MEMORANDUM

TO: Joint Review Committee on UCC Article 9

FROM: Steven L. Harris, Reporter

RE: Draft Amendments to Article 9

DATE: April 1, 2010

I have attached three documents for discussion on a teleconference scheduled for Monday, April 5, at 2:00 p.m. Eastern Daylight Time. These documents reflect the deliberations of the Joint Review Committee at its most recent meeting.

Appendix A contains the draft amendments to the Official Text together with the proposed modifications to the Official Comments that relate to the amendments. The sections are presented in numerical order. Please note that additional Official Comments will be needed to explain some of the amendments.

Appendix B contains proposed modifications to the Official Comments that are not accompanied by amendments to the Official Text.

Appendix C has the same content as Appendix A; however, like the drafts prepared for committee meetings, the organization of the provisions is topical.

Among the issues that the Joint Review Committee may wish to address in the teleconference are the following:

1. Should § 9-316(h)(3) and (i)(3) be retained? The first subsection would protect buyers, lessees, and licensees against a security interest in property acquired after the debtor has relocated when a financing statement was filed only in the debtor’s “old” jurisdiction. The second subsection would protect these purchasers against a security interest in property acquired by a new debtor located in one jurisdiction when perfection was achieved by filing against the original debtor in the a different jurisdiction.

2. A question has arisen whether the sufficiency of “additional information . . . to distinguish the trust from other trusts having one or more of the same settlors” (§ 9-503(a)) is to be tested with respect to other trusts actually settled by the same settlor or with respect to other trusts that hypothetically might be settled by the same settlor. For example, is any additional information required if the settlor settles only one trust and the financing statement includes the required indication that the debtor is a trust or is a trustee acting with respect to property held in a trust?

S. L. H.
## APPENDIX A

Amendments to Uniform Commercial Code Article 9 and Modifications to Comments Relating to the Amendments

Interim Draft of April 1, 2010

### TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>9-102</td>
<td>DEFINITIONS AND INDEX OF DEFINITIONS</td>
<td>A1</td>
</tr>
<tr>
<td>9-105</td>
<td>CONTROL OF ELECTRONIC CHATTEL PAPER</td>
<td>A4</td>
</tr>
<tr>
<td>9-307</td>
<td>LOCATION OF DEBTOR</td>
<td>A6</td>
</tr>
<tr>
<td>9-311</td>
<td>PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES,...</td>
<td>A8</td>
</tr>
<tr>
<td>9-316</td>
<td>CONTINUED PERFECTION OF SECURITY INTEREST FOLLOWING EFFECT OF CHANGE IN GOVERNING LAW</td>
<td>A9</td>
</tr>
<tr>
<td>9-317</td>
<td>INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN</td>
<td>A11</td>
</tr>
<tr>
<td>9-322</td>
<td>PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL</td>
<td>A12</td>
</tr>
<tr>
<td>9-326</td>
<td>PRIORITY OF SECURITY INTERESTS CREATED BY NEW DEBTOR</td>
<td>A13</td>
</tr>
<tr>
<td>9-406</td>
<td>DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, AND PROMISSORY NOTES INEFFECTIVE</td>
<td>A14</td>
</tr>
<tr>
<td>9-408</td>
<td>RESTRICTIONS ON ASSIGNMENT OF PROMISSORY NOTES, HEALTH-CARE-INSURANCE RECEIVABLES, AND CERTAIN GENERAL INTANGIBLES INEFFECTIVE</td>
<td>A15</td>
</tr>
<tr>
<td>9-502</td>
<td>CONTENTS OF FINANCING STATEMENT; RECORD OF MORTGAGE AS FINANCING STATEMENT; TIME OF FILING FINANCING STATEMENT.</td>
<td>A16</td>
</tr>
<tr>
<td>9-503</td>
<td>NAME OF DEBTOR AND SECURED PARTY</td>
<td>A17</td>
</tr>
</tbody>
</table>
APPENDIX A

Amendments to Uniform Commercial Code Article 9 and Modifications to Comments Relating to the Amendments (Sections appear in numerical order)

Interim Draft of April 1, 2010

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

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

* * *

(7) “Authenticate” means:

(A) to sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

* * *

(10) “Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

* * *
“Jurisdiction of organization”, with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

* * *

(67A) “Public organic record” means:

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

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

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

* * *

“Registered organization” means an organization formed or organized solely under the law of a single State or the United States and as to which the State or the United States must maintain a public record showing the organization to have been organized by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of
legislation by the State or United States. The term includes a business trust that is formed or
organized under the law of a single State if a statute of the State governing business trusts
requires that the business trust’s organic record be filed with the State.

* * *

Official Comment

* * *

Unit”; “Jurisdiction of Organization”; “Registered Organization”; “State.” These new
definitions reflect the changes in the law governing perfection and priority of security interests
and agricultural liens provided in Part 3, Subpart 1.

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

The first sentence of the definition of “certificate of title” includes certificates consisting
of tangible records, of electronic records, and of combinations of tangible and electronic records.

In many States, a certificate of title covering goods that are encumbered by a security
interest is delivered to the secured party by the issuing authority. To eliminate the need for the
issuance of a paper certificate under these circumstances, several States have revised their
certificate-of-title statutes to permit or require a State agency to maintain an electronic record
that evidences ownership of the goods and in which a security interest in the goods may be
noted. The second sentence of the definition provides that such a record is a “certificate of title”
if it is in fact maintained as an alternative to the issuance of a paper certificate of title, regardless
of whether the certificate-of-title statute provides that the record is a certificate of title and even
if the statute does not expressly state that the record is maintained instead of issuing a paper certificate.

* * *

SECTION 9-105. CONTROL OF ELECTRONIC CHATTEL PAPER.

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

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

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

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

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

(4) copies or revisions of the authoritative copy can be made only with the participation consent of the secured party;

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

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

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

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

This section and the concept of control of electronic chattel paper are not based on the same concepts as are control of deposit accounts (Section 9-104), security entitlements, a type of investment property (Section 9-106), and letter-of-credit rights (Section 9-107). The rules for control of that collateral are based on existing market practices and legal and regulatory regimes for institutions such as banks and securities intermediaries. Analogous practices for electronic chattel paper are developing nonetheless. The flexible approach adopted by this section, moreover, should not impede the development of these practices and, eventually, legal and regulatory regimes, which may become analogous to those for, e.g., investment property.
34. **“Authoritative Copy” of Electronic Chattel Paper.** One requirement for establishing control under subsection (b) is that a particular copy be an “authoritative copy.” Although other copies may exist, they must be distinguished from the authoritative copy. This may be achieved, for example, through the methods of authentication that are used or by business practices involving the marking of any additional copies. When tangible chattel paper is converted to electronic chattel paper, in order to establish that a copy of the electronic chattel paper is the authoritative copy it may be necessary to show that the tangible chattel paper no longer exists or has been permanently marked to indicate that it is not the authoritative copy.

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

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

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

* * *

A6
(f) [Location of registered organization organized under federal law; bank branches and agencies.] Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a State are located:

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

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

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

* * *

Official Comment

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

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

Subsection (f) also specifies the location of a branch or agency in the United States of a foreign bank that has one or more branches or agencies in the United States. The law of the United States authorizes a foreign bank (or, on behalf of the bank, a federal agency)
to designate a single home state for all of the foreign bank’s branches and agencies in the United States. See 12 U.S.C. Section 3103(c) and 12 C.F.R. Section 211.22. As authorized, the designation constitutes the State of location for the branch or agency for purposes of Section 9-307(f), unless all of a foreign bank’s branches or agencies that are in the United States are licensed in only one State, in which case the branches and agencies are located in that State. See subsection (i).

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

SECTION 9-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES.

(a) [Security interest subject to other law.] Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

   (1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9-310(a);

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

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

   * * *
SECTION 9-316. CONTINUED PERFECTION OF SECURITY INTEREST

FOLLOWING EFFECT OF CHANGE IN GOVERNING LAW.

* * *

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

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

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

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

A9
(i) [Effect of change in governing law on financing statement filed against original debtor.] If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

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

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

3. [A security interest that is perfected solely by a financing statement that is effective solely under paragraph (1) is deemed to be unperfected as against a lessee, licensee, or buyer, other than a secured party, of the collateral until it is perfected under the law of the other jurisdiction.]
SECTION 9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN.

* * *

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

* * *

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

* * *

Official Comment

* * *

6. Purchasers Other Than Secured Parties.

* * *

Subsection (b) governs goods, as well as intangibles of the type whose transfer is effected by physical delivery of the representative piece of paper (tangible chattel paper, tangible documents, instruments, and security certificates). To obtain priority, a buyer must both give value and receive delivery of the collateral without knowledge of the existing security interest and before perfection. Even if the buyer gave value without knowledge and before perfection, the buyer would take subject to the security interest if perfection occurred before physical delivery of the collateral to the buyer. Subsection (c) contains a similar rule with respect to
lessees of goods. Note that a lessee of goods in ordinary course of business takes free of all
security interests created by the lessor, even if perfected. See Section 9-321.

* * *

The rule of subsection (b) obviously is not appropriate where the collateral consists of
intangibles and there is no representative piece of paper whose physical delivery is the only or
the customary method of transfer. Therefore, with respect to such intangibles (including
accounts, electronic chattel paper, general intangibles, and investment property other than
certificated securities), subsection (d) gives priority to any buyer who gives value without
knowledge, and before perfection, of the security interest. A licensee of a general intangible
takes free of an unperfected security interest in the general intangible under the same
circumstances. Note that a licensee of a general intangible in ordinary course of business takes
rights under a nonexclusive license free of security interests created by the licensor, even if
perfected. See Section 9-321.

