

DRAFT  
FOR DISCUSSION ONLY

## AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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Draft for September 25 - 26, 2009 Drafting Committee Meeting

*Amendments Shown in Strike and Score*

*With Reporter's Prefatory Note and Comments*

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By  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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September 10, 2009

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**AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9**

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## AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9

### Reporter's Prefatory Note

1. **Background.** The Uniform Law Commissioners (“ULC”) and The American Law Institute (“ALI”) promulgated Revised Article 9 of the Uniform Commercial Code in 1998. By the end of 2001, all of the States had enacted the Revised Article.

In 2008 the ULC and the ALI formed an Article 9 Review Committee (“Review Committee”). The Review Committee was asked to review the operation of the 1998 revisions to Article 9 of the Uniform Commercial Code in practice and to consider whether there were select issues arising that would merit the formation of a drafting committee to address them. The Review Committee issued its report to the ULC Scope and Program Committee and Executive Committee on June 24, 2008. The report recommended that a drafting committee consider the issues specified on a list that the Review Committee had formulated in telephone conferences held on April 14, April 23, May 12, May 27, June 9, and June 16, 2008.

After deciding to proceed with the drafting of amendments to Revised Article 9, the ULC and the ALI organized the Joint Review Committee (“JRC”). The JRC has met three times (October, 2008; February, 2009; March 2009). It also has held two conference calls (April, 2009; May, 2009) in which the members of a task force organized by the American Bankers Association were invited to participate.

The Chair of the Joint Review Committee recommended that the JRC use the following standards in proposing revisions of the official text of Article 9:

- We should not recommend changes that would alter policy decisions made during the 1998 revision unless the current provisions appear to be creating significant problems in practice.
- Recommendations for statutory change should focus on issues as to which ambiguities have been discovered in existing statutory language, where there are substantial problems in practice under the current provisions, or as to which there have been significant non-uniform amendments that suggest the need to consider revisions.
- We should recommend that an issue be handled by a revision to the Official Comments rather than to the statutory text whenever we believe that the statutory language is sufficiently clear and produces the desired result, but that judicial decisions or experience in practice indicates that some clarification might be desirable.

The JRC's discussions focused almost exclusively on the issues listed by the Review Committee. Some additional issues were raised, and the JRC asked the Chair to request that the Scope and Program Committee and Executive Committee expand the JRC's charge to include addressing these issues.

**2. Organization of this Draft.** This draft contains amendments to the official text of, and official comments to, Uniform Commercial Code Article 9. Amendments dealing with a single subject matter appear together. A single section that addresses more than one subject may appear in the draft more than once. Each time such a section appears it reflects only the amendments relevant to the subject at issue.

The first part of the draft contains amendments to the statutory text, together with any related amendments to the comments. Because the statutory amendments are still under discussion, some of the statutory amendments are yet not accompanied by draft amendments to the comments. The second part of the draft contains modifications to the comments for which no change in statutory text is recommended. The Joint Review Committee may reconsider whether certain proposed changes to the comments would be more appropriate as statutory amendments and vice versa.



1                   **AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9**

2  
3                   **PART ONE**

4  
5                   **AMENDMENTS TO THE OFFICIAL TEXT AND RELATED COMMENTS**

6  
7                   **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

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

9                                   \* \* \*

10                               (7) “Authenticate” means:

11                                       (A) to sign; or

12                                       (B) ~~to execute or otherwise adopt a symbol, or encrypt or similarly~~

13 ~~process a record in whole or in part, with the present intent of the authenticating person to~~

14 ~~identify the person and adopt or accept a record~~ with present intent to adopt or accept a record, to

15 attach to or logically associate with the record an electronic sound, symbol, or process.

16   **Reporter’s Note**

17  
18                   The revised definition of “authenticate” derives from the definitions of “sign” in Revised  
19 Articles 1 and 7.

20  
21  
22                   **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

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

24                                   \* \* \*

25                               (10) “Certificate of title” means a certificate of title with respect to which a

26 statute provides for the security interest in question to be indicated on the certificate as a

27 condition or result of the security interest’s obtaining priority over the rights of a lien creditor

28 with respect to the collateral. The term includes another record maintained by the governmental

29 unit that issues certificates of title as an alternative to issuing a certificate for the collateral if a

30 statute permits the security interest in question to be indicated on the record as a condition or

1 result of the security interest’s obtaining priority over the rights of a lien creditor with respect to  
2 the collateral.

3 \* \* \*

4 \* \* \*

### 5 **Official Comment**

6 \* \* \*

7  
8  
9 **11. Choice-of-Law-Related Definitions: “Certificate of Title”; “Governmental**  
10 **Unit”; “Jurisdiction of Organization”; “Registered Organization”; “State.”** These new  
11 definitions reflect the changes in the law governing perfection and priority of security interests  
12 and agricultural liens provided in Part 3, Subpart 1.

13  
14 Statutes often require applicants for a certificate of title to identify all security interests  
15 on the application and require the issuing agency to indicate the identified security interests on  
16 the certificate. Some of these statutes provide that priority over the rights of a lien creditor (i.e.,  
17 perfection of a security interest) in goods covered by the certificate occurs upon indication of the  
18 security interest on the certificate; that is, they provide for the indication of the security interest  
19 on the certificate as a “condition” of perfection. Other statutes contemplate that perfection is  
20 achieved upon the occurrence of another act, e.g., delivery of the application to the issuing  
21 agency, that “results” in the indication of the security interest on the certificate. A certificate  
22 governed by either type of statute can qualify as a “certificate of title” under this Article. The  
23 statute need not expressly state the connection between the indication and perfection. For  
24 example, a certificate issued pursuant to a statute that requires applications to identify security  
25 interests, requires the issuing agency to indicate the identified security interests on the  
26 certificate, but is silent concerning the legal consequences of the indication would be a  
27 “certificate of title” if, under a judicial interpretation of the statute, perfection of a security  
28 interest is a legal consequence of the indication.

29  
30 In many states, a certificate of title covering goods that are encumbered by a security  
31 interest is delivered to the secured party by the issuing authority. To eliminate the need for the  
32 issuance of a paper certificate under these circumstances, several states have revised their  
33 certificate-of-title statutes to permit or require a state agency to maintain an electronic record  
34 that evidences ownership of the goods and in which a security interest in the goods may be  
35 noted. Such a record is a “certificate of title” if it is in fact maintained as an alternative to the  
36 issuance of a paper certificate of title, regardless of whether the certificate-of-title statute  
37 provides that the record is a certificate of title and even if the statute does not expressly state that  
38 the record is maintained instead of issuing a paper certificate.

39 \* \* \*

### 40 41 42 43 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

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

1 \* \* \*

2 (28) “Debtor” means:

3 (A) subject to paragraph (D), a person having an interest, other  
4 than a security interest or other lien, in the collateral, whether or not the person is an obligor;

5 (B) subject to paragraph (D), a seller of accounts, chattel paper,  
6 payment intangibles, or promissory notes; or

7 (C) subject to paragraph (D), a consignee; and

8 (D) if the collateral is property held in an express trust created or  
9 organized under the law of this State, [the trustee of the trust] [the trust].

10 **Reporter’s Note**

11  
12 The foregoing amendment to the definition of “debtor” has been proposed by The State  
13 Bar of Texas Business Law Section UCC Committee. The Texas Committee explains the  
14 proposal as follows:

15  
16 There are uncertainties in the uniform provisions when the collateral is property of an  
17 express trust. While §9.102(a)(28) defines “debtor” as “a person having *an* interest ... in  
18 the collateral” (emphasis added), §1.201(a)(27) defining “person” does not include a  
19 trustee but does include “an individual ..., business trust, estate, *trust* ...” (emphasis  
20 added). The debtor who has “an interest” in collateral under §9.102(a)(28) may be the  
21 trustee or the trust under a particular state’s law.

22  
23 State law does not necessarily provide clarification. For example, Texas Property Code  
24 §111.004(6) defines “interest” as “any interest, whether legal or equitable or both,  
25 present or future, vested or contingent, defeasible or indefeasible” for purposes of the  
26 Texas Trust Code. A trust is a bundle of interests beyond just the legal title noted in the  
27 Texas Trust Code definition.

28  
29 The Committee should consider promulgating statutory language such as the following,  
30 providing for clarification on who the debtor is in a trust situation (since other state law is  
31 looked to under the current uniform rule):

32  
33 [The proposed language appears above.]

34  
35 While it may seem more natural for the trustee to be the debtor since the trustee signs a  
36 security agreement, the simplest approach would be to name the trust as the debtor. This  
37 is not different from the decision of the original R9 Drafting Committee to locate  
38 registered organizations in the state where organized. “Calling it” in this fashion under

1 state law provides not only certainty but consistency with both §1.201(a)(27), which  
2 excludes trustees from the definition of “person,” and §9.503(a)(3)(A), which specifies  
3 that the name of the trust, if it has a name, is sufficient for the name of the debtor. Since  
4 prudent secured parties should currently be obtaining a copy of the trust’s organic  
5 documents under §9.503(a)(3)(A), to ascertain if a trust name is specified in the trust’s  
6 organic documents, it should not impose an additional burden on the secured party to  
7 determine what law is specified in those documents as governing the trust.  
8

9 State Bar of Texas Business Law Section UCC Committee (“Texas”) Comments on Joint  
10 Review Committee (“Committee”) Meeting, February 6-8, 2009, Draft Amendments (“Feb.  
11 2009 Draft”) to Uniform Commercial Code Revised Article 9 (“R9”) 2-3 (Jan. 26, 2009).  
12

13  
14 **SECTION 9-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY**

15 **SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES.**

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

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

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

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

29 \* \* \*

30 **Reporter’s Note**

31 The proposed amendment to the definition of “certificate of title” address the  
32

1 increasingly common practice of electronic notations of liens on goods subject to certificate-of-  
2 title statutes. Section 9-311(a) would be amended in light of the amendment to the definition.

3  
4  
5 **SECTION 9-104. CONTROL OF DEPOSIT ACCOUNT.**

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

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

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

11 (3) the secured party becomes the bank's customer with respect to the deposit  
12 account; or

13 (4) another person has control of the deposit account on behalf of the secured  
14 party, or, having previously acquired control of the deposit account, acknowledges that it has  
15 control on behalf of the secured party.

16 \* \* \*

17 **Official Comment**

18 \* \* \*

19  
20  
21 3. **Requirements for "Control."** This section derives from Section 8-106 of Revised  
22 Article 8, which defines "control" of securities and certain other investment property. Under  
23 subsection (a)(1), the bank with which the deposit account is maintained has control. The effect  
24 of this provision is to afford the bank automatic perfection. No other form of public notice is  
25 necessary; all actual and potential creditors of the debtor are always on notice that the bank with  
26 which the debtor's deposit account is maintained may assert a claim against the deposit account.

27  
28 **Example:** D maintains a deposit account with Bank A. To secure a loan from Banks X,  
29 Y, and Z, D creates a security interest in the deposit account in favor of Bank A, as agent  
30 for Banks X, Y, and Z. Because Bank A is a "secured party" as defined in Section 9-102,  
31 the security interest is perfected by control under subsection (a)(1).

32  
33 Under subsection (a)(2), a secured party may obtain control by obtaining the bank's  
34 authenticated agreement that it will comply with the secured party's instructions without further  
35 consent by the debtor. The analogous provision in Section 8-106 does not require that the

1 agreement be authenticated. An agreement to comply with the secured party's instructions  
2 suffices for "control" of a deposit account under this section even if the bank's agreement is  
3 subject to specified conditions, e.g., that the secured party's instructions are accompanied by a  
4 certification that the debtor is in default. (Of course, if the condition is the *debtor's* further  
5 consent, the statute explicitly provides that the agreement would *not* confer control.) See revised  
6 Section 8-106, Comment 7.

