, at the moment that Alpha's security  
29 interest attaches to securities listed by Able, Alpha obtains  
30 control of those securities under subsection (d)(2). There is  
31 no requirement that Clearing Corporation be informed of which  
32 securities Able has pledged to Alpha.

33           \* \* \*

34           7. The term "control" is used in a particular defined  
35 sense. The requirements for obtaining control are set out in  
36 this section. The concept is not to be interpreted by reference  
37 to similar concepts in other bodies of law. In particular, the  
38 requirements for "possession" derived from the common law of  
39 pledge are not to be used as a basis for interpreting subsection  
40 (c)(2) or (d)(2). Those provisions are designed to supplant the  
41 concepts of "constructive possession" and the like. A principal  
42 purpose of the "control" concept is to eliminate the uncertainty  
43 and confusion that results from attempting to apply common law  
44 possession concepts to modern securities holding practices.

1           The key to the control concept is that the purchaser has  
2 the ~~present~~ ability to have the securities sold or transferred  
3 without further action by the transferor. There is no  
4 requirement that the powers held by the purchaser be exclusive.  
5 For example, in a secured lending arrangement, if the secured  
6 party wishes, it can allow the debtor to retain the right to make  
7 substitutions, or to direct the disposition of the uncertificated  
8 security or security entitlement. Subsection (f) is included to  
9 make clear the general point stated in subsection (c) that the  
10 test of control is whether the purchaser has obtained the  
11 requisite power, not whether the debtor has retained other  
12 powers. There is no implication that retention by the debtor of  
13 powers other than those mentioned in subsection (f) is  
14 inconsistent with the purchaser having control. Moreover, the  
15 purchaser's right to direct the intermediary may be subject to  
16 conditions. For example, a purchaser may have present control of  
17 a security entitlement even though the purchaser's right to give  
18 entitlement orders to the securities intermediary is conditioned  
19 on the entitlement holder's default or the purchaser's informing  
20 the securities intermediary that the entitlement holder is in  
21 default. Better practice for both the intermediary and the  
22 purchaser would be to insist that any conditions be effective  
23 only as between the purchaser and the entitlement holder. That  
24 would avoid the risk that the intermediary could be caught  
25 between conflicting assertions of the entitlement holder and the  
26 purchaser as to whether the conditions in fact have been met.  
27 Nonetheless, the existence of unfulfilled conditions effective  
28 against the intermediary would not preclude the purchaser from  
29 having control.

30           **SECTION 8-110. APPLICABILITY; CHOICE OF LAW.**

31           \* \* \*

32           (e) The following rules determine a "securities  
33 intermediary's jurisdiction" for purposes of this section:

34           (1) If an agreement between the securities intermediary  
35 and its entitlement holder expressly specifies ~~that it is~~  
36 ~~governed by the law of a particular jurisdiction,~~ the securities  
37 intermediary's jurisdiction for purposes of this part, this  
38 article, or this act, that jurisdiction is the securities  
39 intermediary's jurisdiction.

1           (2) If an agreement between the securities intermediary  
2 and its entitlement holder does not specify the ~~governing law~~  
3 securities intermediary's jurisdiction as provided in paragraph  
4 (1), but expressly specifies that the securities account is  
5 maintained at an office in a particular jurisdiction, that  
6 jurisdiction is the securities intermediary's jurisdiction.

7           (3) If an agreement between the securities intermediary  
8 and its entitlement holder does not specify a jurisdiction as  
9 provided in paragraph (1) or (2), the securities intermediary's  
10 jurisdiction is the jurisdiction in which is located the office  
11 identified in an account statement as the office serving the  
12 entitlement holder's account.

13           (4) If an agreement between the securities intermediary  
14 and its entitlement holder does not specify a jurisdiction as  
15 provided in paragraph (1) or (2) and an account statement does  
16 not identify an office serving the entitlement holder's account  
17 as provided in paragraph (3), the securities intermediary's  
18 jurisdiction is the jurisdiction in which is located the chief  
19 executive office of the securities intermediary.

20           (f) A securities intermediary's jurisdiction is not  
21 determined by the physical location of certificates representing  
22 financial assets, or by the jurisdiction in which is organized  
23 the issuer of the financial asset with respect to which an  
24 entitlement holder has a security entitlement, or by the location  
25 of facilities for data processing or other record keeping  
26 concerning the account.

1

**Reporters' Comments**

2

This section has been revised to provide more flexibility for the parties to select the security intermediary's jurisdiction.

3

4

See also § 9-304(1) (depository institution's jurisdiction); § 9-

5

305(a)(4)(A) (commodity intermediary's jurisdiction).