* * *

SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY

INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.

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

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

* * *

(b) [Time of perfection: proceeds and supporting obligations.] For the purposes of
subsection (a)(1):
(1) the time of filing or perfection as to a security interest in collateral is also the
time of filing or perfection as to a security interest in proceeds; and

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

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

* * *

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

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

(a) [Subordination of security interest created by new debtor.] Subject to subsection
(b), a security interest created by a new debtor which is perfected by a filed financing statement
that is effective solely under Section 9-508 or Sections 9-508 and 9-316(i)(1) in collateral in
which a new debtor has or acquires rights is subordinate to a security interest in the same
collateral which is perfected other than by a filed financing statement that is effective solely
under Section 9-508 or Sections 9-508 and 9-316(i)(1).

(b) [Priority under other provisions; multiple original debtors.] The other provisions
of this part determine the priority among conflicting security interests in the same collateral
perfected by filed financing statements that are effective solely under Section 9-508 or Sections
9-508 and 9-316(i)(1). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

SECTION 9-406. DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, AND PROMISSORY NOTES INEFFECTIVE.

* * *

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

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

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.
(e) [Inapplicability of subsection (d) to certain sales.] Subsection (d) does not apply to the sale, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620, of a payment intangible or promissory note.

---

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

(a) [Term restricting assignment generally ineffective.] Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

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

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

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

* * *

SECTION 9-502. CONTENTS OF FINANCING STATEMENT; RECORD OF MORTGAGE AS FINANCING STATEMENT; TIME OF FILING FINANCING STATEMENT.

* * *

(c) [Record of mortgage as financing statement.] A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) the record indicates the goods or accounts that it covers;

(2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) the record satisfies the requirements for a financing statement in this section, except that:

(A) it need not indicate other than an indication that it is to be filed in the real property records; and

(B) it sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual as to whom Section 9-503(a)(4) applies; and

(4) the record is [duly] recorded.
**Legislative Note:** Only a State that enacts Alternative A of the amendments to Section 9-503 should enact the amendments to Section 9-502. As to the bracketed term “driver’s license,” see Legislative Note 3 to Section 9-502.

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

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

(1) except as otherwise provided in paragraph (3) and subject to subsection (f), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name of the debtor registered organization indicated on the public organic record of, filed with or issued or enacted by the debtor’s registered organization’s jurisdiction of organization which shows the debtor to have been organized;

(2) subject to subsection (g), if the debtor is a decedent’s estate collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the debtor is an estate;

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

(A) provides the name specified for the trust in its organic documents or,

if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and
(B) indicates, in the debtor’s name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; collateral is held in a trust that is not a registered organization, only if the financing statement:

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

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

(ii) if the organic record of the trust does not specify a name for the trust, the name of the settlor or testator under subsection (h); and

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

(i) if the name is provided in accordance with subparagraph (A)(i), indicates that the collateral is held in a trust; or

(ii) if the name is provided in accordance with subparagraph (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

[Subsection (a)(4), (5) & (6)—Alternative A]

(4) subject to subsection (h), if the debtor is an individual to whom this State has issued a [driver's license] that has not expired, only if it provides the name of the individual which is indicated on the [driver’s license]:

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

(4)(6) in other cases:
(A) if the debtor has a name, only if it provides the individual or 
organizational name of the debtor; and 

(B) if the debtor does not have a name, only if it provides the names of the 
partners, members, associates, or other persons comprising the debtor, in a manner such that 
each name provided would be sufficient if the person named were the debtor.

[Subsection (a)(4) & (5)—Alternative B]

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

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

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

(C) subject to subsection (h), it provides the name of the individual which 
is indicated on a [driver’s license] that this State has issued to the individual and which has not 
expired; and 

(45) in other cases:

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

(B) if the debtor does not have a name, only if it provides the names of the 
partners, members, associates, or other persons comprising the debtor, in a manner such that 
each name provided would be sufficient if the person named were the debtor.

[End of Alternatives]

(f) [Name of registered organization.] For purposes of subsection (a)(1), “the name of 
the debtor indicated on the public organic record” means the name that is stated to be the 
debtor’s name on the most recently filed or issued organic public record that purports to state, 
amend, or restate the debtor’s name.
(g) The “name of the settlor or testator” in subsection (a)(3) means:

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

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

[Subsection (h)—Alternative A]

(h) [Multiple licenses or cards.] If this State has issued to an individual more than one
[driver’s license] of a kind described in subsection (a)(4), the one that was issued most recently
is the one to which the subparagraph refers.

[Subsection (h)—Alternative B]

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

[End of Alternatives]

Legislative Notes:

1. This Act contains two alternative sets of amendments relating to the names of
individual debtors. A State should enact the same Alternative, A or B, for both subsections (a)
and (g) of Section 9-503. A State that enacts Alternative A of the amendments to this section
should also enact the amendments to Section 9-502.

2. Both Alternatives refer, in part, to the name as shown on a debtor’s driver’s license.
The Legislature should be aware that, in some States, certain characters that may be used by the
State’s department of motor vehicles (or similar agency) in the name on a driver’s license may
not be accepted by the State’s central or local UCC filing offices under current regulations or
internal protocols. This may occur because of technological limitations of the filing offices or
merely as a result of inconsistent procedures. Similar issues may exist for field sizes as well. In
these situations, perfection of a security interest granted by a debtor with such a driver’s license
may be impossible under Alternative A of the amendments and the utility of Alternative B, under which the name on the driver’s license is one of the names that is sufficient, may be reduced. Accordingly, the Legislature may wish to determine if one or more of these issues exist in this State and, if so, to make certain that such issues have been resolved. A successful resolution might be accomplished by statute, agency regulation, or technological change effectuated before or as part of the enactment of this Act.

3. Regardless of which Alternative is enacted, in States in which a single agency issues driver’s licenses and non-driver identification cards as an alternative to a driver’s license, such that at any given time an individual may hold either a driver’s license or an identification card but not both, the Legislature should replace each use of the term “driver’s license” with a phrase meaning “driver’s license or identification card” but containing the analogous terms used in the enacting State. In other States, the Legislature should replace the term “driver’s license” with the analogous term used in the enacting State.

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

* * *

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

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

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.
SECTION 9-515. DURATION AND EFFECTIVENESS OF FINANCING STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT.

* * *

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

* * *

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

* * *

SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF FILING.

* * *

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

* * *

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

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

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

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

* * *

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

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

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

   (C) if the financing statement indicates that the debtor is an organization, provide:

       (i) a type of organization for the debtor;

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

       (iii) an organizational identification number for the debtor or indicate that the debtor has none;

* * *

SECTION 9-518. CLAIM CONCERNING INACCURATE OR WRONGFULLY FILED RECORD.

(a) [Who may file statement with respect to record indexed under person’s name.]

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

[Alternative A]

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

correction An information statement under subsection (a) must:

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

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

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

[Alternative B]

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

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

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

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

(2) indicate that it is a correction an information statement; and
(3) provide the basis for the person’s belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person’s belief that the record was wrongfully filed.

[End of Alternatives]

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

[Subsection (d)—Alternative A]

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

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

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

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

[Subsection (d)—Alternative B]

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

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

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

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

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

[End of Alternatives]

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

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

Official Comment

* * *

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

Sometimes a person files a termination statement or other record relating to a financing statement without being entitled to do so. A secured party of record with respect to the financing statement who believes that such a record has been filed may, but need not, file an information statement indicating that the amendment was unauthorized. See subsection (c). An information
A statement has no legal effect. Its sole purpose is to provide some limited public notice that the efficacy of the amendment is disputed. If the person filing the record was not entitled to do so, the filed record is ineffective, regardless of whether the secured party of record files an information statement. Likewise, if the person filing the record was entitled to do so, the filed record is effective, even if the secured party of record files an information statement. See Section 9-510(a), 9-518(e). Because an information statement filed under subsection (c) has no legal effect, a secured party of record—even one who is aware of the filing of an unauthorized amendment—has no duty to file one. Searchers bear the burden of determining whether an amendment is authorized, just as they bear the burden of determining whether a filed initial financing statement is authorized.

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

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

**SECTION 9-521. UNIFORM FORM OF WRITTEN FINANCING STATEMENT AND AMENDMENT.**

(a) **[Initial financing statement form.]** A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in Section 9-516(b):

[New form will be substituted for existing form]

(b) **[Amendment form.]** A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in Section 9-516(b):

[New form will be substituted for existing form]

**SECTION 9-607. COLLECTION AND ENFORCEMENT BY SECURED PARTY.**
(a) [Collection and enforcement generally.] If so agreed, and in any event after default, a secured party:

* * *

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

* * *

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

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

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

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

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

PART 8

TRANSITION PROVISIONS FOR 2010 AMENDMENTS

SECTION 9-801. EFFECTIVE DATE. This [Act] takes effect on July 1, 2013.
SECTION 9-802. SAVINGS CLAUSE.

(a) [Pre-effective-date transactions or liens.] Except as otherwise provided in this part, this [Act] applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this [Act] takes effect.

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

SECTION 9-803. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE.

(a) [Continuing perfection: perfection requirements satisfied.] A security interest that is a perfected security interest immediately before this [Act] takes effect is a perfected security interest under [Article 9 as amended by this [Act]] if, when this [Act] takes effect, the applicable requirements for attachment and perfection under [Article 9 as amended by this [Act]] are satisfied without further action.

(b) [Continuing perfection: perfection requirements not satisfied.] Except as otherwise provided in Section 9-805, if, immediately before this [Act] takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under [Article 9 as amended by this [Act]] are not satisfied when this [Act] takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under [Article 9 as amended by this [Act]] are satisfied within one year after this [Act] takes effect.