7  
8 Under subsection (a)(3), a secured party may obtain control by becoming the bank's  
9 "customer," as defined in Section 4-104. As the customer, the secured party would enjoy the  
10 right (but not necessarily the exclusive right) to withdraw funds from, or close, the deposit  
11 account. See Sections 4-401(a), 4-403(a).

12  
13 Under subsection (a)(4), a secured party may obtain control if another person has control  
14 and the person acknowledges that it has control on the secured party's behalf.

15 \* \* \*

16  
17  
18 **SECTION 9-327. PRIORITY OF SECURITY INTERESTS IN DEPOSIT**

19 **ACCOUNT.** The following rules govern priority among conflicting security interests in the  
20 same deposit account:

21 (1) A security interest held by a secured party having control of the deposit account  
22 under Section 9-104 has priority over a conflicting security interest held by a secured party that  
23 does not have control.

24 (2) Except as otherwise provided in paragraphs (3) and (4), security interests perfected  
25 by control under Section 9-314 rank according to priority in time of obtaining control. For  
26 purposes of this paragraph, if a secured party obtained control through another person under  
27 Section 9-104(a)(4), the time of obtaining control is the time the other person obtained control.

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

31 (4) A security interest perfected by control under Section 9-104(a)(3) has priority over a  
32 security interest held by the bank with which the deposit account is maintained.

1 **Reporter’s Note**

2  
3 New Section 9-104(a)(4) conforms “control” of a deposit account to “control” of a  
4 security entitlement in Section 8-106. The corresponding amendment to Section 9-327(2)  
5 explains when a secured party that has control under Section 9-104(a)(4) obtains control for  
6 purposes of the first-to-obtain-control priority rule.  
7

8  
9 **SECTION 9-106. CONTROL OF INVESTMENT PROPERTY.**

10 \* \* \*

11 (b) [**Control of commodity contract.**] A secured party has control of a  
12 commodity contract if:

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

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

19 (3) another person has control of the commodity contract on behalf of the  
20 secured party, or, having previously acquired control of the commodity contract, acknowledges  
21 that it has control on behalf of the secured party.

22 \* \* \*

23  
24 **SECTION 9-328. PRIORITY OF SECURITY INTERESTS IN INVESTMENT**

25 **PROPERTY.** The following rules govern priority among conflicting security interests in the  
26 same investment property:

27 \* \* \*

28 (2) Except as otherwise provided in paragraphs (3) and (4), conflicting security

1 interests held by secured parties each of which has control under Section 9-106 rank according to  
2 priority in time of:

3 \* \* \*

4 (C) if the collateral is a commodity contract carried with a commodity  
5 intermediary, ~~the satisfaction of the requirement for control specified in Section 9-106(b)(2) with~~  
6 ~~respect to commodity contracts carried or to be carried with the commodity intermediary and:~~

7 (i) if the secured party obtained control under Section 9-106(b)(2),  
8 the commodity intermediary's agreement to apply any value distributed on account of the  
9 commodity contract as directed by the secured party; or

10 (ii) if the secured party obtained control through another person  
11 under Section 9-106(b)(3), the time on which priority would be based under this paragraph if the  
12 other person were the secured party.

13 (3) A security interest held by a securities intermediary in a security entitlement  
14 or a securities account maintained with the securities intermediary has priority over a conflicting  
15 security interest held by another secured party.

16 (4) A security interest held by a commodity intermediary in a commodity  
17 contract or a commodity account maintained with the commodity intermediary has priority over  
18 a conflicting security interest held by another secured party.

19 \* \* \*

### 20 **Reporter's Note**

21  
22  
23 New Section 9-106(a)(3) conforms "control" of a commodity contract to "control" of a  
24 security entitlement in Section 8-106. The corresponding amendment to Section 9-328(2)(C)  
25 explains when a secured party that has control under Section 9-106(a)(3) obtains control for  
26 purposes of the first-in-time priority rule.  
27  
28  
29





1 Section 16 of the Uniform Electronic Transactions Act, sets forth the general test for control.  
2 Subsection (b) sets forth a safe harbor test that if satisfied, results in control under the general  
3 test in subsection (a).  
4

5 A secured party's control of electronic chattel paper (i) may substitute for an  
6 authenticated security agreement for purposes of attachment under Section 9-203, (ii) is a  
7 method of perfection under Section 9-314, and (iii) is a condition for obtaining special, non-  
8 temporal priority under Section 9-330. Because electronic chattel paper cannot be transferred,  
9 assigned, or possessed in the same manner as tangible chattel paper, a special definition of  
10 control is necessary. In descriptive terms, this section provides that control of electronic chattel  
11 paper is the functional equivalent of possession of "tangible chattel paper" (a term also defined  
12 in Section 9-102).  
13

14 **3. Development of Control Systems.** This Article leaves to the marketplace the  
15 development of systems and procedures, through a combination of suitable technologies and  
16 business practices, for dealing with control of electronic chattel paper in a commercial context.  
17 Systems that evolve for control of electronic chattel paper may or may not involve a third party  
18 custodian of the relevant records. As under UETA, a system must be shown to reliably establish  
19 that the secured party is the assignee of the chattel paper. Reliability is a high standard and  
20 encompasses the general principles of uniqueness, identifiability, and unalterability found in  
21 subsection (b) without setting forth strict guidelines as to how these principles must be achieved.  
22 However, the standards applied to determine whether a party is in control of electronic chattel  
23 paper should not be more stringent than the standards now applied to determine whether a party  
24 is in possession of tangible chattel paper. For example, just as a secured party does not lose  
25 possession of tangible chattel paper merely by virtue of the possibility that a person acting on its  
26 behalf could wrongfully redeliver the chattel paper to the debtor, so control of electronic chattel  
27 paper would not be defeated by the possibility that the secured party's interest could be  
28 subverted by the wrongful conduct of a person (such as a custodian) acting on its behalf.  
29

30 This section and the concept of control of electronic chattel paper are not based on the  
31 same concepts as are control of deposit accounts (Section 9-104), security entitlements, a type of  
32 investment property (Section 9-106), and letter-of-credit rights (Section 9-107). The rules for  
33 control of that collateral are based on existing market practices and legal and regulatory regimes  
34 for institutions such as banks and securities intermediaries. Analogous practices for electronic  
35 chattel paper are developing nonetheless. The flexible approach adopted by this section,  
36 moreover, should not impede the development of these practices and, eventually, legal and  
37 regulatory regimes, which may become analogous to those for, e.g., investment property.  
38

39 **34. "Authoritative Copy" of Electronic Chattel Paper.** One requirement for  
40 establishing control under subsection (b) is that a particular copy be an "authoritative copy."  
41 Although other copies may exist, they must be distinguished from the authoritative copy. This  
42 may be achieved, for example, through the methods of authentication that are used or by  
43 business practices involving the marking of any additional copies. When tangible chattel paper  
44 is converted to electronic chattel paper, in order to establish that a copy of the electronic chattel  
45 paper is the authoritative copy it may be necessary to show that the tangible chattel paper no  
46 longer exists or has been permanently marked to indicate that it is not the authoritative copy.  
47



1           2. The change from current Section 9-105 to the revised Section *ipso facto* may result in  
2 a secured party's achieving control of electronic chattel paper. In these circumstances, control  
3 would date from the effective date of the revision and would not relate back.  
4

5  
6           **SECTION 9-316. ~~CONTINUED PERFECTION OF SECURITY INTEREST~~**

7           **FOLLOWING EFFECT OF CHANGE IN GOVERNING LAW.**

8           \* \* \*

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

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

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

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

1 jurisdiction.

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

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

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

11                   \* \* \*

12           (b) [**Time of perfection: proceeds and supporting obligations.**] For the purposes of  
13 subsection (a)(1):

14           (1) the time of filing or perfection as to a security interest in collateral is also the  
15 time of filing or perfection as to a security interest in proceeds; ~~and~~

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

19           (3) subject to subsection (h), the time of filing or perfection as to a security  
20 interest in collateral which remains perfected under Section 9-316(h)(2) is the time the security  
21 interest becomes perfected under the law of the other jurisdiction.

22                   \* \* \*

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

1  
2  
3 **Reporter’s Note**

4 1. When a debtor changes its location, the law governing perfection generally changes  
5 also. See Section 9-301(1). Current Section 9-316 addresses security interests that are perfected  
6 (i.e., that have attached and as to which any required perfection step has been taken) before the  
7 debtor changes its location. It does not apply to security interests that have not attached before  
8 the debtor’s location changes. Suppose, for example, that Debtor is an individual who resides in  
9 Pennsylvania. Lender perfects a security interest in Debtor’s inventory by filing in  
10 Pennsylvania. Then, without Lender’s knowledge, Debtor’s principal residence is relocated to  
11 New Jersey. Under Section 9-316, Lender’s security interest in inventory on hand as of the  
12 relocation date remains perfected for four months thereafter (or, if earlier, until perfection would  
13 have ceased under Pennsylvania law). However, although Lender’s security interest attaches to  
14 inventory that Debtor acquires after relocating to New Jersey, the security interest is unperfected  
15 because Lender has not filed in New Jersey.

16 New Section 9-316(h) would change the result. In the example, Lender’s filing in  
17 Pennsylvania would be effective to perfect a security interest in inventory acquired by Debtor  
18 within the four months after Debtor relocates (assuming that the financing statement would not  
19 have become ineffective earlier). The security interest will remain continuously perfected if,  
20 before the expiration of the four-month period (and before the financing statement would have  
21 become ineffective), the security interest is perfected under the law of New Jersey. Otherwise,  
22 the security interest will become unperfected at the end of the four-month period (or, if earlier,  
23 when perfection would have ceased) and will be deemed never to have been perfected as against  
24 a purchaser for value.

25  
26 2. Under current law, a competing secured party generally can rely on the public record  
27 in New Jersey to determine its priority as to collateral acquired by Debtor post-relocation. This  
28 is because a filing against Debtor in another state would be ineffective to perfect a security  
29 interest in that collateral. Proposed Section 9-316(h) would make Lender’s pre-relocation filing  
30 in Pennsylvania effective against collateral acquired after the Debtor relocates to New Jersey.  
31 Under the normal rule in Section 9-322(a)(1), the priority of Lender’s security interest in that  
32 collateral would date from the time a filing covering the collateral was first made in  
33 Pennsylvania. Application of this rule in cases covered by proposed Section 9-316(h) would  
34 impose a new risk on a competing secured party. Accordingly, new Section 9-322(b)(3) would  
35 date Lender’s priority from the time it became perfected under the law of the other jurisdiction  
36 (New Jersey).

37  
38 Proposed Section 9-322(b)(3) carries with it its own difficulties. Suppose, for example,  
39 that both Lender and Bank file financing statements under Pennsylvania law while Debtor is  
40 located in Pennsylvania. Lender files first. Debtor then relocates to New Jersey. Both Lender  
41 and Bank file against Debtor in New Jersey within four-months after relocation, but Bank files  
42 first. If Section 9-322(b)(3) were to apply, Bank’s security interest—previously junior—would  
43 become senior. New Section 9-322(h) preserves Lender’s priority under these circumstances.