SECTION 9-804. SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE. A security interest that is an unperfected security interest immediately before this [Act] takes effect becomes a perfected security interest:
(1) without further action, when this [Act] takes effect if the applicable requirements for perfection under [Article 9 as amended by this [Act]] are satisfied before or at that time; or

(2) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

SECTION 9-805. EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE.

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

(b) [When pre-effective-date filing becomes ineffective.] This [Act] does not render ineffective an effective financing statement that, before this [Act] takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in [pre-amendment Article 9]. However, except as otherwise provided in subsections (c) and (d) and Section 9-806, the financing statement ceases to be effective:

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

(2) if the financing statement is filed in another jurisdiction, at the earlier of:

(A) the time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) [Continuation statement.] The filing of a continuation statement after this [Act] takes effect does not continue the effectiveness of the financing statement filed before this [Act]
takes effect. However, upon the timely filing of a continuation statement after this [Act] takes effect and in accordance with the law of the jurisdiction governing perfection as provided in [pre-amendment Article 9], the effectiveness of a financing statement filed in the same office in that jurisdiction before this [Act] takes effect continues for the period provided by the law of that jurisdiction.

(d) [Application of subsection (b)(2)(B) to transmitting utility financing statement.] Subsection (b)(2)(B) applies to a financing statement that, before this [Act] takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in [pre-amendment Article 9], only to the extent that [Article 9 as amended by this [Act]] provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

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

SECTION 9-806. WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.

(a) [Initial financing statement in lieu of continuation statement.] The filing of an initial financing statement in the office specified in Section 9-501 continues the effectiveness of a financing statement filed before this [Act] takes effect if:
(1) the filing of an initial financing statement in that office would be effective to
perfect a security interest under [Article 9 as amended by this [Act]]; (2) the pre-effective-date financing statement was filed in an office in another
State or another office in this State; and (3) the initial financing statement satisfies subsection (c).

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

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

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

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

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

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

(3) indicate that the pre-effective-date financing statement remains effective.
SECTION 9-807. AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING STATEMENT.

(a) [“Pre-effective-date financing statement.”] In this section, “pre-effective-date financing statement” means a financing statement filed before this [Act] takes effect.

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

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

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

(2) an amendment is filed in the office specified in Section 9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Section 9-806(c); or

(3) an initial financing statement that provides the information as amended and satisfies Section 9-806(c) is filed in the office specified in Section 9-501.

(d) [Method of amending: continuation.] If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Section 9-805(c) and (e) or 9-806.
(e) [Method of amending: additional termination rule.] Whether or not the law of
this State governs perfection of a security interest, the effectiveness of a pre-effective-date
financing statement filed in this State may be terminated after this [Act] takes effect by filing a
termination statement in the office in which the pre-effective-date financing statement is filed,
unless an initial financing statement that satisfies Section 9-806(c) has been filed in the office
specified by the law of the jurisdiction governing perfection as provided in [Article 9 as
amended by this [Act]] as the office in which to file a financing statement.

SECTION 9-808. PERSONS ENTITLED TO FILE INITIAL FINANCING
STATEMENT OR CONTINUATION STATEMENT. A person may file an initial financing
statement or a continuation statement under this part if:

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

(2) the filing is necessary under this part:

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

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

SECTION 9-809. PRIORITY. This [Act] determines the priority of conflicting claims
to collateral. However, if the relative priorities of the claims were established before this [Act]
takes effect, [pre-amendment Article 9] determines priority.
APPENDIX B

TABLE OF CONTENTS

Modifications to the Official Comments
Unaccompanied by Amendments to the Official Text

Interim Draft of April 1, 2010

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS ................. B1
SECTION 9-104. CONTROL OF DEPOSIT ACCOUNT ............................ B3
SECTION 9-109. SCOPE ..................................................... B5
SECTION 9-301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS .................................................. B5
SECTION 9-501. FILING OFFICE ........................................... B7
SECTION 9-307. LOCATION OF DEBTOR ................................... B7
SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL ................ B9
SECTION 9-509. PERSONS ENTITLED TO FILE A RECORD ............... B11
SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL ................ B11
SECTION 9-326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW DEBTOR ............................................................................... B13
SECTION 9-330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR INSTRUMENT ........................................................................... B14
SECTION 9-509. PERSONS ENTITLED TO FILE A RECORD ............... B15
SECTION 9-512. AMENDMENT OF FINANCING STATEMENT ............... B16
SECTION 9-602. WAIVER AND VARIANCE OF RIGHTS AND DUTIES ........ B18
SECTION 9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT ........ B20
SECTION 9-624. WAIVER ................................................................ B21
SECTION 9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT ............... B21

SECTION 9-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL. ...... B22

SECTION 9-613. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL: GENERAL .................................................. B23

SECTION 9-616. EXPLANATION OF CALCULATION OF SURPLUS OR DEFICIENCY. ............................................................................. B24

SECTION 9-621. NOTIFICATION OF PROPOSAL TO ACCEPT COLLATERAL ..... B25

SECTION 9-625. REMEDIES FOR SECURED PARTY’S FAILURE TO COMPLY WITH ARTICLE ................................................................. B26

SECTION 9-706. WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT ....................... B26

SECTION 8-103. RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS ............... B28

ARTICLE 11

EFFECTIVE DATE AND TRANSITION PROVISIONS ............................. B28
APPENDIX B

Modifications to the Official Comments
Unaccompanied by Amendments to the Official Text
(Sections are arranged by topic)

Interim Draft of April 1, 2010

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

***

Official Comment

***

5. Receivables-related Definitions.

a. “Account”; “Health-Care-Insurance Receivable”; “As-Extracted Collateral.” The definition of “account” has been expanded and reformulated. It is no longer limited to rights to payment relating to goods or services. For example, the right of a credit-card issuer to payment arising out of the cardholder’s use of a credit card is an “account.” Many categories of rights to payment that were classified as general intangibles under former Article 9 are accounts under this Article. Thus, if they are sold, a financing statement must be filed to perfect the buyer’s interest in them. Among the types of property that are expressly excluded from the definition is “a right to payment for money or funds advanced or sold.” As defined in Section 1-201, “money” is limited essentially to currency. As used in the exclusion from the definition of “account,” however, “funds” is a broader concept (although the term is not defined). For example, when a bank-lender credits a borrower’s deposit account for the amount of a loan, the bank’s advance of funds is not a transaction giving rise to an account.

The definition of “health-care-insurance receivable” is new. It is a subset of the definition of “account.” However, the rules generally applicable to account debtors on accounts do not apply to insurers obligated on health-care-insurance receivables. See Sections 9-404(e), 9-405(d), 9-406(i).

Note that certain accounts also are “as-extracted collateral.” See Comment 4.c., Examples 6 and 7.


“Chattel paper” consists of a monetary obligation together with a security interest in or a lease of specific goods if the obligation and security interest or lease are evidenced by “a record or records.” The definition has been expanded from that found in former Article 9 to include records that evidence a monetary obligation and a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in

B1
the goods, or a lease of specific goods and license of software used in the goods. The expanded
definition covers transactions in which the debtor’s or lessee’s monetary obligation includes
amounts owed with respect to software used in the goods. The monetary obligation with respect
to the software need not be owed under a license from the secured party or lessor, and the
secured party or lessor need not be a party to the license transaction itself. Among the types of
monetary obligations that are included in “chattel paper” are amounts that have been advanced
by the secured party or lessor to enable the debtor or lessee to acquire or obtain financing for a
license of the software used in the goods. The definition also makes clear that rights to payment
arising out of credit-card transactions are not chattel paper.

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

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

The definition of electronic chattel paper does not dictate that it be created in any
particular fashion. For example, a record consisting of a tangible writing may be converted to
electronic form (e.g., by creating electronic images of a signed writing). Or, records may be
initially created and executed in electronic form (e.g., a lessee might authenticate an electronic
record of a lease that is then stored in electronic form). In either case the resulting records are
electronic chattel paper. Likewise, tangible chattel paper results when chattel paper in electronic
form is converted to tangible form.

* * *

d. “General Intangible”; “Payment Intangible.” “General intangible”
is the residual category of personal property, including things in action, that is not included in
the other defined types of collateral. Examples are various categories of intellectual property
and the right to payment of a loan of funds that is not evidenced by chattel paper or an
instrument. As used in the definition of “general intangible,” “things in action” includes rights
that arise under a license of intellectual property, including the right to exploit the intellectual
property without liability for infringement. The definition has been revised to exclude
commercial tort claims, deposit accounts, and letter-of-credit rights. Each of the three is a
separate type of collateral. One important consequence of this exclusion is that tortfeasors
(commercial tort claims), banks (deposit accounts), and persons obligated on letters of credit
(letter-of-credit rights) are not “account debtors” having the rights and obligations set forth in
Sections 9-404, 9-405, and 9-406. In particular, tortfeasors, banks, and persons obligated on
letters of credit are not obligated to pay an assignee (secured party) upon receipt of the
notification described in Section 9-404(a). See Comment 5.h. Another important consequence relates to the adequacy of the description in the security agreement. See Section 9-108.

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

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

A right to the payment of money is frequently buttressed by ancillary covenants rights, such as covenants in a purchase agreement, note, or mortgage requiring insurance on the collateral or forbidding removal of the collateral, or covenants to preserve the creditworthiness of the promisor, such as covenants restricting dividends and the like, and the lessor’s rights with respect to leased goods that arise upon the lessee’s default (see Section 2A-523). This Article does not treat these ancillary rights separately from the rights to payment to which they relate. For example, attachment and perfection of an assignment of a right to payment of a monetary obligation, whether it be an account or payment intangible, also carries these ancillary rights. Contrary to the opinion in In re Commercial Money Center, Inc., 350 B.R. 465 (B.A.P. 9th Cir. 2006), if the lessor’s rights under a lease constitute chattel paper, an assignment of the lessor’s right to payment under the lease also would be chattel paper, even if the assignment excludes other rights.

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

* * *

SECTION 9-104. CONTROL OF DEPOSIT ACCOUNT.

(a) [Requirements for control.] A secured party has control of a deposit account if:

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

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

***

Official Comment

***

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

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

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

Under subsection (a)(3), a secured party may obtain control by becoming the bank’s
“customer,” as defined in Section 4-104. As the customer, the secured party would enjoy the
right (but not necessarily the exclusive right) to withdraw funds from, or close, the deposit
account. See Sections 4-401(a), 4-403(a).

***
SECTION 9-109. SCOPE.

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

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

** *

** *

Official Comment

2. Basic Scope Provision. Subsection (a)(1) derives from former Section 9-102(1) and (2). These subsections have been combined and shortened. No change in meaning is intended. Under subsection (a)(1), all consensual security interests in personal property and fixtures are covered by this Article, except for transactions excluded by subsections (c) and (d). As to which transactions give rise to a “security interest,” the definition of that term in Section 1-201 must be consulted. When a security interest is created, this Article applies regardless of the form of the transaction or the name that parties have given to it. Likewise, the subjective intention of the parties with respect to the legal characterization of their transaction is irrelevant to whether this Article applies, as it was to the application of former Article 9 under the proper interpretation of former Section 9-102.

** *

SECTION 9-301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS.

** *

(3) Except as otherwise provided in paragraph (4), while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;
5. Law Governing Perfection: Exceptions. The general rule is subject to several exceptions. It does not apply to goods covered by a certificate of title (see Section 9-303), deposit accounts (see Section 9-304), investment property (see Section 9-305), or letter-of-credit rights (see Section 9-306). Nor does it apply to possessory security interests, i.e., security interests that the secured party has perfected by taking possession of the collateral (see paragraph (2)), security interests perfected by filing a fixture filing (see subparagraph (3)(A)), security interests in timber to be cut (subparagraph (3)(B)), or security interests in as-extracted collateral (see paragraph (4)).

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

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

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

Official Comment

5. Transmitting Utilities. The usual filing rules do not apply well for a transmitting utility (defined in Section 9-102). Many pre-UCC statutes provided special filing rules for railroads and in some cases for other public utilities, to avoid the requirements for filing with legal descriptions in every county in which such debtors had property. Former Section 9-401(5) recreated and broadened these provisions, and subsection (b) follows this approach. The nature of the debtor will inform persons searching the record as to where to make a search. A given State’s subsection (b) applies only if the local law of that State governs perfection. As to most collateral, perfection by filing is governed by the law of the jurisdiction in which the debtor is located. See Section 9-301(1). However, the law of the jurisdiction in which goods that are or become fixtures are located governs perfection by fixture filing. See Section 9-301(3)(A). As a consequence, filing in the filing office of more than one State may be necessary to perfect by fixture filing a security interest in fixtures collateral of a transmitting utility. See Section 9-301, Comment 5.b.

SECTION 9-307. LOCATION OF DEBTOR.

(a) [“Place of business.”] In this section, “place of business” means a place where a debtor conducts its affairs.
(b) [Debtor’s location: general rules.] Except as otherwise provided in this section, the following rules determine a debtor’s location:

   (1) A debtor who is an individual is located at the individual’s principal residence.

   (2) A debtor that is an organization and has only one place of business is located at its place of business.

   (3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

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

Official Comment

* * *

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

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

***

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

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

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

***

Official Comment

***

4. Competing Perfected Security Interests. When there is more than one perfected security interest, the security interests rank according to priority in time of filing or perfection. “Filing,” of course, refers to the filing of an effective financing statement. “Perfection” refers to the acquisition of a perfected security interest, i.e., one that has attached and as to which any required perfection step has been taken. See Sections 9-308 and 9-309.

Example 1: On February 1, A files a financing statement covering a certain item of Debtor’s equipment. On March 1, B files a financing statement covering the same equipment. On April 1, B makes a loan to Debtor and obtains a security interest in the equipment. On May 1, A makes a loan to Debtor and obtains a security interest in the
same collateral. A has priority even though B’s loan was made earlier and was perfected when made. It makes no difference whether A knew of B’s security interest when A made its advance.

The problem stated in Example 1 is peculiar to a notice-filing system under which filing may occur before the security interest attaches (see Section 9-502). The justification for determining priority by order of filing lies in the necessity of protecting the filing system—that is, of allowing the first secured party who has filed to make subsequent advances without each time having to check for subsequent filings as a condition of protection. Note, however, that this first-to-file protection is not absolute. For example, Section 9-324 affords priority to certain purchase-money security interests, even if a competing secured party was the first to file or perfect.

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

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

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

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

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

SECTION 9-509. PERSONS ENTITLED TO FILE A RECORD.

* * *

Official Comment

* * *

3. Unauthorized Filings. Records filed in the filing office do not require signatures for their effectiveness. Subsection (a)(1) substitutes for the debtor’s signature on a financing statement the requirement that the debtor authorize in an authenticated record the filing of an initial financing statement or an amendment that adds collateral. Also, under subsection (a)(1), if an amendment adds a debtor, the debtor who is added must authorize the amendment. A person who files an unauthorized record in violation of subsection (a)(1) is liable under Section 9-625(b) and (e) for actual and statutory damages. Of course, a filed financing statement is ineffective to perfect a security interest if the filing is not authorized. See Section 9-510(a).

Law other than this Article, including the law with respect to ratification of past acts, generally determines whether a person has the requisite authority to file a record under this section. See Sections 1-103, 9-502, Comment 3. This Article applies to other issues, such as the priority of a security interest perfected by the filing of a financing statement. See Section 9-322, Comment 4.

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

* * *

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

(1) any supporting obligation for the collateral; and

(2) proceeds of the collateral if:

(A) the security interest in proceeds is perfected;

(B) the proceeds are cash proceeds or of the same type as the collateral;

and

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

***

Official Comment

***

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

***

The proceeds of proceeds are themselves proceeds. See Section 9-102 (defining
“proceeds” and “collateral”). Sometimes competing security interests arise in proceeds that are
several generations removed from the original collateral. As the following example explains, the
applicability of subsection (c) may turn on the nature of the intervening proceeds.
Example 11: SP-1 perfects its security interest in Debtor’s deposit account by obtaining control. Thereafter, SP-2 files against inventory, (presumably) searches, finds no indication of a conflicting security interest, and advances against Debtor’s existing and after-acquired inventory. Debtor uses funds from the deposit account to purchase inventory, which SP-1 can trace as identifiable proceeds of its security interest in Debtor’s deposit account, and which SP-2 claims as original collateral. The inventory is sold and the proceeds deposited into another deposit account, as to which SP-1 has not obtained control. Subsection (c) does not govern priority in this other deposit account. This deposit account is cash proceeds and is also the same type of collateral as SP-1’s original collateral, as required by subsections (c)(2)(A) and (B). However, SP-1’s security interest does not satisfy subsection (c)(2)(C) because the inventory proceeds, which intervened between the original deposit account and the deposit account constituting the proceeds at issue, are not cash proceeds, proceeds of the same type as the collateral (original deposit account), or an account relating to the collateral. Stated otherwise, once proceeds other than cash proceeds, proceeds of the same type as the original collateral, or an account relating to the original collateral intervene in the chain of proceeds, priority under subsection (c) is thereafter unavailable. The special priority rule in subsection (d) also is inapplicable to this case. See Comment 9, Example 13, below. Instead, the general first-to-file-or-perfect rule of subsections (a) and (b) apply. Under that rule, SP-1 has priority unless its security interest in the inventory proceeds became unperfected under Section 9-315(d). Had SP-2 filed against inventory before SP-1 obtained control of the original deposit account, the SP-2 would have had priority even if SP-1’s security interest in the inventory proceeds remained perfected.

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

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

***

Official Comment

***

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

Subsection (a) subordinates the original debtor’s secured party’s security interest perfected against the new debtor solely under Section 9-508. The security interest is
subordinated to security interests in the same collateral perfected by another method, e.g., by filing against the new debtor. As used in this section, “a filed financing statement that is effective solely under Section 9-508” refers to a financing statement filed against the original debtor that continues to be effective under Section 9-508 to perfect a security interest in the collateral in question. It does not encompass a new initial financing statement providing the name of the new debtor, even if the initial financing statement is filed to maintain the effectiveness of a financing statement under the circumstances described in Section 9-508(b). Nor does it encompass a financing statement filed against the original debtor which remains effective against collateral transferred by the original debtor to the new debtor. See Section 9-508(c). Concerning priority contests involving transferred collateral, see Sections 9-325 and 9-507.

SECTION 9-330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR INSTRUMENT.

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

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

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

(b) [Purchaser’s priority: other security interests.] A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 9-105 in good faith, in the ordinary course of the purchaser’s business, and without knowledge that the purchase violates the rights of the secured party.
3. Chattel Paper. Subsections (a) and (b) follow former Section 9-308 in distinguishing between earlier-perfected security interests in chattel paper that is claimed merely as proceeds of inventory subject to a security interest and chattel paper that is claimed other than merely as proceeds. Like former Section 9-308, this section does not elaborate upon the phrase “merely as proceeds.” For an elaboration, see PEB Commentary No. 8.