44  
45 3. Standing alone, new Section 9-316(h)(1) would impose on buyers, lessees, and  
46 licensees a risk that is analogous to the risk that the section would impose on secured parties that  
47 take an interest in collateral acquired after the debtor’s relocation. Paragraph (h)(3) would

1 protect these purchasers.  
2

3 4. Although new subsection (h) is likely to be most useful to creditors having a security  
4 interest in inventory and receivables, it would apply to all kinds of collateral.  
5

6 5. The addition of subsection (h) will require explanatory and other changes to the  
7 official comments. The revised comments will also explain the application of this subsection to  
8 entities that convert from one organizational form to another. They may also include a general  
9 statement to the effect that, when used in this section, “another jurisdiction” and “the other  
10 jurisdiction” mean the jurisdiction whose Section 9-316 is being applied.  
11

12  
13 **SECTION 9-316. ~~CONTINUED PERFECTION OF SECURITY INTEREST~~**

14 **FOLLOWING EFFECT OF CHANGE IN GOVERNING LAW.**

15 \* \* \*

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

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

25 (2) Subject to paragraph (3), a security interest that is perfected by the financing  
26 statement and which becomes perfected under the law of the other jurisdiction before the earlier  
27 of the expiration of the four-month period or the time the financing statement would have  
28 become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c)  
29 remains perfected thereafter. A security interest that is perfected by the financing statement but  
30 which does not become perfected under the law of the other jurisdiction before the earlier time

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

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

### 7 **Reporter's Note**

8  
9 1. New subsection (i) is similar to new subsection (h). Whereas the latter addresses a  
10 given debtor's change of location, the former addresses situations in which a successor to the  
11 debtor becomes bound as debtor by the original debtor's security agreement. See Section 9-  
12 203(d).

13  
14 Consider the difficulty faced by Lender under the facts of official comment 5 to Section  
15 9-316:

16  
17 Debtor is a Pennsylvania corporation. Debtor grants to Lender a security interest in  
18 Debtor's existing and after-acquired inventory. Lender perfects by filing in  
19 Pennsylvania. Debtor's shareholders decide to "reincorporate" in Delaware. They form  
20 a Delaware corporation (Newcorp) into which they merge Debtor. By virtue of the  
21 merger, Newcorp becomes bound by Debtor's security agreement. See Section 9-203.  
22 After the merger, Newcorp acquires inventory to which Lender's security interest  
23 attaches. Because Newcorp is located in Delaware, Delaware law governs perfection of a  
24 security interest in Newcorp's inventory. See Sections 9-301, 9-307.

25  
26 Delaware's current Section 9-316(a) applies to the pre-merger collateral that was  
27 transferred from Debtor to Newcorp, and in which Lender held a security interest perfected  
28 under Pennsylvania law. Under this section, Lender's security interest in the transferred  
29 collateral remains perfected for one year after the merger (assuming that perfection would not  
30 have ceased earlier under Pennsylvania law). Because Lender's financing statement was filed in  
31 Pennsylvania and not Delaware, current Section 9-316(a) would have no application to inventory  
32 acquired by Newcorp, a Delaware corporation, after the merger. For the same reason, Lender's  
33 security interest in Newcorp's post-merger inventory would be unperfected until Lender files  
34 against Newcorp in Delaware.

35  
36 Under new subsection (i), however, the financing statement filed in Pennsylvania would  
37 be effective to perfect a security interest that attaches to the post-merger collateral. The new  
38 subsection would eliminate the risk that a change in Debtor's location would result in security  
39 interests in post-relocation collateral being unperfected until Lender discovers the relocation and  
40 files in Delaware. The perfection afforded by the Pennsylvania financing statement would end  
41 four months after the merger (reincorporation) unless Lender perfects under Delaware law



1 within the four-month period (or, if earlier, before the financing statement would have become  
2 ineffective under Pennsylvania law).

3  
4 2. In many cases, an original debtor (Debtor, a Pennsylvania corporation) will merge  
5 into a corporation (Survivor, a Delaware corporation) that has been operating before the merger.  
6 In these cases, subsection (i) would affect Lender's security interest not only in inventory  
7 acquired by Survivor after the merger but also in inventory held by Survivor at the time of the  
8 merger. Where Lender files against Debtor's inventory in Pennsylvania before the merger,  
9 amended Section 9-316 would yield the following results (assuming that the financing statement  
10 would not have become ineffective under Pennsylvania law):

11  
12 a. *Transferred inventory.* Lender's perfected security interest in the inventory that  
13 Survivor acquired from Debtor would remain perfected for one year after the merger.  
14 See subsection (a). If Lender perfects under Delaware law within the year, then the  
15 security interest would remain perfected thereafter. See subsection (b).

16  
17 b. *Survivor's pre-merger inventory.* Lender's security interest in collateral that Survivor  
18 had on hand at the time of the merger would attach and become perfected when Survivor  
19 becomes a new debtor. It would remain perfected for four months after Survivor  
20 becomes a new debtor. If Lender perfects under Delaware law within the four-month  
21 period, then the security interest would remain perfected thereafter. See subsection (i).

22  
23 c. *Inventory acquired post-merger.* Lender's security interest in collateral that Survivor  
24 acquires within four months after Survivor becomes a new debtor would become  
25 perfected when Survivor acquires the collateral. If Lender perfects under Delaware law  
26 within the four-month period, then the security interest would remain perfected  
27 thereafter. See subsection (i).

28  
29 3. The cases described in Note 2 also may give rise to a "double-debtor" problem, in  
30 which Lender and Survivor's secured parties hold competing security interests in the same  
31 inventory. Section 9-326 contains the priority rules addressing this problem. They have been  
32 amended to take account of new subsection (i).

33  
34 4. Under current law, the security interest of a secured party in the position of Lender  
35 would be unperfected, and a buyer, lessee, or licensee normally would take free of it under  
36 Section 9-317. New subsection (i)(3) preserves this result.

37  
38 5. Although new subsection (i) is likely to be most useful to creditors having a security  
39 interest in inventory and receivables, it would apply to all kinds of collateral.

40  
41 6. The addition of subsection (i) will require explanatory and other changes to the  
42 official comments. The revised comments will also explain the application of this subsection to  
43 entities that convert from one organizational form to another.



1           Suppose instead that Survivor is a Delaware corporation and that SP-S perfected by filing  
2 in Delaware. As in the previous example, SP-D’s security interest would attach to inventory that  
3 Survivor had on hand at the time of the merger or acquired after the merger. Here, SP-D faces  
4 two problems: Not only does SP-D’s financing statement name Debtor and not Survivor, but it  
5 also is filed where Debtor is located (Pennsylvania) and not where Survivor is located  
6 (Delaware). Section 9-508 solves the first problem for SP-D, but not the second. Thus, until SP-  
7 D files in Delaware, SP-D’s security interest in inventory that Survivor had on hand at the time  
8 of the merger or acquired after the merger would be unperfected.

9  
10           New subsection (i) would address this second problem by making SP-D’s Pennsylvania  
11 filing effective with respect to inventory that Survivor had at the time of the merger and  
12 inventory that Survivor acquired within four months after the merger. To insure that the first-to-  
13 file-or-perfect rule subordinates a security interest like SP-D’s, Section 9-326 would be amended  
14 to subordinate a security interest that is perfected by a financing statement that is “effective  
15 solely under Section 9-508 or Sections 9-508 and 9-316(i)(1).”

16  
17  
18           **SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY**  
19 **INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.**

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

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

27           \* \* \*

28           (b) [**Time of perfection: proceeds and supporting obligations.**] For the purposes of  
29 subsection (a)(1):

30           (1) the time of filing or perfection as to a security interest in collateral is also the  
31 time of filing or perfection as to a security interest in proceeds; ~~and~~

32           (2) the time of filing or perfection as to a security interest in collateral supported

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

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

6 \* \* \*

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

### 9 **Reporter's Note**

10 Consider this example:

11  
12  
13 SP-D holds a security interest in the existing and after-acquired inventory of Debtor, a  
14 Pennsylvania corporation. In 2007 SP-D perfected its security interest by filing a  
15 financing statement against Debtor in Pennsylvania. SP-S holds a security interest in the  
16 existing and after-acquired inventory of Survivor, a Delaware corporation. In 2008 SP-S  
17 perfected its security interest by filing a financing statement against Survivor in  
18 Delaware. In 2009 Debtor merges into Survivor. Shortly after the merger, Survivor  
19 acquires additional inventory.

20  
21 SP-S's security interest would attach to the post-merger inventory and would be perfected by  
22 SP-S's filing in Delaware. SP-D's security interest also would attach to the post-merger  
23 inventory and, under new Section 9-316(i)(1), would be a perfected security interest until four  
24 months after the merger. Because SP-D's security interest would be perfected by a financing  
25 statement that is "effective solely under . . . Sections 9-508 and 9-316(i)(1)," Section 9-326(a)  
26 would subordinate SP-D's security interest to SP-S's.

27  
28 Now suppose that SP-D files an initial financing statement against Survivor in Delaware  
29 before the expiration of the four-month period. Under new Section 9-316(i)(2), SP-D's security  
30 interest in the inventory that Survivor acquired post-merger would remain perfected after the  
31 period expires. SP-D's Delaware filing should not, however, elevate the priority of SP-D's  
32 subordinate security interest. SP-S was the first to file against Survivor; Debtor never had an  
33 interest in the collateral in question, which Survivor acquired independently of the merger. But  
34 once SP-D files against Survivor in Delaware, SP-D's security interest in this collateral no  
35 longer would be perfected by a financing statement that is "effective solely under . . . Sections 9-  
36 508 and 9-316(i)" and so no longer would be covered by the subordination rule in Section 9-  
37 326(a).

38  
39 The amendments to Section 9-322(a) and (b) would preserve the subordination by dating



1 documents, instruments, and security certificates). To obtain priority, a buyer must both give  
2 value and receive delivery of the collateral without knowledge of the existing security interest  
3 and before perfection. Even if the buyer gave value without knowledge and before perfection,  
4 the buyer would take subject to the security interest if perfection occurred before physical  
5 delivery of the collateral to the buyer. Subsection (c) contains a similar rule with respect to  
6 lessees of goods. Note that a lessee of goods in ordinary course of business takes free of all  
7 security interests created by the lessor, even if perfected. See Section 9-321.

8  
9 \* \* \*

10  
11 The rule of subsection (b) obviously is not appropriate where the collateral consists of  
12 intangibles and there is no representative piece of paper whose physical delivery is the only or  
13 the customary method of transfer. Therefore, with respect to such intangibles (including  
14 accounts, electronic chattel paper, general intangibles, and investment property other than  
15 certificated securities), subsection (d) gives priority to any buyer who gives value without  
16 knowledge, and before perfection, of the security interest. A licensee of a general intangible  
17 takes free of an unperfected security interest in the general intangible under the same  
18 circumstances. Note that a licensee of a general intangible in ordinary course of business takes  
19 rights under a nonexclusive license free of security interests created by the licensor, even if  
20 perfected. See Section 9-321.

21  
22 \* \* \*

### 23 24 **Reporter's Note**

25  
26 1. The application of subsection (d) is expanded to cover buyers of all types of collateral  
27 that are not susceptible to possession. In all likelihood the amendment reflects the original  
28 intention of the Article 9 Drafting Committee.

29  
30 2. This draft adds the word “tangible” before “documents” to conform to the  
31 amendments to Article 9 that accompany Revised Article 7.

32  
33  
34 **SECTION 9-406. DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF**  
35 **ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS**  
36 **ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES,**  
37 **AND PROMISSORY NOTES INEFFECTIVE.**

38 \* \* \*

39 (d) [**Term restricting assignment generally ineffective.**] Except as otherwise provided  
40 in subsection (e) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an

1 agreement between an account debtor and an assignor or in a promissory note is ineffective to  
2 the extent that it:

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

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

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

14 \* \* \*

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

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

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

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

10 \* \* \*

### 11 **Reporter’s Note**

12  
13 Section 9-406(a) contains a broad override of contractual restrictions on assignability of  
14 receivables. Section 9-408(a) contains a similar, but narrower, override. The most significant  
15 difference between the two concerns whether an assignee may enforce the assigned receivable  
16 against the account debtor or other obligor, notwithstanding a provision in the underlying  
17 contract that purports to prevent an assignee from doing so.

18  
19 The draft addresses the allocation of transactions between the broader override in Section  
20 9-406(a) and the narrower override in Section 9-408(a). The distinction is most likely to matter  
21 where the collateral is the right to payment of a loan.

22  
23 Under current law, if the right to payment of the loan is evidenced by chattel paper, then  
24 a contractual restriction would not be effective to restrict the assignee’s right to enforce against  
25 the account debtor. If, however, the right to payment of the loan is evidenced by an instrument,  
26 or is a payment intangible, then a contractual restriction would not be effective to restrict the  
27 assignee’s right to enforce against the account debtor if the assignment is made for collateral  
28 purposes. If, however, the assignment is a sale of the payment intangible or promissory note,  
29 then Section 9-408(a) applies and the assignee’s right to enforce is limited by any contractual  
30 restriction. Whether current Section 9-406 or 9-408 applies to a foreclosure sale of the  
31 receivable by an assignee for collateral purposes is unclear. The proposed amendment would  
32 clarify that Section 9-406 applies and that, therefore, a buyer at a foreclosure sale would be free  
33 to enforce the account debtor’s obligation.

34  
35 Consider this example:

36  
37 Lender makes a loan to Borrower. The loan is not evidenced by chattel paper. The loan



1 agreement (or note) provides that Lender’s rights may not be assigned and, if Lender  
2 wrongfully assigns the rights, an assignee may not enforce Borrower’s obligation to pay.  
3 Lender assigns the right to payment (i.e., the payment intangible or instrument) to  
4 Assignee.  
5

6 If the assignment to Assignee is a sale, then Section 9-408(a) applies and the contractual  
7 restrictions are ineffective with respect to the creation, attachment, and perfection of  
8 Assignee’s security interest.  
9

10 If the assignment to Assignee is for security, the restriction would not be effective if  
11 Assignee itself sought to collect or if Assignee sold to a buyer at foreclosure (and,  
12 presumably, if the foreclosure buyer resold). However, the restriction would be effective  
13 against nonforeclosure buyers who did not take through a foreclosure buyer.  
14

15 Section 9-406 is clear that a contractual restriction would not be effective to restrict the  
16 assignee’s right *qua* assignee to enforce the account debtor’s obligation under Section 9-607.  
17 The proposed amendment would eliminate any doubt that the restriction would not be effective  
18 to restrict the assignee’s right to enforce if the assignee became the owner of the payment  
19 intangible or promissory note by accepting it in a “strict foreclosure” under Section 9-620.  
20  
21

22 **SECTION 9-513A. TERMINATION OF WRONGFULLY FILED RECORD;**

23 **REINSTATEMENT.**

24 (a) [**“Government employee.”**] In this section, “government employee” means:

25 (1) an employee or elected or appointed official of this State, the United  
26 States, or a governmental unit of this State or the United States; and

27 (2) a member of an authority, board, or commission established by this  
28 State, the United States, or a governmental unit of this State or the United States.

29 (b) [**Application of this section.**] This section applies only with respect to a  
30 filed financing statement that indicates all secured parties of record to be individuals, identifies  
31 as a debtor an individual who was a government employee at or before the time the financing  
32 statement was filed, and was filed by an individual not entitled to do so under Section 9-509(a).

33 If the financing statement indicates more than one debtor, the provisions of this section apply  
34 only with respect to those debtors who are individuals and were government employees at or

1 before the time the financing statement was filed.

2 (c) [Affidavit of wrongful filing.] A government employee identified as a  
3 debtor in a filed financing statement [to which this section applies] may file in the filing office a  
4 notarized affidavit, made under oath or penalty of perjury, in the form prescribed by the  
5 [Secretary of State], stating that the financing statement was filed by an individual not entitled to  
6 do so under Section 9-509(a). The [Secretary of State] shall adopt and, upon request, make  
7 available to a government employee a form of affidavit to be used under this subsection.

8 (d) [Termination statement by filing office.] If an affidavit is filed under  
9 subsection (c), the filing office shall promptly file a termination statement with respect to the  
10 financing statement. The termination statement must indicate that it was filed pursuant to this  
11 section.

12 (e) [No fee charged or refunded.] The filing office shall not charge a fee for the  
13 filing of an affidavit under subsection (c) or a termination statement under subsection (d). The  
14 filing office shall not return any fee paid for filing the financing statement to which the affidavit  
15 relates, whether or not the financing statement is reinstated under subsection (h).

16 (f) [Notice of termination statement.] On the same day that a filing office files  
17 a termination statement under subsection (d), it shall send to the secured party of record for the  
18 financing statement a notice advising the secured party of record that the termination statement  
19 has been filed. The notice shall be sent by certified mail, return receipt requested, to the address  
20 provided for the secured party in the financing statement.

21 (g) [Action for reinstatement.] An individual who believes in good faith that  
22 the individual was entitled to file the financing statement as to which a termination statement  
23 was filed under subsection (d) may file an action to reinstate the financing statement. The  
24 exclusive venue for an action shall be in the [circuit] court for the county where the filing office

1 in which the financing statement was filed is located or, if the government employee resides in  
2 this State, the county where the government employee resides. The action shall have priority on  
3 the court's calendar and shall proceed by expedited hearing.

4 (h) [Action for reinstatement successful.] If, in an action under subsection (g),  
5 the court determines that the financing statement should be reinstated, the secured party of  
6 record may provide a copy of the court's judgment or order to the filing office. If the filing  
7 office receives a copy within 30 days after the entry of the judgment or order, the filing office  
8 shall promptly file a record that identifies by its file number the initial financing statement to  
9 which the record relates and indicates that the financing statement has been reinstated.

10 (i) [Effect of reinstatement.] Except as otherwise provided in subsection (j),  
11 upon the filing of a record reinstating a financing statement under subsection (h), the  
12 effectiveness of the financing statement is retroactively reinstated and the financing statement  
13 shall be considered never to have been ineffective as against all persons and for all purposes. If  
14 the effectiveness of a financing statement that is reinstated would have lapsed between the time  
15 of the filing of the termination statement and the time of the filing of the record reinstating the  
16 financing statement, the secured party of record may file a continuation statement not later than  
17 30 days after the time of the filing of the record reinstating the financing statement. Upon the  
18 timely filing of a continuation statement, the effectiveness of the financing statement continues  
19 for a period of five years commencing on the day on which the financing statement would have  
20 become ineffective had no termination statement been filed by the filing office.

21 (j) [Exception to subsection (i).] A financing statement whose effectiveness is  
22 reinstated shall not be effective as against a person that purchased the collateral in good faith and  
23 for value between the time of the filing of the termination of the financing statement and the time  
24 of the filing of the record reinstating the financing statement.

1                   (k) [Liability for wrongful filing.] If, in an action under subsection (g), the  
2 court determines that the individual who filed the financing statement was not entitled to do so  
3 under Section 9-509(a), the government employee may recover from the individual the costs and  
4 expenses, including reasonable attorneys' fees, that the government employee incurred in the  
5 action. [This recovery is in addition to any recovery to which the government employee is  
6 entitled under Section 9-625.]

7                   **Reporter's Note**

8                   This section responds to those who think it desirable to provide an administrative remedy  
9 to deal with "bogus" financing statements. To preserve the integrity of the filing system, it is  
10 available only under specified circumstances, provides a right of action to an aggrieved secured  
11 party of record, and protects good faith purchasers for value.  
12

13                   If the Joint Review Committee adopts this approach, it may wish to consider whether an  
14 amendment to Section 9-510(a) would be necessary. Section 9-510 provides that a filed record  
15 is effective only to the extent that it was filed by a person that may file it under Section 9-509.  
16 Section 9-509 does not include records that would be authorized to be filed by the Secretary of  
17 State under this Section.  
18

19  
20                   **SECTION 9-515. DURATION AND EFFECTIVENESS OF FINANCING**  
21 **STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT.**

22                   \* \* \*

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

28                   \* \* \*

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

1 termination statement is filed.

2 \* \* \*

3 **Reporter's Note**

4 The amendment conforms subsection (f) to subsection (b).

5  
6  
7  
8 **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.**

9 (a) **[Sufficiency of debtor's name.]** A financing statement sufficiently provides the  
10 name of the debtor:

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

15 \* \* \*

16 (f) **[Name of registered organization.]** For purposes of subsection (a)(1), if the public  
17 organic record indicates more than one name of the debtor, "the name of the debtor indicated on  
18 the public organic record" means:

19 (1) if the public organic record is composed of a single record that states the name  
20 of the debtor, the name of the debtor which that record states to be the debtor's name;

21 (2) if the public organic record is composed of more than one record, the name of  
22 the debtor which is indicated on the most recently filed, issued, or enacted record that is intended  
23 to amend or restate the debtor's name; and

24 (3) if the most recently filed or issued record of a kind specified in paragraph (2)  
25 indicates more than one name of the debtor, the name of the debtor which that record states to be  
26 the debtor's name.

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

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

3                   \* \* \*

4                   (50) “Jurisdiction of organization”, with respect to a registered organization,  
5 means the jurisdiction under whose law the organization is formed or organized.

6                   \* \* \*

7                   (67A) “Public organic record” means:

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

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

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

22  
23                   \* \* \*

24                   (70) “Registered organization” means an organization formed or organized solely

1 under the law of a single State or the United States ~~and as to which the State or the United States~~  
2 ~~must maintain a public record showing the organization to have been organized by the filing of a~~  
3 ~~public organic record with, the issuance of a public organic record by, or the enactment of~~  
4 ~~legislation by the State or United States. The term includes a business trust that is formed or~~  
5 ~~organized under the law of a single State if a statute of the State governing business trusts~~  
6 ~~requires that the business trust's organic record be filed with the State.~~

7 \* \* \*

8 \* \* \*

### 9 **Reporter's Note**

10  
11 1. The amendments to Section 9-503 and the related amendments to Sections 9-102 are  
12 meant to designate more clearly the public record that is relevant to determining the name of a  
13 debtor that is a registered organization. The relevant public record is always a “public organic  
14 record.” In most cases, this will be a record that is “filed with a State or the United States.”  
15 However, the term also includes a charter that is “issued by a State or the United States.” Any  
16 other public record that the State creates, such as a certificate of good standing or an index of  
17 domestic corporations, would not be a “public organic record” and so would be irrelevant to the  
18 determination of the debtor's name under Section 9-503(a)(1).  
19

20 Section 9-503(f) covers two cases where the public organic record may indicate more  
21 than one name for the debtor. Under paragraph (1), the name that must be provided in the  
22 financing statement is the name that is indicated on the most recently filed public record that is  
23 intended to state, amend, or restate the debtor's name. If that record indicates more than one  
24 name of the debtor, the name that must be provided is the name that the record states to be the  
25 debtor's name.  
26

27 The references to the “public organic record” in Section 9-503(a) and “the most recently  
28 filed or issued record” in Section 9-503(f) are not meant to refer to any randomly filed or issued  
29 record. Rather, they are meant to refer to the public organic record filed or issued with respect to  
30 the debtor and most recently filed or issued record that constitutes part of that public organic  
31 record. The Joint Review Committee may wish to consider whether these phrases should be  
32 amplified in the text.  
33

34 2. The amendments to the definition of “registered organization” also are meant to  
35 clarify that the term includes an organization that is created without the need for a public record  
36 but that is “formed” only when a public filing has been made. For example, under Delaware  
37 law, a statutory trust is “created by a governing instrument,” Del. Code Ann. tit. 12, §  
38 3801(g)(1), but is “formed at the time of the filing of the initial certificate of trust in the office of  
39 the Secretary of State or at any later date or time specified in the certificate of trust.” Del. Code  
40 Ann. § 3810(a)(2). The definition presents alternative approaches to clarifying that a  
41 Massachusetts business trust is a registered organization. The Joint Review Committee may

1 wish to consider whether the approach taken should be extended to all organizations, not just  
2 statutory trusts.