For a security interest to qualify for priority under subsection (a) or (b), the secured party must “take[] possession of the chattel paper or obtain[] control of the chattel paper under Section 9-105.” When chattel paper comprises one or more tangible records and one or more electronic records, a secured party may satisfy this requirement by taking possession of the tangible records under Section 9-313 and having control of the electronic records under Section 9-105.

This section makes explicit the “good faith” requirement and retains the requirements of “the ordinary course of the purchaser’s business” and the giving of “new value” as conditions for priority. Concerning the last, this Article deletes former Section 9-108 and adds to Section 9-102 a completely different definition of the term “new value.” Under subsection (e), the holder of a purchase-money security interest in inventory is deemed to give “new value” for chattel paper constituting the proceeds of the inventory. Accordingly, the purchase-money secured party may qualify for priority in the chattel paper under subsection (a) or (b), whichever is applicable, even if it does not make an additional advance against the chattel paper.

If a possessory security interest in tangible chattel paper or a perfected-by-control security interest in electronic chattel paper does not qualify for priority under this section, it may be subordinate to a perfected-by-filing security interest under Section 9-322(a)(1).

SECTION 9-509. PERSONS ENTITLED TO FILE A RECORD.

(a) [Person entitled to file record.] A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) the debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c); or
(2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

* * *

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

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

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

* * *

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

* * *

SECTION 9-512. AMENDMENT OF FINANCING STATEMENT.
[Alternative A]

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

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

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

[Alternative B]

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

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

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

[End of Alternatives]

* * *

Official Comment

B17
4. **Amendment Adding Debtor.** An amendment that adds a debtor is effective, provided that the added debtor authorizes the filing. See Section 9-509(a). However, filing an amendment adding a debtor to a previously filed financing statement affords no advantage over filing an initial financing statement against that debtor and may be disadvantageous. With respect to the added debtor, for purposes of determining the priority of the security interest, the time of filing is the time of the filing of the amendment, not the time of the filing of the initial financing statement. See subsection (d). However, the effectiveness of the financing statement lapses with respect to added debtor at the time it lapses with respect to the original debtor. See subsection (b).

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

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

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

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

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

3. **Nonwaivable Rights and Duties.** This section revises former Section 9-501(3) by restricting the ability to waive or modify additional specified rights and duties: (i) duties under Section 9-207(b)(4)(C), which deals with the use and operation of consumer goods, (ii) the right to a response to a request for an accounting, concerning a list of collateral, or concerning a statement of account (Section 9-210), (iii) the duty to collect collateral in a commercially reasonable manner (Section 9-607), (iv) the implicit duty to refrain from a breach of the peace in taking possession of collateral under Section 9-609, (v) the duty to apply noncash proceeds of collection or disposition in a commercially reasonable manner (Sections 9-608 and 9-615), (vi) the right to a special method of calculating a surplus or deficiency in certain dispositions to a secured party, a person related to secured party, or a secondary obligor (Section 9-615), (vii) the duty to give an explanation of the calculation of a surplus or deficiency (Section 9-616), (viii) the right to limitations on the effectiveness of certain waivers (Section 9-624), and (ix) the right to hold a secured party liable for failure to comply with this Article (Sections 9-625 and 9-626). For clarity and consistency, this Article uses the term “waive or vary” instead of “renounc[e] or modify[ ].” which appeared in former Section 9-504(3).
This section provides generally that the specified rights and duties “may not be waived or varied.” However, it does not restrict the ability of parties to agree to settle, compromise, or renounce claims for past conduct that may have constituted a violation or breach of those rights and duties, even if the settlement involves an express “waiver.”

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

4. **Waiver by Debtors and Obligors.** The restrictions on waiver contained in this section apply to obligors as well as debtors. This resolves a question under former Article 9 as to whether secondary obligors, assuming that they were “debtors” for purposes of former Part 5, were permitted to waive, under the law of suretyship, rights and duties under that Part.

5. **Certain Post-Default Waivers.** Section 9-624 permits post-default waivers in limited circumstances. These waivers must be made in agreements that are authenticated. Under Section 1-201, an “‘agreement’ means the bargain of the parties in fact.” In considering waivers under Section 9-624 and analogous agreements in other contexts, courts should carefully scrutinize putative agreements that appear in records that also address many additional or unrelated matters.

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

* * *

(c) **[Purchase by secured party.]** A secured party may purchase collateral:

(1) at a public disposition; or

(2) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

**Official Comment**

* * *

7. **Public vs. Private Dispositions.** This Part maintains two distinctions between “public” and other dispositions: (i) the secured party may buy at the former, but normally not at the latter (Section 9-610(c)), and (ii) the debtor is entitled to notification of “the time and place of a public disposition” and notification of “the time after which” a private disposition or other intended disposition is to be made (Section 9-613(1)(E)). It does not retain the distinction under former Section 9-504(4), under which transferees in a noncomplying public disposition could
lose protection more easily than transferees in other noncomplying dispositions. Instead, Section 9-617(b) adopts a unitary standard. Although the term is not defined, as used in this Article, a “public disposition” is one at which the price is determined after the public has had a meaningful opportunity for competitive bidding. “Meaningful opportunity” is meant to imply that some form of advertisement or public notice must precede the sale (or other disposition) and that the public must have access to the sale (disposition).

A secured party’s purchase of collateral at its own private disposition is equivalent to a “strict foreclosure” and is governed by Sections 9-620, 9-621, and 9-622. The provisions of these sections can be waived only as provided in Section 9-624(b).

* * *

SECTION 9-624. WAIVER.  

(a) [Waiver of disposition notification.] A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 9-611 only by an agreement to that effect entered into and authenticated after default.

(b) [Waiver of mandatory disposition.] A debtor may waive the right to require disposition of collateral under Section 9-620(e) only by an agreement to that effect entered into and authenticated after default.

(c) [Waiver of redemption right.] Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 9-623 only by an agreement to that effect entered into and authenticated after default.

Official Comment


2. Waiver. This section is a limited exception to Section 9-602, which generally prohibits waiver by debtors and obligors. It makes no provision for waiver of the rule prohibiting a secured party from buying at its own private disposition. Transactions of this kind are equivalent to “strict foreclosures” and are governed by Sections 9-620, 9-621, and 9-622.

SECTION 9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT.
(b) [Commercially reasonable disposition.] Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

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

SECTION 9-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL.

10. Other Law. Other State or federal law may contain requirements concerning notification of a disposition of property by a secured party. For example, federal law imposes notification requirements with respect to the enforcement of mortgages on federally documented vessels. Principles of statutory interpretation and, in the context of federal law, supremacy and preemption determine whether and to what extent law other than this Article supplements, displaces, or is displaced by this Article. See Sections 1-103(b), 1-104, 9-109(c)(1).
SECTION 9-613. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL: GENERAL. Except in a consumer-goods transaction, the following rules apply:

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

(A) describes the debtor and the secured party;
(B) describes the collateral that is the subject of the intended disposition;
(C) states the method of intended disposition;
(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and
(E) states the time and place of a public disposition or the time after which any other disposition is to be made.

* * *

Official Comment

* * *

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

This section applies to a notification of a public disposition conducted electronically. A notification of an electronic disposition satisfies paragraph (1)(E) if it states the time when the
disposition is scheduled to begin and states the electronic location. For example, under the
technology current in 2010, the Uniform Resource Locator (URL) or other Internet address
where the site of the public disposition can be accessed suffices as an electronic location.

**SECTION 9-616. EXPLANATION OF CALCULATION OF SURPLUS OR
DEFICIENCY.**

* * *

(b) [Explanation of calculation.] In a consumer-goods transaction in which the debtor
is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 9-615, the
secured party shall:

(1) send an explanation to the debtor or consumer obligor, as applicable, after the
disposition and:

(A) before or when the secured party accounts to the debtor and pays any
surplus or first makes written demand on the consumer obligor after the disposition for payment
of the deficiency; and

(B) within 14 days after receipt of a request; or

(2) in the case of a consumer obligor who is liable for a deficiency, within 14
days after receipt of a request, send to the consumer obligor a record waiving the secured party’s
right to a deficiency.

**Official Comment**

* * *

2. **Duty to Send Information Concerning Surplus or Deficiency.** * * *

A debtor or secondary obligor need not wait until the secured party commences written
collection efforts in order to receive an explanation of how a deficiency or surplus was
calculated. Subsection (b)(2)(b)(1)(B) obliges the secured party to send an explanation within
14 days after it receives a “request” (defined in subsection (a)(2)).
SECTION 9-621. NOTIFICATION OF PROPOSAL TO ACCEPT COLLATERAL.

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

Official Comment

2. Notification Requirement. Subsection (a) specifies three classes of competing claimants to whom the secured party must send notification of its proposal: (i) those who notify the secured party that they claim an interest in the collateral, (ii) holders of certain security interests and liens who have filed against the debtor, and (iii) holders of certain security interests who have perfected by compliance with a statute (including a certificate-of-title statute), regulation, or treaty described in Section 9-311(a). With regard to (ii), see Section 9-611, Comment 4. Subsection (b) also requires notification to any secondary obligor if the proposal is for acceptance in partial satisfaction.

Unlike Section 9-611, this section contains no “safe harbor,” which excuses an enforcing secured party from notifying certain secured parties and other lienholders. This is because, unlike Section 9-610, which requires that a disposition of collateral be commercially reasonable, Section 9-620 permits the debtor and secured party to set the amount of credit the debtor will receive for the collateral subject only to the requirement of good faith. An effective acceptance discharges subordinate security interests and other subordinate liens. See Section 9-622. If collateral is subject to several liens securing debts much larger than the value of the collateral, the debtor may be disinclined to refrain from consenting to an acceptance by the holder of the senior security interest, even though, had the debtor objected and the senior disposed of the collateral under Section 9-610, the collateral may have yielded more than enough to satisfy the senior security interest (but not enough to satisfy all the liens). Accordingly, this section imposes upon the enforcing secured party the risk of the filing office’s errors and delay. The holder of a security interest who is entitled to notification under this section but does not receive it to whom the enforcing secured party does not send notification has the right to recover under Section 9-625(b) any loss resulting from the enforcing secured party’s noncompliance with this section.
SECTION 9-625. REMEDIES FOR SECURED PARTY’S FAILURE TO
COMPLY WITH ARTICLE.