3  
4 **Reporter’s Prefatory Note**  
5 **to Provisions Concerning the Name of an Individual Debtor**  
6

7 The Article 9 filing system was designed to balance the needs of both filers, who need  
8 comfort that they have filed against the debtor’s correct name, and searchers, who need comfort  
9 that a search of the public record will reveal any financing statements that have been filed  
10 against the debtor.

11  
12 Like Former Section 9-402(1), Section 9-503(a)(4) provides that, when the debtor is an  
13 individual, a financing statement is sufficient only if it provides the “name of the debtor.”  
14 Inasmuch as some individuals use variations of their name at various times—for example,  
15 sometimes using the full middle name and sometimes a middle initial—, this standard does not  
16 provide absolute certainty.

17  
18 American law provides each individual with nearly unlimited freedom to change his  
19 name. Unlike citizens of most other nations, citizens of the United States do not hold an official  
20 identity document, and so no single source for determining and verifying the debtor’s name is  
21 available. For these reasons, absolute certainty in concerning the name of an individual debtor  
22 seems impossible to achieve. Rather, the questions for the Joint Review Committee have been  
23 whether more certainty than is currently available is needed and, if it is, how much certainty can  
24 Article 9 provide and at what cost.

25  
26 Whether the existing level of certainty is sufficiently great that a statutory change is  
27 warranted has been the subject of some dispute. Many believe that it is not. The majority of  
28 reported cases in which a financing statement was held to be insufficient because of an error in  
29 the debtor’s name concern entity debtors, not individuals. Although some reported cases have  
30 held that filings against individual debtors were insufficient because they did not provide the  
31 correct name for the debtor, the financing statements typically were insufficient because they  
32 contained a typographical error or provided the debtor’s nickname rather than a “real” name, and  
33 not because the secured party chose the “wrong” name from among those appearing on  
34 documents disclosed through the exercise of due diligence. Indeed, no reported case has found  
35 that the name appearing on the debtor’s driver’s license is insufficient.

36  
37 The possibility that more than one name may satisfy the statutory requirement (e.g.,  
38 Franklin Delanao Roosevelt and Franklin D. Roosevelt) may require searchers to search under  
39 more than one name. However, the advent of on-line searching has significantly reduced the  
40 delay and cost of searching under more than one of the likely names and increased the ease of  
41 making multiple searches. Likewise, the burden of filing under more than one name has become  
42 quite small, inasmuch as filing is done electronically and most states charge a very low fee, or no  
43 fee at all, for adding an additional debtor name to a filing.

44  
45 Others believe that amendments to Article 9 are needed, although there is no clear  
46 agreement as to exactly what those amendments should contain. In response to their concerns,  
47 three different approaches towards clarifying what name or names are sufficient were developed.



1           These approaches are:  
2

3           (A) to amend Article 9 to require that a financing statement provide the name for the  
4 debtor that appears on a driver’s license or other specified document (the “only if” approach);  
5

6           (B) to retain the current “name of the debtor” requirement but amend Article 9 to provide  
7 a “safe harbor” for satisfying this requirement (the “safe harbor” approach); and  
8

9           (C) to amend Article 9 to create two classes of security interests—one as to which a  
10 financing statement provides the name that appears on a driver’s license or other specified  
11 document filing and another as to which a financing statement provides the name of the debtor  
12 but not the name on the specified document, and to provide that a security interest in the latter  
13 class generally does not have priority over competing secured parties, buyers, lessees, and  
14 licensees (the “priority” approach). The members of a task force of the American Bankers  
15 Association tend to favor this approach.  
16

17           The Reporter prepared drafts of sets of provisions that would implement each of these  
18 approaches. This draft includes one version of Alternatives A and C (the “only if” and “priority”  
19 approaches) and two versions of Alternative B (the “safe harbor” approach), one in which the  
20 safe harbor is a driver’s license or other specified document, and the other in which the safe  
21 harbor is a particular form of the debtor’s name.  
22

23           Alternatives A and B would affect only the rules concerning the content of a financing  
24 statement. The nonuniformity that would result if different States made different choices from  
25 among (i) keeping the current text of Section 9-503, (ii) adopting Alternative A, and (iii)  
26 adopting Alternative B appears to be manageable. However, Alternative C includes priority  
27 rules. If some States were to adopt Alternative C and others did not, the resulting nonuniformity  
28 would create significant problems, discussed more fully in the Reporter’s Note accompanying  
29 Alternative C.  
30

31           Even those who are not inclined to change current law appear to be open to the  
32 possibility of refining it. For example, Article 9 might be amended to provide that a financing  
33 statement is not seriously misleading if it contains an error in the debtor’s middle name, as long  
34 as the name it provides includes the correct middle initial. Or, it might be amended to provide  
35 that a financing statement is not seriously misleading if omits the debtor’s middle name  
36 altogether. In effect, this minimalist approach would be a fourth alternative to leaving the  
37 current text unchanged. The nonuniformity that would result if different States made different  
38 choices as between this approach and the current text of Section 9-503 appears to be  
39 manageable.  
40

41           Discussion at the Joint Review Committee has acknowledged the possibility of taking  
42 such “minimalist” approach. Perhaps because minimalist provisions are easy to imagine without  
43 seeing them in print, especially when compared with the three other approaches, it has not  
44 appeared in the draft to date.  
45

46           Adoption of any of the alternatives under discussion would change current law. A  
47 financing statement that is effective under only under Section 9-503 as amended and is filed

1 before the section’s effective date should take effect on the effective date, which would be the  
2 “time of filing” for purposes of Section 9-322(a)(1). Additional text (i.e., transition rules) will  
3 be necessary for implementation. The complexity of this text is likely to vary with the  
4 complexity of the approach adopted.  
5

6  
7 *[Alternative A: Name for Individual Debtor—“Only If” Approach]*  
8

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

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

12 \* \* \*

13 (3) \* \* \*

14 \* \* \*

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

17 (4) subject to subsection (g), if the debtor is an individual:

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

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

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

1                   (D) as to whom none of the preceding subparagraphs applies, only if it  
2 provides the surname, first given name, and first initial of the second given name, if any, of the  
3 individual; and

4                   (4)(5) in other cases:

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

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

9                   \* \* \*

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

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

16                  \* \* \*

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

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

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

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

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

5                           (A) the [driver's license] that indicates the name appears on its face to  
6 expire and the name that, immediately upon the expiration, would be sufficient under Section 9-  
7 503(a)(4) is different from the name provided; or

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

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

12                           (A) the [identification card] that indicates the name appears on its face to  
13 expire and the name that, immediately upon the expiration, would be sufficient under Section 9-  
14 503(a)(4) is different from the name provided; or

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

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

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

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

1           **SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.**

2           \* \* \*

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

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

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

12                   (1) in the case of a change under Section 9-507(d)(1)(A), 9-507(d)(2)(A), or 9-  
13 507(d)(3)(A), the name of the debtor that would be sufficient under Section 9-503(a)(4)  
14 immediately after the apparent expiration; and

15                   (2) in the case of a change under Section 9-507(d)(1)(B), 9-507(d)(2)(B), or 9-  
16 507(d)(3)(B), the name of the debtor indicated on the [driver’s license], [identification card], or  
17 passport, as the case may be, that indicates a name different from the name provided on the  
18 financing statement.

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

20                                   **Reporter’s Note**

21  
22           1. Alternative A uses a cascade, or waterfall, to determine the name of an individual  
23 debtor which is sufficient for a financing statement. Although the particular steps in the cascade  
24 remain under discussion, the three steps under the draft are the debtor’s driver’s license,  
25 identification card, and U.S. passport, in that order. Because States use different terms for the  
26 driver’s licenses and identification cards they issue, the words “driver’s license” and  
27 “identification card” appear in brackets. If a debtor has been issued more than one identity  
28 document (i.e., license, identification card, or passport) described in the applicable paragraph of

1 Section 9-503(a)(4), the document that was issued most recently would be the one that indicates  
2 the debtor's name for purposes of that paragraph.  
3

4 The last step in the cascade (draft Section 9-503(a)(4)(D)) is based upon the approach  
5 taken by the filing-office regulations of some Canadian provinces. It is independent from the  
6 remainder of Alternative A and can be deleted or revised without affecting the remaining  
7 provisions. If the Joint Review Committee wishes to retain this approach, it may wish to  
8 consider whether paragraph (D) is too limiting. For example, should it be expanded to include  
9 debtors whose names do not include both a surname and a first given name? Should a special  
10 rule be provided for debtors whose names include both a matronymic and patronymic, e.g.,  
11 Vicente Fox Quesada (the former President of Mexico)?  
12

13 2. The draft refers to a license or ID card issued by "this State." Perfection of a security  
14 interest by filing is determined by the law of the jurisdiction in which the debtor is located. See  
15 Section 9-301(1). A debtor who is an individual is located at the individual's principal  
16 residence. Thus, a given State's Section 9-503 will apply during any period when the debtor  
17 maintains his principal residence in that State. Consider the following example:  
18

19 Debtor, who resides in Illinois, grants a security interest to SP in certain business  
20 equipment. SP files a financing statement with the Illinois filing office. The financing  
21 statement provides the name appearing on Debtor's Illinois driver's license ("Joseph  
22 Allan Jones"). Illinois' Section 9-503(a)(4) (Alternative A) or 9-503(g) (Alternative B)  
23 would make this filing sufficient to satisfy subsection (a)(4), even though Debtor's  
24 correct middle name is Alan, not Allan. As long as Illinois remains Debtor's principal  
25 residence, Debtor's acquisition of a driver's license or ID card from another State would  
26 not affect the effectiveness of the Illinois filing.  
27

28 If the debtor relocates by changing his principal residence, perfection will be governed  
29 by the law of the debtor's new location. As a consequence of the application of that State's  
30 Section 9-316, a security interest that is perfected by filing under the law of the debtor's former  
31 location will remain perfected for four months after the relocation, and thereafter if the secured  
32 party perfects under the law of the debtor's new location. Consider the following example:  
33

34 Debtor, who resides in Illinois, grants a security interest to SP in certain business  
35 equipment. SP files a financing statement in Illinois that provides a name that is  
36 sufficient under Illinois' Section 9-503(a)(4) (Alternative A) or 9-503(g) (Alternative B).  
37 On January 1, Debtor relocates to Indiana. Upon the relocation, the governing law  
38 changes from the law of Illinois to the law of Indiana. However, under Indiana's Section  
39 9-316, a security interest perfected by the Illinois filing remains perfected for four  
40 months, i.e., through the end of April. If SP does not file in Indiana before the four-  
41 month period expires, then the security interest will become unperfected and will be  
42 deemed never to have been perfected as against a purchaser of the collateral for value.  
43 See Indiana's Section 9-316(b).  
44

45 In the example, the name on Debtor's Illinois driver's license would be irrelevant for  
46 purposes of Indiana's Section 9-503(a)(4) (Alternative A) or 9-503(g) (Alternative B), inasmuch  
47 as it was not issued by "this State," i.e., Indiana. Of course, a financing statement providing that

1 name might be effective under Section 9-506 (i.e., it might not be seriously misleading) and,  
2 under Alternative B, it might satisfy Indiana’s Section 9-503(a)(4) (i.e., it might be the  
3 individual name of the debtor).  
4

5 3. Draft Section 9-507(d) specifies two events that would constitute a change of the  
6 debtor’s name. First, an individual debtor would change his name upon the apparent expiration  
7 of the identity document indicating the name provided in the financing statement, if,  
8 immediately following the apparent expiration, the debtor’s name under Section 9-503(a)(4) is  
9 different from the name provided. Second, an individual debtor would change his name when a  
10 new identity document is issued that is on a higher step than, or superseding, the one indicating  
11 the name provided in the financing statement, if the new document indicates a name different  
12 from the one provided on the financing statement. An individual whose name is determined  
13 under Section 9-503(a)(4)(D) would change his name as under current law.  
14

15 Even if the debtor’s name changes, the filed financing statement does not become  
16 seriously misleading if it can be found by searching under the debtor’s “correct” name, using the  
17 filing office’s standard search logic. Draft Section 9-506(e) explains what is meant by the  
18 debtor’s “correct name” when the debtor’s name changes under Section 9-507(d). If the name  
19 change results from the expiration of the identity document, the correct name is the name that  
20 Section 9-503(a)(4) would yield after the expiration. If the name change results from the  
21 issuance of a new identity document, the correct name is the name that is indicated on the new  
22 document (which, of course, is the name that Section 9-503(a)(4) would yield after the issuance  
23 of the new document).  
24

25 4. To satisfy Section 9-503(a)(4), the name provided on the financing statement must be  
26 the same as the name indicated on the license. For example, a filing against “Joseph A. Jones”  
27 or “Joseph Jones” would not satisfy either of those sections if Jones’s driver’s license shows his  
28 name to be “Joseph Allan Jones.” Determining whether the name provided on the financing  
29 statement is the same as the name indicated on the license must not be done mindlessly. For  
30 example, the order in which the components of an individual’s name appear on a driver’s license  
31 differs among the States. Some States, such as Illinois, put the individual’s “last name” (as the  
32 term is used on the financing statement form in Section 9-521) last, e.g., “Joseph Allan Jones.”  
33 But even where the driver’s license puts the individual’s “last name” first, the driver’s license  
34 may indicate that the name appearing first is the debtor’s “last name” for the purpose of the  
35 financing statement. This would be the case, for example, with a driver’s license on which the  
36 debtor’s name appears as “Jones, Joseph Allan.”  
37

38 5. Still to be decided by the Joint Review Committee are whether, and, if so, how to deal  
39 with the situations in which the filing office refuses to accept a financing statement because it  
40 cannot index the name specified by Section 9-503(a)(4) (e.g., because its character set does not  
41 include a character appearing in the identity document and provided in the name), refuses to  
42 allow searches under the name specified by Section 9-503(a)(4), or indexes the financing  
43 statement providing the name specified by Section 9-503(a)(4) under a name other than the name  
44 provided (e.g., by truncating the name) so that the financing statement cannot be found by a  
45 search under the name specified.  
46

47 6. If the debtor is a trust whose organic documents do not specify a name for the trust,

1 Section 9-503(a)(3) requires a financing statement to provide the name of an individual as  
2 debtor. If the draft’s “driver’s license/identification card” approach is acceptable, the Joint  
3 Review Committee should consider whether the same approach should be taken with respect to  
4 the name of an individual shown as debtor under Section 9-503(a)(3). Any such expansion  
5 would likely require additional changes to the filing provisions.  
6

7 Regardless of the approach it decides to take towards specifying the name of an  
8 individual debtor, the Joint Review Committee may wish to consider whether to clarify that,  
9 where the debtor is not an individual but the financing statement must provide the name of an  
10 individual as debtor, the financing statement must provide the name in the field designated for  
11 the name of an individual debtor.  
12

13  
14 *[Alternative B: Name for Individual Debtor— “Safe Harbor” Approach]*  
15 *[Alternative B1—Name on official document]*  
16

17  
18 **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.**

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

21 \* \* \*

22 (4) in other cases:

23 (A) except as otherwise provided in subsection (g), if the debtor has a  
24 name, only if it provides the individual or organizational name of the debtor; and

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

27 \* \* \*

28 (g) **[Exception for individual debtor’s name.]** Subject to subsection (h), a financing  
29 statement that does not provide the individual name of the debtor nevertheless does sufficiently  
30 provide the name of a debtor who is an individual if it provides the name of the individual which  
31 is indicated on a [driver’s license] or [identification card] that was issued to the individual by  
32 this State, if at the time the financing statement is filed the [driver’s license] or [identification



1 card] appears on its face not to have expired.

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

5  
6 **SECTION 9-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF**  
7 **FINANCING STATEMENT.**

8 \* \* \*

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

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

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

17 (d) **[Name sufficient solely under Section 9-503(g).]** An individual debtor changes the  
18 debtor's name for purposes of subsection (c) if, after the filing of a financing statement that  
19 provides a name that is sufficient solely under Section 9-503(g):

20 (1) the [driver's license] or [identification card] that indicates the name appears  
21 on its face to expire and the name that, immediately upon the expiration, would be sufficient  
22 under Section 9-503(a)(4) is different from the name provided; or

23 (2) this State issues to the debtor a [driver's license] or [identification card] that  
24 indicates a name different from the name provided and from the name that, immediately upon

1 the issuance, would be sufficient under Section 9-503(a)(4).

2  
3 **SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.**

4 \* \* \*

5 (b) [**Financing statement seriously misleading.**] Except as otherwise provided in  
6 subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in  
7 accordance with Section 9-503(a) or (g) is seriously misleading.

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

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

15 (e) [**Individual “debtor’s correct name.”**] If a debtor who is an individual changes the  
16 debtor’s name under Section 9-507(d), the “debtor’s correct name” in subsection (c) means the  
17 name of the debtor which, immediately after the change, would be sufficient under Section 9-  
18 503(a)(4) or (g).

19 *[End of Alternative B1]*

20  
21 *[Alternative B2—Form of Name]*

22  
23 **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.**

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

1 \* \* \*

2 (4) in other cases:

3 (A) except as otherwise provided in subsection (g), if the debtor has a  
4 name, only if it provides the individual or organizational name of the debtor; and

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

7 \* \* \*

8 (g) **[Exception for individual debtor's name.]** A financing statement that does not  
9 provide the individual name of the debtor nevertheless does sufficiently provide the name of a  
10 debtor who is an individual if it provides the surname, first given name, and first initial of the  
11 second given name, if any, of the individual.

12 *[End of Alternative B: "Safe Harbor" Approach]*

13 **Reporter's Note**

14  
15  
16 1. Under Alternative B, a financing statement providing the name on the debtor's  
17 debtor's driver's license or identification card would be sufficient, if the license or card appears  
18 on its face not to have expired. See Section 9-503(g). However, a financing statement that  
19 provides the debtor's individual name would also be sufficient, even if that name does not  
20 appear on the license or card. See Section 9-503(a)(4). If the State of the debtor's principal  
21 residence ("this State") has issued more than one such document, the name that is sufficient is  
22 the one indicated on the most recent document. See Section 9-503(h).

23  
24 2. Draft Section 9-507(d) specifies two events that would constitute a change of the  
25 debtor's name. First, an individual debtor would change his name upon the apparent expiration  
26 of the identity document indicating the name provided in the financing statement, if,  
27 immediately following the apparent expiration, the debtor's name under Section 9-503(a)(4) is  
28 different from the name provided. Second, an individual debtor would change his name when  
29 the State of the debtor's principal residence issues a license or card that indicates a name  
30 different from the one provided on the financing statement. An individual whose name is  
31 determined under Section 9-503(a)(4) would change his name as under current law.

32  
33 Even if the debtor's name changes, the filed financing statement does not become  
34 seriously misleading if it can be found by searching under the debtor's "correct" name, using the  
35 filing office's standard search logic. Draft Section 9-506(e) explains what is meant by the  
36 debtor's "correct name" when the debtor's name changes under Section 9-507(d): The name that

1 Section 9-503(a)(4) or (g) would yield immediately after the debtor’s name changes.

2  
3 3. The rule in Section 9-503(g) has been drafted as an exception to the rule in Section 9-  
4 503(a)(4). The Joint Review Committee may wish to consider whether the rule should appear  
5 instead as an alternative.

6  
7  
8 *[Alternative C: Name for Individual Debtor—“Priority Approach”]*  
9

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

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

12 \* \* \*

13 (46A) “High-priority filing” means the filing of a financing statement providing  
14 the name of the debtor that is sufficient under Section 9-503(a)(4).

15 \* \* \*

16 (52A) “Low-priority filing” means the filing of a financing statement providing a  
17 name of the debtor that is insufficient under Section 9-503(a)(4) but sufficient under Section 9-  
18 503(h).

19 \* \* \*

20 \* \* \*

21  
22 **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.**

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

25 \* \* \*

26 (3) \* \* \*

27 \* \* \*

28 (B) indicates, in the debtor’s name or otherwise, that the debtor is a trust

1 or is a trustee acting with respect to property held in trust; ~~and~~

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

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

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

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

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

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

22 ~~(4)~~(5) in other cases:

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

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

3 \* \* \*

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

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

12  
13 **SECTION 9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE**  
14 **OF SECURITY INTEREST OR AGRICULTURAL LIEN.**

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

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

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

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

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

23 (b) **[Buyers that receive delivery.]** Except as otherwise provided in subsection (e), a  
24 buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a

1 security certificate takes free of a security interest or agricultural lien if the buyer gives value  
2 and receives delivery of the collateral without knowledge of the security interest or agricultural  
3 lien and before it is perfected by a method other than a low-priority filing.

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

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

13 (e) **[Purchase-money security interest.]** Except as otherwise provided in Sections  
14 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money  
15 security interest before or within 20 days after the debtor receives delivery of the collateral, the  
16 security interest takes priority over:

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

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

22  
23 **SECTION 9-320. BUYER OF GOODS.**

24 \* \* \*

1 (b) **[Buyer of consumer goods.]** Except as otherwise provided in subsection (e), a  
2 buyer of goods from a person who used or bought the goods for use primarily for personal,  
3 family, or household purposes takes free of a security interest, even if perfected, if the buyer  
4 buys:

5 (1) without knowledge of the security interest;

6 (2) for value;

7 (3) primarily for the buyer's personal, family, or household purposes; and

8 (4) before ~~the filing of a financing statement a high-priority filing~~ covering the  
9 goods is made.