* * *

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

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

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

* * *

SECTION 9-706. WHEN INITIAL FINANCING STATEMENT SUFFICES TO
CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.

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

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

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

B26
(3) the initial financing statement satisfies subsection (c).

***

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

1. satisfy the requirements of Part 5 for an initial financing statement;
2. identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and
3. indicate that the pre-effective-date financing statement remains effective.

**Official Comment**

***

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

A single initial financing statement may continue the effectiveness of more than one financing statement filed before this Article's effective date. See Section 1-102(5)(a) (words in the singular include the plural). If a financing statement has been filed in more than one office in a given jurisdiction, as may be the case if the jurisdiction had adopted former Section 9-401(1), third alternative, then an identification of the filing in the central filing office suffices for purposes of subsection (c)(2). If under this Article the collateral is of a type different from its type under former Article 9–as would be the case, e.g., with a right to payment of lottery winnings (a “general intangible” under former Article 9 and an “account” under this Article), then subsection (c) requires that the initial financing statement indicate the type under this Article.
SECTION 8-103. RULES FOR DETERMINING WHETHER CERTAIN
OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS.

Official Comment

* * *

9. Contrary to the holding of Highland Capital Management LP v. Schneider, 8 N.Y.3d 406 (2007), the registrability requirement in the definition of “registered form,” and its parallel in the definition of “security,” are satisfied only if books are maintained by or on behalf of the issuer for the purpose of registration of transfer, including the determination of rights under Section 8-207(a) (or if, in the case of a certificated security, the security certificate so states). It is not sufficient that the issuer records ownership, or records transfers thereof, for other purposes. Nor is it sufficient that the issuer, while not in fact maintaining books for the purpose of registration of transfer, could do so, for such is always the case.

ARTICLE 11

EFFECTIVE DATE AND TRANSITION PROVISIONS

* * *

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

### TABLE OF CONTENTS

Amendments to Uniform Commercial Code Article 9 and Modifications to Comments Relating to the Amendments

Interim Draft of April 1, 2010

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>9-102.</td>
<td>DEFINITIONS AND INDEX OF DEFINITIONS</td>
<td>C1</td>
</tr>
<tr>
<td>9-102.</td>
<td>DEFINITIONS AND INDEX OF DEFINITIONS</td>
<td>C1</td>
</tr>
<tr>
<td>9-311.</td>
<td>PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO</td>
<td>C3</td>
</tr>
<tr>
<td></td>
<td>CERTAIN STATUTES, REGULATIONS, AND TREATIES.</td>
<td></td>
</tr>
<tr>
<td>9-105.</td>
<td>CONTROL OF ELECTRONIC CHATTEL PAPER</td>
<td>C3</td>
</tr>
<tr>
<td>9-316.</td>
<td>CONTINUED PERFECTION OF SECURITY INTEREST FOLLOWING</td>
<td>C6</td>
</tr>
<tr>
<td></td>
<td>EFFECT OF CHANGE IN GOVERNING LAW</td>
<td></td>
</tr>
<tr>
<td>9-316.</td>
<td>CONTINUED PERFECTION OF SECURITY INTEREST FOLLOWING</td>
<td>C7</td>
</tr>
<tr>
<td></td>
<td>EFFECT OF CHANGE IN GOVERNING LAW</td>
<td></td>
</tr>
<tr>
<td>9-326.</td>
<td>PRIORITY OF SECURITY INTERESTS CREATED BY NEW DEBTOR</td>
<td>C8</td>
</tr>
<tr>
<td>9-322.</td>
<td>PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN AND</td>
<td>C9</td>
</tr>
<tr>
<td></td>
<td>AGRICULTURAL LIENS ON SAME COLLATERAL</td>
<td></td>
</tr>
<tr>
<td>9-317.</td>
<td>INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF</td>
<td>C10</td>
</tr>
<tr>
<td></td>
<td>SECURITY INTEREST OR AGRICULTURAL LIEN</td>
<td></td>
</tr>
<tr>
<td>9-406.</td>
<td>DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF</td>
<td>C12</td>
</tr>
<tr>
<td></td>
<td>ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>PAYMENT INTANGIBLES, AND PROMISSORY NOTES INEFFECTIVE</td>
<td></td>
</tr>
<tr>
<td>9-408.</td>
<td>RESTRICTIONS ON ASSIGNMENT OF PROMISSORY NOTES, HEALTH-CARE-INSURANCE</td>
<td>C12</td>
</tr>
<tr>
<td></td>
<td>RECEIVABLES, AND CERTAIN GENERAL INTANGIBLES INEFFECTIVE</td>
<td></td>
</tr>
<tr>
<td>9-515.</td>
<td>DURATION AND EFFECTIVENESS OF FINANCING STATEMENT;</td>
<td>C13</td>
</tr>
<tr>
<td></td>
<td>EFFECT OF LAPSED FINANCING STATEMENT</td>
<td></td>
</tr>
</tbody>
</table>
SECTION 9-503.  NAME OF DEBTOR AND SECURED PARTY .......................... C14

SECTION 9-102.  DEFINITIONS AND INDEX OF DEFINITIONS .................. C14

SECTION 9-503.  NAME OF DEBTOR AND SECURED PARTY ........................ C16

SECTION 9-503.  NAME OF DEBTOR AND SECURED PARTY ....................... C17

SECTION 9-502.  CONTENTS OF FINANCING STATEMENT; RECORD OF MORTGAGE AS FINANCING STATEMENT; TIME OF FILING FINANCING STATEMENT.
.................................................................................................................. C19

SECTION 9-503.  NAME OF DEBTOR AND SECURED PARTY ....................... C20

SECTION 9-507.  EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF FINANCING STATEMENT  .......................................................... C22

SECTION 9-521.  UNIFORM FORM OF WRITTEN FINANCING STATEMENT AND AMENDMENT. ................................................................. C23

SECTION 9-307.  LOCATION OF DEBTOR ................................................ C23

SECTION 9-516.  WHAT CONSTITUTES FILING; EFFECTIVENESS OF FILING. .... C24

SECTION 9-518.  CLAIM CONCERNING INACCURATE OR WRONGFULLY FILED RECORD  ............................................................................ C25

SECTION 9-516.  WHAT CONSTITUTES FILING; EFFECTIVENESS OF FILING. .... C29

SECTION 9-607.  COLLECTION AND ENFORCEMENT BY SECURED PARTY ...... C30

SECTION 9-801.  EFFECTIVE DATE. .......................................................... C31

SECTION 9-802.  SAVINGS CLAUSE. ........................................................ C31

SECTION 9-803.  SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE. . C31

SECTION 9-804.  SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE.
.................................................................................................................. C32

SECTION 9-805.  EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE.
.................................................................................................................. C32

SECTION 9-806.  WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT. ............... C33
SECTION 9-807. AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING STATEMENT.
------------------------------------------------------------------------ C35

SECTION 9-808. PERSONS ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT. .................................................. C36

SECTION 9-809. PRIORITY. ................................................................. C37
APPENDIX C

Amendments to Uniform Commercial Code Article 9 and Modifications to Comments Relating to the Amendments
(Sections are arranged by topic)

Interim Draft of April 1, 2010

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

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

* * *

(7) “Authenticate” means:

(A) to sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

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

* * *

(10) “Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the
security interest in question to be indicated on the record as a condition or result of the security
interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

***

***

Official Comment

***

Unit”; “Jurisdiction of Organization”; “Registered Organization”; “State.” These new
definitions reflect the changes in the law governing perfection and priority of security interests
and agricultural liens provided in Part 3, Subpart 1.

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

The first sentence of the definition of “certificate of title” includes certificates consisting
of tangible records, of electronic records, and of combinations of tangible and electronic records.

In many States, a certificate of title covering goods that are encumbered by a security
interest is delivered to the secured party by the issuing authority. To eliminate the need for the
issuance of a paper certificate under these circumstances, several States have revised their
certificate-of-title statutes to permit or require a State agency to maintain an electronic record
that evidences ownership of the goods and in which a security interest in the goods may be
noted. The second sentence of the definition provides that such a record is a “certificate of title”
if it is in fact maintained as an alternative to the issuance of a paper certificate of title, regardless
of whether the certificate-of-title statute provides that the record is a certificate of title and even
if the statute does not expressly state that the record is maintained instead of issuing a paper certificate.

**SECTION 9-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES.**

(a) [Security interest subject to other law.] Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9-310(a);  

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

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

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

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

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

1. a single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
2. the authoritative copy identifies the secured party as the assignee of the record or records;
3. the authoritative copy is communicated to and maintained by the secured party or its designated custodian;
4. copies or revisions of the record or records that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;
5. each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
6. any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

Official Comment

* * *

2. “Control” of Electronic Chattel Paper. This Article covers security interests in “electronic chattel paper,” a new term defined in Section 9-102. This section governs how “control” of electronic chattel paper may be obtained. Subsection (a), which derives from Section 16 of the Uniform Electronic Transactions Act, sets forth the general test for control. Subsection (b) sets forth a safe harbor test that if satisfied, results in control under the general test in subsection (a).
A secured party’s control of electronic chattel paper (i) may substitute for an authenticated security agreement for purposes of attachment under Section 9-203, (ii) is a method of perfection under Section 9-314, and (iii) is a condition for obtaining special, non-temporal priority under Section 9-330. Because electronic chattel paper cannot be transferred, assigned, or possessed in the same manner as tangible chattel paper, a special definition of control is necessary. In descriptive terms, this section provides that control of electronic chattel paper is the functional equivalent of possession of “tangible chattel paper” (a term also defined in Section 9-102).