10 \* \* \*

11  
12 **SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY**  
13 **INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.**

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

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

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



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

3 \* \* \*

4  
5 **SECTION 9-324. PRIORITY OF PURCHASE-MONEY SECURITY INTERESTS.**

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

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

20 (1) the purchase-money security interest is perfected when the debtor receives  
21 possession of the inventory;

22 (2) the purchase-money secured party sends an authenticated notification to the  
23 holder of the conflicting security interest;

24 (3) the holder of the conflicting security interest receives the notification within

1 five years before the debtor receives possession of the inventory; and

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

5 (c) **[Holders of conflicting inventory security interests to be notified.]** Subsections  
6 (b)(2) through (4) apply only if the holder of the conflicting security interest had filed a  
7 financing statement covering the same types of inventory:

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

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

12 (d) **[Livestock purchase-money priority.]** Subject to subsection (e) and except as  
13 otherwise provided in ~~subsection~~ subsections (g) and (h), a perfected purchase-money security  
14 interest in livestock that are farm products has priority over a conflicting security interest in the  
15 same livestock, and, except as otherwise provided in Section 9-327, a perfected security interest  
16 in their identifiable proceeds and identifiable products in their unmanufactured states also has  
17 priority, if:

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

20 (2) the purchase-money secured party sends an authenticated notification to the  
21 holder of the conflicting security interest;

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

24 (4) the notification states that the person sending the notification has or expects to

1 acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

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

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

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

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

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

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

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

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

1 Section 9-309.

2  
3 **SECTION 9-318. NO INTEREST RETAINED IN RIGHT TO PAYMENT THAT**  
4 **IS SOLD; RIGHTS AND TITLE OF SELLER OF ACCOUNT OR CHATTEL PAPER**  
5 **WITH RESPECT TO CREDITORS AND PURCHASERS.**

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

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

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

19  
20  
21 **SECTION 9-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF**  
22 **FINANCING STATEMENT.**

23 \* \* \*

24 (c) **[Change in debtor's name.]** If a debtor so changes its name that a filed financing

1 statement becomes seriously misleading under Section 9-506:

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

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

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

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

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

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

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

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

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

24 (3) after the filing of a financing statement that provides a name that is sufficient

1 under Section 9-503(a)(4)(C):

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

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

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

10 (A) the passport that indicates the name appears on its face to expire and  
11 the name that, immediately upon the apparent expiration, would be sufficient under Section 9-  
12 503(a)(4) is different from the name provided; or

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

16  
17 **SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.**

18 \* \* \*

19 (b) **[Financing statement seriously misleading.]** Except as otherwise provided in  
20 subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in  
21 accordance with Section 9-503(a) or (h) is seriously misleading.

22 (c) **[Financing statement not seriously misleading.]** If a search of the records of the  
23 filing office under the debtor's correct name, using the filing office's standard search logic, if  
24 any, would disclose a financing statement that fails sufficiently to provide the name of the debtor

1 in accordance with Section 9-503(a) or (h), the name provided does not make the financing  
2 statement seriously misleading.

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

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

8 (1) in the case of a change under Section 9-507(d)(1)(A), 9-507(d)(2)(A), 9-  
9 507(d)(3)(A), or 9-507(d)(4)(A), the name of the debtor that would be sufficient under Section  
10 9-503(a)(4) immediately after the apparent expiration; and

11 (2) in the case of a change under Section 9-507(d)(1)(B), 9-507(d)(2)(B), 9-  
12 507(d)(3)(B), or 9-507(d)(4)(B), the name of the debtor indicated on the [driver’s license],  
13 [identification card], or passport, as the case may be, that indicates a name different from the  
14 name provided on the financing statement.

15  
16 **SECTION 9-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL.**

17 \* \* \*

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

21 (c) [**Persons to be notified.**] To comply with subsection (b), the secured party shall  
22 send an authenticated notification of disposition to:

23 (1) the debtor;

24 (2) any secondary obligor; and

1 (3) if the collateral is other than consumer goods:

2 (A) any other person from which the secured party has received, before  
3 the notification date, an authenticated notification of a claim of an interest in the collateral;

4 (B) any other secured party or lienholder that, 10 days before the  
5 notification date, held a security interest in or other lien on the collateral perfected by the filing  
6 of a financing statement that:

7 (i) identified the collateral;

8 (ii) was indexed under the debtor's name as of that date; and

9 (iii) was filed in the office in which to file a financing statement  
10 against the debtor covering the collateral as of that date; and

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

14 \* \* \*

15 (e) [**Compliance with subsection (c)(3)(B).**] A secured party complies with the  
16 requirement for notification prescribed by subsection (c)(3)(B) if:

17 (1) not later than 20 days or earlier than 30 days before the notification date, the  
18 secured party requests, in a commercially reasonable manner, information concerning financing  
19 statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

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

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

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



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

3  
4           **SECTION 9-621. NOTIFICATION OF PROPOSAL TO ACCEPT**  
5 **COLLATERAL.**

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

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

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

14                           (A) identified the collateral;

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

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

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

21           \* \* \*

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

1 **Reporter’s Note**

2  
3 The amendments to Sections 9-611 and 9-621 make clear that an enforcing secured party  
4 need not give notice to the holder of a security interest perfected by a low-priority filing unless  
5 the enforcing party has received an authenticated notification from the holder.  
6

7 *[End of Alternative C: “Priority Approach”]*

8 **Reporter’s Note**

9  
10 **1. Classes of Security Interests Perfected by Filing.** Alternative C divides security  
11 interests perfected by filing into two classes. A financing statement that provides the name  
12 determined under the cascade, or waterfall, in Section 9-503(a)(4) would afford to the secured  
13 party all the benefits that current law affords to a security interest perfected by filing. The draft  
14 uses the term “high-priority filing” for a filing of this kind.  
15

16 Section 9-503(h) would give effect to a financing statement that does not provide the  
17 name specified in subsection (a)(4) but instead provides the debtor’s individual name. The draft  
18 uses the term “low-priority filing” for a filing of this kind. Although a low-priority financing  
19 would be sufficient to perfect a security interest, a security interest perfected by a low-priority  
20 filing would be subordinate to the rights of most third parties other than a lien creditor and a  
21 competing security interest perfected by a low-priority filing.  
22

23 A name that would be disclosed by a search described in Section 9-506(b) under the  
24 name specified in subsection (a)(4) would be “sufficient under Section 9-503(a)(4)” within the  
25 meaning of the definition of “high-priority filing” and would “sufficiently provide the name of a  
26 debtor who is an individual pursuant to subsection (a)(4)” within the meaning of Section 9-  
27 503(h). The Joint Review Committee may wish to consider whether this point is clear from the  
28 text.  
29

30 The fact that the steps of the cascade in Alternative C’s version of Section 9-503(a)(4)  
31 differ from those of the cascade in Alternative A results from the fact that the particular steps in  
32 the cascade remain under discussion. The discussion of issues concerning the cascade that  
33 appears in Reporter’s Notes 1, 2, 4, and 5 to Alternative A are relevant to the cascade in  
34 Alternative C.  
35

36 **2. Competing Security Interests under Section 9-322.** As between competing security  
37 interests perfected by filing, the amendment to subsection (a)(1) states the basic rule of the  
38 “priority” approach, i.e., that a security interest perfected by a low-priority filing is subordinate  
39 to a security interest perfected by a high-priority filing. As drafted, the first-to-file-or-perfect  
40 rule would continue to apply as between competing low-priority filings and as between  
41 competing security interests, one of which is perfected by filing and the other of which is  
42 perfected by another method (subject, of course, to the “superpriority” rules elsewhere in part 3).  
43

44 The amendment to subsection (a)(1) can result in a circular priority. Suppose, for  
45 example, that after SP-1 perfects by a low-priority filing, SP-2 perfects by taking possession.

1 Under the first-to-file-or-perfect rule, SP-1’s perfected security interest has priority over SP-2’s.  
2 Thereafter, SP-3 perfects by a high-priority filing. Under the first-to-file-or-perfect rule, SP-2’s  
3 security interest is senior to SP-3’s; however, under the new exception in subsection (a)(1), SP-  
4 3’s security interest would be senior to SP-1’s, which is senior to SP-2’s, which is senior to SP-  
5 3’s, etc. One way in which to prevent this circular priority from arising would be to provide that  
6 a security interest perfected by a low-priority filing is subordinate to a security interest perfected  
7 by possession.  
8

9 **3. Purchase-money Priority.** New Section 9-324(h) would implement the “priority”  
10 rule as it affects purchase-money security interests. This subsection does not affirmatively state  
11 that a security interest perfected by a high-priority filing is senior to a security interest perfected  
12 by a low-priority filing (which would be the case under the general rule in amended Section 9-  
13 322(a)(1)). Rather, subsection (h) prevents Section 9-324 from giving a “superpriority” to a  
14 PMSI perfected by a low-priority filing as against a security interest perfected by a high-priority  
15 filing. Under these circumstances, subsection (h) disappplies the PMSI “superpriority” rules with  
16 respect to both the purchase-money collateral itself and the proceeds of the purchase-money  
17 collateral.  
18

19 Current Section 9-324(g) deals with the relatively unusual case in which a debtor creates  
20 two purchase-money security interests in the same collateral and both security interests qualify  
21 for special priority under one of the other subsections. It gives priority to a seller-retained PMSI  
22 over a PMSI that secures an enabling loan. As amended, it would be subject to new subsection  
23 (h), which would deny priority to a seller-retained PMSI that is perfected by a low-priority filing  
24 as against an enabling lender’s PMSI that is perfected by a high-priority filing.  
25

26 **4. Competing Lien Creditor.** As against a lien creditor, a security interest perfected by  
27 a low-priority filing has the same rights as any other perfected security interest.  
28

29 **5. Competing Buyer, Lessee, or Licensee.** The draft assumes that non-secured party  
30 buyers, lessees, and licensees generally would take their interests free of such a security interest.  
31 To implement these results, Sections 9-317(b) (buyers of tangible collateral), (c) (lessees), and  
32 (d) (licensees and buyers of intangible collateral) have been amended to distinguish between  
33 security interests perfected by a low-priority filing and security interests perfected by other  
34 methods. To implement the same distinction, PMSIs perfected by a low-priority filing are  
35 treated separately in new Section 9-317(e)(2), and Section 9-320(b) (concerning consumer  
36 buyers of consumer-goods collateral) has been amended to distinguish between security interests  
37 perfected by a high-priority filing and security interests perfected by other methods.  
38

39 Consider the case in which the first buyer of accounts or chattel paper (B-1) perfects its  
40 security interest by a low-priority filing and the second buyer (B-2) perfects by a high-priority  
41 filing. Section 9-318(a) would prevent B-2 from acquiring any interest in the sold receivables,  
42 and subsection (b) would not apply because B-1’s security interest is perfected. But the policy  
43 underlying the “priority” approach dictates that B-2 should become the owner of the collateral  
44 free of B-1’s security interest. New Section 9-318(c) would enable B-2’s interest to attach  
45 notwithstanding subsection (a), and amended Section 9-322(a)(1) would give priority to B-2’s  
46 interest.  
47

1 Section 9-318(c) also would come into play when intangible collateral is sold to a buyer,  
2 other than a secured party, who would take free of B-1's perfected-by-low-priority-filing  
3 security interest under amended Section 9-317(d)(1).  
4

5 **6. Other Priority Rules.** The draft does not distinguish between security interests  
6 perfected by a high-priority filing and those perfected by a low-priority filing in the following  
7 circumstances:  
8

9 a. Section 9-334, which deals with the priority of a security interest in fixtures as against  
10 a conflicting interest of an encumbrancer or owner of the related real property other than the  
11 debtor.  
12

13 b. Section 9-336, which deals with conflicting security interests in a product or mass that  
14 results when goods become commingled goods.  
15

16 c. Sections 9-326 and 9-325, which address "double-debtor" problems.  
17

18 Section 9-326 addresses the priority contests that may arise when a new debtor becomes  
19 bound by the security agreement of an original debtor and each debtor has a different secured  
20 creditor. It subordinates the original debtor's secured party's security interest when it is  
21 perfected against the new debtor solely under Section 9-508. The security interest is  
22 subordinated to security interests in the same collateral perfected by another method, e.g., by  
23 filing against the new debtor.  
24