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

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

34. “Authoritative Copy” of Electronic Chattel Paper. One requirement for establishing control under subsection (b) is that a particular copy be an “authoritative copy.” Although other copies may exist, they must be distinguished from the authoritative copy. This may be achieved, for example, through the methods of authentication that are used or by business practices involving the marking of any additional copies. When tangible chattel paper is converted to electronic chattel paper, in order to establish that a copy of the electronic chattel paper is the authoritative copy it may be necessary to show that the tangible chattel paper no longer exists or has been permanently marked to indicate that it is not the authoritative copy.
business practices, for dealing with control of electronic chattel paper in a commercial context.

However, achieving control under this section requires more than the agreement of interested persons that the elements of control are satisfied. For example, paragraph (4) contemplates that control requires that it be a physical impossibility (or sufficiently unlikely or implausible so as to approach practical impossibility) to add or change an identified assignee without the participation of the secured party (or its authorized representative). It would not be enough for the assignor merely to agree that it will not change the identified assignee without the assignee-secured party’s consent. However, the standards applied to determine whether a party is in control of electronic chattel paper should not be more stringent than the standards now applied to determine whether a party is in possession of tangible chattel paper. Control of electronic chattel paper contemplates systems or procedures such that the secured party must take some action (either directly or through its designated custodian) to effect a change or addition to the authoritative copy. But just as a secured party does not lose possession of tangible chattel paper merely by virtue of the possibility that a person acting on its behalf could wrongfully redeliver the chattel paper to the debtor, so control of electronic chattel paper would not be defeated by the possibility that the secured party’s interest could be subverted by the wrongful conduct of a person (such as a custodian) acting on its behalf:

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

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

* * * 

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

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

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

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

SECTION 9-316. CONTINUED PERFECTION OF SECURITY INTEREST
FOllOWING EFFECT OF CHANGE IN GOVERNING LAW.

* * *

(i) [Effect of change in governing law on financing statement filed against original
debtor.] If a financing statement naming an original debtor is filed pursuant to the law of the
jurisdiction designated in Section 9-301(1) or 9-305(c) and the new debtor is located in another
jurisdiction, the following rules apply:
(1) [Subject to paragraph (3), the] [The] financing statement is effective to
perfect a security interest in collateral in which the new debtor has or acquires rights before or
within four months after the new debtor becomes bound under Section 9-203(d), if the financing
statement would have been effective to perfect a security interest in the collateral if it had been
acquired by the original debtor.

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

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

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

(a) [Subordination of security interest created by new debtor.] Subject to subsection
(b), a security interest created by a new debtor which is perfected by a filed financing statement
that is effective solely under Section 9-508 or Sections 9-508 and 9-316(i)(1) in collateral in
which a new debtor has or acquires rights is subordinate to a security interest in the same
collateral which is perfected other than by a filed financing statement that is effective solely
under Section 9-508 or Sections 9-508 and 9-316(i)(1).

(b) [Priority under other provisions; multiple original debtors.] The other provisions
of this part determine the priority among conflicting security interests in the same collateral
perfected by filed financing statements that are effective solely under Section 9-508 or Sections
9-508 and 9-316(i)(1). However, if the security agreements to which a new debtor became
bound as debtor were not entered into by the same original debtor, the conflicting security
interests rank according to priority in time of the new debtor's having become bound.

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

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

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

* * *

(b) [Time of perfection: proceeds and supporting obligations.] For the purposes of
subsection (a)(1):
(1) the time of filing or perfection as to a security interest in collateral is also the
time of filing or perfection as to a security interest in proceeds; and

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

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

* * *

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

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

* * *

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

* * *

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

* * *

Official Comment

* * *

6. Purchasers Other Than Secured Parties.

* * *

Subsection (b) governs goods, as well as intangibles of the type whose transfer is effected by physical delivery of the representative piece of paper (tangible chattel paper, tangible documents, instruments, and security certificates). To obtain priority, a buyer must both give value and receive delivery of the collateral without knowledge of the existing security interest and before perfection. Even if the buyer gave value without knowledge and before perfection, the buyer would take subject to the security interest if perfection occurred before physical delivery of the collateral to the buyer. Subsection (c) contains a similar rule with respect to lessees of goods. Note that a lessee of goods in ordinary course of business takes free of all security interests created by the lessor, even if perfected. See Section 9-321.

* * *

The rule of subsection (b) obviously is not appropriate where the collateral consists of intangibles and there is no representative piece of paper whose physical delivery is the only or the customary method of transfer. Therefore, with respect to such intangibles (including accounts, electronic chattel paper, general intangibles, and investment property other than certificated securities), subsection (d) gives priority to any buyer who gives value without knowledge, and before perfection, of the security interest. A licensee of a general intangible takes free of an unperfected security interest in the general intangible under the same circumstances. Note that a licensee of a general intangible in ordinary course of business takes rights under a nonexclusive license free of security interests created by the licensor, even if perfected. See Section 9-321.

* * *

SECTION 9-406. DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS
ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, AND PROMISSORY NOTES INEFFECTIVE.

* * *

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

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

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

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

* * *

SECTION 9-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY NOTES, HEALTH-CARE-INSURANCE RECEIVABLES, AND CERTAIN GENERAL INTANGIBLES INEFFECTIVE.
(a) [Term restricting assignment generally ineffective.] Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

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

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

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

***

SECTION 9-515. DURATION AND EFFECTIVENESS OF FINANCING STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT.

***

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

* * *

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

* * *

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

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

(1) subject to subsection (f), if the debtor is a registered organization, only if the
financing statement provides the name of the debtor indicated on the public organic record of
filed with or issued or enacted by the debtor’s jurisdiction of organization which shows the
debtor to have been organized;

* * *

(f) [Name of registered organization.] For purposes of subsection (a)(1), “the name of
the debtor indicated on the public organic record” means the name that is stated to be the
debtor’s name on the most recently filed or issued organic public record that purports to state,

amend, or restate the debtor’s name.

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

(a) [Article 9 definitions.] In this article:
(50) “Jurisdiction of organization”, with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(67A) “Public organic record” means:

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

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

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

(70) “Registered organization” means an organization formed or organized solely under the law of a single State or the United States and as to which the State or the United States must maintain a public record showing the organization to have been organized by the filing of a
C16

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

***

[Alternative Approaches to Name of Individual Debtor]

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

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

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

***

(3) ***

***

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

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

(5) if the debtor is an individual as to whom paragraph (4) does not apply, only if it provides the individual name of the debtor or the surname and first personal name of the debtor; and
(4)(6) in other cases:

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

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner such that each name provided would be sufficient if the person named were the debtor.

* * *

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

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

[Alternative B: Name for Individual Debtor—“Safe Harbor” Approach]

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

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

* * *

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

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

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

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

(45) in other cases:
(A) if the debtor has a name, only if it provides the individual or organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner such that each name provided would be sufficient if the person named were the debtor.

* * *

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

[End of Alternative B1]

[End of Alternatives]

Legislative Notes:

1. This Act contains two alternative sets of amendments relating to the names of individual debtors. A State should enact the same Alternative, A or B, for both subsections (a) and (g) of Section 9-503. A State that enacts Alternative A of the amendments to this section should also enact the amendments to Section 9-502.

2. Both Alternatives refer, in part, to the name as shown on a debtor’s driver’s license. The Legislature should be aware that, in some States, certain characters that may be used by the State’s department of motor vehicles (or similar agency) in the name on a driver’s license may not be accepted by the State’s central or local UCC filing offices under current regulations or internal protocols. This may occur because of technological limitations of the filing offices or merely as a result of inconsistent procedures. Similar issues may exist for field sizes as well. In these situations, perfection of a security interest granted by a debtor with such a driver’s license may be impossible under Alternative A of the amendments and the utility of Alternative B, under which the name on the driver’s license is one of the names that is sufficient, may be reduced. Accordingly, the Legislature may wish to determine if one or more of these issues exist in this State and, if so, to make certain that such issues have been resolved. A successful resolution might be accomplished by statute, agency regulation, or technological change effectuated before or as part of the enactment of this Act.

3. Regardless of which Alternative is enacted, in States in which in which a single agency issues driver’s licenses and non-driver identification cards as an alternative to a driver’s

C18
license, such that at any given time an individual may hold either a driver’s license or an
identification card but not both, the Legislature should replace each use of the term “driver’s
license” with a phrase meaning “driver’s license or identification card” but containing the
analogous terms used in the enacting State. In other States, the Legislature should replace the
term “driver’s license” with the analogous term used in the enacting State.

SECTION 9-502. CONTENTS OF FINANCING STATEMENT; RECORD OF
MORTGAGE AS FINANCING STATEMENT; TIME OF FILING FINANCING
STATEMENT.

* * *

(c) [Record of mortgage as financing statement.] A record of a mortgage is effective,
from the date of recording, as a financing statement filed as a fixture filing or as a financing
statement covering as-extracted collateral or timber to be cut only if:

(1) the record indicates the goods or accounts that it covers;
(2) the goods are or are to become fixtures related to the real property described
in the record or the collateral is related to the real property described in the record and is as-
extracted collateral or timber to be cut;
(3) the record satisfies the requirements for a financing statement in this section,
except that:
(A) it need not indicate other than an indication that it is to be filed in the
real property records; and
(B) it sufficiently provides the name of a debtor who is an individual if it
provides the individual name of the debtor or the surname and first personal name of the debtor,
even if the debtor is an individual as to whom Section 9-503(a)(4) applies; and
(4) the record is [duly] recorded.
**Legislative Note:** Only a State that enacts Alternative A of the amendments to Section 9-503 should enact the amendments to Section 9-502. As to the bracketed term “driver’s license,” see Legislative Note 3 to Section 9-502.

[End of Alternative Approaches to Name of Individual Debtor]

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

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

1. **(1)** except as otherwise provided in paragraph (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name of the debtor, registered organization indicated on the public, organic record of the filed with or issued or enacted by the debtor’s registered organization’s jurisdiction of organization which shows the debtor to have been organized;

2. **(2)** if the debtor is a decedent’s estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

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

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

   (B) indicates, in the debtor’s name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; collateral is held in a trust that is not a registered organization, only if the financing statement:
(A) provides, as the name of the debtor:

(i) if the organic record of the trust specifies the name of the trust,

the name so specified; or

(ii) if the organic record of the trust does not specify a name for the

trust, the name of the settlor or testator under subsection (x); and

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

(i) if the name is provided in accordance with subparagraph (A)(i),

indicates that the collateral is held in a trust; or

(ii) if the name is provided in accordance with subparagraph

(A)(ii), provides additional information sufficient to distinguish the trust from other trusts having

one or more of the same settlors or the same testator and indicates that the collateral is held in a

trust, unless the additional information so indicates:

(4) * * *

**

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

(1) if the settlor is a registered organization, the name of the registered

organization indicated on the public organic record filed with or issued or enacted by the

registered organization’s jurisdiction of organization; and

(2) in other cases, the name of the settlor or testator indicated in the trust’s

organic record.

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

C21
(a) **[Sufficiency of debtor’s name.]** A financing statement sufficiently provides the name of the debtor:

* * *

(2) subject to subsection (w), if the debtor is a decedent’s estate collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the debtor is an estate;

* * *

* * *

(w) **[Name of decedent.]** The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the “name of the decedent” under subsection (a)(2).

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

* * *

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

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

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

SECTION 9-521. UNIFORM FORM OF WRITTEN FINANCING STATEMENT AND AMENDMENT.

(a) [Initial financing statement form.] A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in Section 9-516(b):

[New form will be substituted for existing form]

(b) [Amendment form.] A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in Section 9-516(b):

[New form will be substituted for existing form]

SECTION 9-307. LOCATION OF DEBTOR.

* * *

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

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

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

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

* * *

Official Comment

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

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

Subsection (f) also specifies the location of a branch or agency in the United States of a foreign bank that has one or more branches or agencies in the United States. The law of the United States authorized a foreign bank (or, on behalf of the bank, a federal agency) to designate a single home state for all of the foreign bank’s branches and agencies in the United States. See 12 U.S.C. Section 3103(c) and 12 C.F.R. Section 211.22. As authorized, the designation constitutes the State of location for the branch or agency for purposes of Section 9-307(f), unless all of a foreign bank’s branches or agencies that are in the United States are licensed in only one State, in which case the branches and agencies are located in that State. See subsection (i).

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

SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF FILING.

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

* * *

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

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

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

(C) if the financing statement indicates that the debtor is an organization, provide:

(i) a type of organization for the debtor;

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

(iii) an organizational identification number for the debtor or indicate that the debtor has none;

* * *

SECTION 9-518. CLAIM CONCERNING INACCURATE OR WRONGFULLY FILED RECORD.

(a) [Who may file Statement with respect to record indexed under person’s name.] A person may file in the filing office a correction an information statement with respect to a record indexed there under the person’s name if the person believes that the record is inaccurate or was wrongfully filed.

[Alternative A]
(b) [Sufficiency of correction statement under subsection (a).]

A correction information statement under subsection (a) must:

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

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

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

[Alternative B]

(b) [Sufficiency of correction statement under subsection (a).]

A correction information statement under subsection (a) must:

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

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

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

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

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

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

[Subsection (d)—Alternative A]

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

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

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

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

[Subsection (d)—Alternative B]

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

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

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

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

(2) indicate that it is an information statement; and
(3) provide the basis for the person’s belief that the person who filed the record
was not entitled to do so under Section 9-509(d).

[End of Alternatives]

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

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

Official Comment

* * *

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

Sometimes a person files a termination statement or other record relating to a financing
statement without being entitled to do so. A secured party of record with respect to the financing
statement who believes that such a record has been filed may, but need not, file an information
statement indicating that the amendment was unauthorized. See subsection (c). An information
statement has no legal effect. Its sole purpose is to provide some limited public notice that the
efficacy of the amendment is disputed. If the person filing the record was not entitled to do so,
the filed record is ineffective, regardless of whether the secured party of record files an
information statement. Likewise, if the person filing the record was entitled to do so, the filed
record is effective, even if the secured party of record files an information statement. See
Section 9-510(a), 9-518(e). Because an information statement filed under subsection (c) has no
legal effect, a secured party of record—even one who is aware of the filing of an unauthorized
amendment—has no duty to file one. Searchers bear the burden of determining whether an
amendment is authorized, just as they bear the burden of determining whether a filed initial
financing statement is authorized.

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

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

SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF
FILING.

* * *

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

* * *

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

* * *

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

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

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

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

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

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

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

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

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

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

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

PART 8

TRANSITION PROVISIONS FOR 2010 AMENDMENTS
SECTION 9-801. EFFECTIVE DATE. This [Act] takes effect on July 1, 2013.

SECTION 9-802. SAVINGS CLAUSE.

(a) [Pre-effective-date transactions or liens.] Except as otherwise provided in this part, this [Act] applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this [Act] takes effect.

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

SECTION 9-803. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE.

(a) [Continuing perfection: perfection requirements satisfied.] A security interest that is a perfected security interest immediately before this [Act] takes effect is a perfected security interest under [Article 9 as amended by this [Act]] if, when this [Act] takes effect, the applicable requirements for attachment and perfection under [Article 9 as amended by this [Act]] are satisfied without further action.

(b) [Continuing perfection: perfection requirements not satisfied.] Except as otherwise provided in Section 9-805, if, immediately before this [Act] takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under [Article 9 as amended by this [Act]] are not satisfied when this [Act] takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under [Article 9 as amended by this [Act]] are satisfied within one year after this [Act] takes effect.]
SECTION 9-804. SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE. A security interest that is an unperfected security interest immediately before this [Act] takes effect becomes a perfected security interest:

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

(2) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

SECTION 9-805. EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE.

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

(b) [When pre-effective-date filing becomes ineffective.] This [Act] does not render ineffective an effective financing statement that, before this [Act] takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in [pre-amendment Article 9]. However, except as otherwise provided in subsections (c) and (d) and Section 9-806, the financing statement ceases to be effective:

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

(2) if the financing statement is filed in another jurisdiction, at the earlier of:

(A) the time the financing statement would have ceased to be effective under the law of that jurisdiction; or
(c) Continuation statement. The filing of a continuation statement after this Act takes effect does not continue the effectiveness of the financing statement filed before this Act takes effect. However, upon the timely filing of a continuation statement after this Act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in [pre-amendment Article 9], the effectiveness of a financing statement filed in the same office in that jurisdiction before this Act takes effect continues for the period provided by the law of that jurisdiction.

(d) Application of subsection (b)(2)(B) to transmitting utility financing statement. Subsection (b)(2)(B) applies to a financing statement that, before this Act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in [pre-amendment Article 9], only to the extent that [Article 9 as amended by this Act] provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

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

SECTION 9-806. WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.
(a) [Initial financing statement in lieu of continuation statement.] The filing of an initial financing statement in the office specified in Section 9-501 continues the effectiveness of a financing statement filed before this [Act] takes effect if:

1. the filing of an initial financing statement in that office would be effective to perfect a security interest under [Article 9 as amended by this [Act]]; and
2. the pre-effective-date financing statement was filed in an office in another State or another office in this State; and
3. the initial financing statement satisfies subsection (c).

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

1. if the initial financing statement is filed before this [Act] takes effect, for the period provided in [unamended Section 9-515] with respect to an initial financing statement; and
2. if the initial financing statement is filed after this [Act] takes effect, for the period provided in Section 9-515 as amended by this [Act] with respect to an initial financing statement.

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

1. satisfy the requirements of Part 5 as amended by this [Act] for an initial financing statement;
2. identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if
any, of the financing statement and of the most recent continuation statement filed with respect
to the financing statement; and

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

SECTION 9-807. AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING
STATEMENT.

(a) [“Pre-effective-date financing statement”.] In this section, “pre-effective-date
financing statement” means a financing statement filed before this [Act] takes effect.

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

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

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

(2) an amendment is filed in the office specified in Section 9-501 concurrently
with, or after the filing in that office of, an initial financing statement that satisfies Section 9-
806(c); or
(3) an initial financing statement that provides the information as amended and satisfies Section 9-806(c) is filed in the office specified in Section 9-501.

(d) [Method of amending: continuation.] If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Section 9-805(c) and (e) or 9-806.

(e) [Method of amending: additional termination rule.] Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after this [Act] takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies Section 9-806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in [Article 9 as amended by this [Act]] as the office in which to file a financing statement.

SECTION 9-808. PERSONS ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT. A person may file an initial financing statement or a continuation statement under this part if:

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

(2) the filing is necessary under this part:

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

(B) to perfect or continue the perfection of a security interest.
SECTION 9-809. PRIORITY. This [Act] determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this [Act] takes effect, [pre-amendment Article 9] determines priority.