25 **Example 1:** SP-X holds a perfected-by-filing security interest in X Corp's existing and  
26 after-acquired inventory, and SP-Z holds a perfected-by-filing security interest in Z  
27 Corp's existing and after-acquired inventory. Z Corp becomes bound as debtor by X  
28 Corp's security agreement. Subsequently, Z Corp acquires a new item of inventory.  
29 Under Section 9-508, SP-X's financing statement is effective to perfect a security interest  
30 in the new item of inventory in which Z Corp has rights. However, because SP-Z's  
31 security interest was perfected by another method, Section 9-326(a) provides that SP-X's  
32 security interest is subordinate to SP-Z's, regardless of which financing statement was  
33 filed first. This would be the case even if SP-Z filed after Z Corp became bound by X  
34 Corp's security agreement.  
35

36 It may be the case that SP-X's security interest is perfected by a high-priority filing and SP-  
37 Z's is perfected by a low-priority filing. Under this draft, SP-Z would nevertheless enjoy  
38 priority.  
39

40 Section 9-325 addresses the problem that arises when a debtor acquires property that is  
41 subject to a security interest created by another debtor. Currently, this section provides that a  
42 security interest created by the transferor has priority over a security interest created by the  
43 transferee, if the security interest created by the transferor was perfected when the transferee  
44 acquired the collateral.  
45

46 **Example 2:** A owns an item of equipment subject to a perfected security interest in  
47 favor of SP-A. A sells the equipment to B, not in the ordinary course of business. B

1 acquires its interest subject to SP-A's security interest. Under current Section 9-325, if B  
2 creates a security interest in the equipment in favor of SP-B, SP-B's security interest is  
3 subordinate to SP-A's security interest, even if SP-B filed against B before SP-A filed  
4 against A, and even if SP-B took a purchase-money security interest. Normally, SP-B  
5 could have investigated the source of the equipment and discovered SP-A's filing before  
6 making an advance against the equipment, whereas SP-A had no reason to search the  
7 filings against someone other than its debtor, A.  
8

9 Under the current draft, a non-ordinary course buyer would take free of a security interest  
10 perfected by a low-priority filing, and so it will not be possible for the situation described in  
11 Example 1 to arise if SP-A has perfected by a low-priority filing. However, if the Joint Review  
12 Committee decides not to distinguish between low- and high-priority filings as against buyers, or  
13 if it decides that a buyer with knowledge of a security interest perfected by a low-priority filing  
14 take subject to the security interest (i.e., if it approves the bracketed language in draft  
15 subsections (b), (c), and (d) of Section 9-317, then the situation in Example 1 might arise when  
16 SP-A has perfected by a low-priority filing. If so, the Joint Review Committee should consider  
17 whether SP-A's security interest should be senior to SP-B's if SP-B has perfected by a high-  
18 priority filing.  
19

20 **7. Change of Debtor's Name.** New Section 9-507(d) would specify the events that  
21 constitute a change of the debtor's name when the security interest is perfected by a high-priority  
22 filing. There are two such events. First, the apparent expiration of the source document  
23 indicating the name provided in the financing statement constitutes a change of name, if, after  
24 the apparent expiration, the name specified by Section 9-503(a)(4) would be different from the  
25 name provided in the financing statement. Second, the issuance of a source document that is on  
26 the same level or on a higher level in the Section 9-503(a)(4) cascade constitutes a change of  
27 name, if the new document indicates a different name from the name provided in the financing  
28 statement. An individual whose name is determined under Section 9-503(a)(4)(E) would change  
29 his name as under current law.  
30

31 Even if the debtor's name changes, a filed financing statement does not become seriously  
32 misleading if it can be found by searching under the debtor's "correct" name, using the filing  
33 office's standard search logic. Draft Section 9-506(e) explains what is meant by the debtor's  
34 "correct name" when the debtor's name changes under Section 9-507(d). If the name change  
35 results from the expiration of the source document, the correct name is the name that Section 9-  
36 503(a)(4) would yield after the expiration. If the name change results from the issuance of a new  
37 source document, the correct name is the name that is indicated on the new document (which, of  
38 course, is the name that Section 9-503(a)(4) would yield after the issuance of the new  
39 document).  
40

41 The Joint Review Committee has yet to consider whether priority should be affected by a  
42 change of the debtor's name and, if so, whether the statute needs to be amended to reflect the  
43 desired outcome.  
44

45 **Example 3:** Financing statements covering an item of equipment are filed in this order:  
46

47 C-1: Low priority

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

3  
4 Priority would rank as follows: C-2 > C-3 > C-1.  
5

6 D changes his name, such that C-1's filing becomes high-priority and C-2's and C-3's  
7 filings remain high-priority. Would this change result in C-1's security interest having priority  
8 over the other two? (Compare the case in which D's name doesn't change but C-1 amends its  
9 financing statement to become a high-priority filing.)  
10

11 **Example 4:** Under the facts of Example 3, D changes his name, such that C-2's and  
12 C-3's filings become low-priority and C-1's filing remains low-priority. Would the first-to-file-  
13 or-perfect rule apply, giving C-1's security interest priority over the other two? (Compare 9-  
14 316(b) and 9-515(c).)  
15

16 8. **Enforcement.** The amendments to Sections 9-611 and 9-621 make clear that an  
17 enforcing secured party need not give notice to the holder of a security interest perfected by a  
18 low-priority filing unless the enforcing party has received an authenticated notification from the  
19 holder.  
20

21 9. **Risks of Nonuniform Enactments.** If some, but not all, Article 9 jurisdictions were  
22 to enact Alternative C, significant choice-of-law problems would be likely to result.  
23

24 **Example 5:** Debtor's principal residence is in Kansas. SP-1 and SP-2 each files a  
25 financing statement against Debtor in the Kansas filing office. Some of Debtor's equipment is  
26 located in Kansas, and some is across the border in Missouri. Although the law of the State of  
27 Debtor's principal residence (Kansas) governs perfection, the law of the State in which the  
28 collateral is located governs priority. Thus, Kansas law governs the priority of the security  
29 interests in the equipment located in Kansas, whereas Missouri law governs the priority of the  
30 security interests in the equipment located in Missouri. Assume Missouri has enacted  
31 Alternative C, and Kansas has not. If SP-1 made a "low-priority" filing and SP-2 made a "high-  
32 priority" filing, then SP-1 will be senior as to the Kansas equipment under Kansas's first-to-file-  
33 or-perfect rule, but junior as to the Missouri equipment under Missouri's "priority" approach.  
34 Moreover, movement of equipment between Kansas and Missouri will change the relative  
35 priority of the two secured parties.  
36

37 *[End of Alternative Approaches to Name of Individual Debtor]*  
38  
39  
40

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

42 (a) **[Sufficiency of debtor's name.]** A financing statement sufficiently provides the  
43 name of the debtor:

1 (1) if the debtor is a registered organization and is not a trustee acting with respect  
2 to property held in trust, only if the financing statement provides the name of the debtor  
3 indicated on the public record of the debtor's jurisdiction of organization which shows the debtor  
4 to have been organized;

5 (2) if the debtor is a decedent's estate, only if the financing statement provides the  
6 name of the decedent and indicates that the debtor is an estate;

7 (3) if the debtor is a trust that is not a registered organization or is a trustee acting  
8 with respect to property held in trust for the beneficial owner of a trust that is not a registered  
9 organization, only if the financing statement:

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

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

15 (4) if the debtor is a trustee acting with respect to property held in trust for the  
16 beneficial owner of a trust that is a registered organization, only if the financing statement  
17 provides the name of the trust indicated on the public organic record filed with or issued or  
18 enacted by the trust's jurisdiction of organization; and

19 ~~(4)~~(5) in other cases:

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

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

24 \* \* \*

1 **Official Comment**

2  
3 \* \* \*

4  
5 2. **Debtor’s Name.** The requirement that a financing statement provide the debtor’s  
6 name is particularly important. Financing statements are indexed under the name of the debtor,  
7 and those who wish to find financing statements search for them under the debtor’s name.  
8 Subsection (a) explains what the debtor’s name is for purposes of a financing statement. If the  
9 debtor is a “registered organization” (defined in Section 9-102 so as to ordinarily include  
10 corporations, limited partnerships, and limited liability companies), then the debtor’s name is the  
11 name shown on the public records of the debtor’s “jurisdiction of organization” (also defined in  
12 Section 9-102). Subsections (a)(2) and (a)(3) contain special rules for decedent’s estates and  
13 common-law trusts. (Subsection (a)(1) applies to ~~business~~ trusts that are registered  
14 organizations, and subsection (a)(4) applies to trustees acting with respect to property held in  
15 such trusts.) As used in subsections (a)(3) and (a)(4), the term “beneficial owner” refers to the  
16 owner of the beneficial interest in the trust. Cf. Uniform Statutory Trust Entity Act § 102(1).  
17

18 \* \* \*

19 **Reporter’s Note**

20 The amendments are meant to clarify current law.  
21

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

23 \* \* \*

24  
25 (f) [**Location of registered organization organized under federal law; bank**  
26 **branches and agencies.**] Except as otherwise provided in subsection (i), a registered  
27 organization that is organized under the law of the United States and a branch or agency of a  
28 bank that is not organized under the law of the United States or a State are located:  
29

30  
31 (1) in the State that the law of the United States designates, if the law designates a  
32 State of location;

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



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

2 \* \* \*

### 3 Official Comment

4  
5 **5. Registered Organizations Organized Under Law of United States; Branches and**  
6 **Agencies of Banks Not Organized Under Law of United States.** Subsection (f) specifies the  
7 location of a debtor that is a registered organization organized under the law of the United States.  
8 It defers to the law of the United States, to the extent that that law determines, or authorizes the  
9 debtor to determine, the debtor's location. Thus, if the law of the United States designates a  
10 particular State as the debtor's location, that State is the debtor's location for purposes of this  
11 Article's choice-of-law rules. Similarly, if the law of the United States authorizes the registered  
12 organization to designate its State of location, the State that the registered organization  
13 designates is the State in which it is located for purposes of this Article's choice-of-law rules. In  
14 other cases, the debtor is located in the District of Columbia.

15  
16 In some cases, the law of the United States authorizes the registered organization to  
17 designate a main office, home office, or other comparable office. See, e.g., 12 U.S.C. Sections  
18 22 and 1464(a); 12 C.F.R. Section 552.3. Designation of such an office constitutes the  
19 designation of the State of location for purposes of Section 9-307 (f)(2).

20  
21 Subsection (f) also specifies the location of a branch or agency in the United States of a  
22 foreign bank that has one or more branches or agencies in the United States. The law of the  
23 United States ~~authorized~~ authorizes a foreign bank (or, on behalf of the bank, a federal agency)  
24 to designate a single home state for all of the foreign bank's branches and agencies in the United  
25 States. See 12 U.S.C. Section 3103(c) and 12 C.F.R. Section 211.22. As authorized, the  
26 designation constitutes the State of location for the branch or agency for purposes of Section 9-  
27 307(f), unless all of a foreign bank's branches or agencies that are in the United States are  
28 licensed in only one State, in which case the branches and agencies are located in that State. See  
29 subsection (i).

30  
31 In cases not governed by subsection (f) or (i), the location of a foreign bank is determined  
32 by subsections (b) and (c).

### 33 Reporter's Note

34  
35  
36 1. The amendment to subsection (f) would remove any doubt that, as the comment  
37 indicates, when the law of the United States authorizes a registered organization to designate a  
38 main office, home office, or other comparable office, designation of such an office constitutes  
39 the designation of the State of location for purposes of Section 9-307(f)(2).

40  
41 2. The amendment to the comment would correct a typographical error.  
42  
43  
44

1           **SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF**  
2 **FILING.**

3           \* \* \*

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

6           \* \* \*

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

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

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

12                   ~~(C) if the financing statement indicates that the debtor is an organization,~~

13 provide:

14                           ~~(i) a type of organization for the debtor;~~

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

16                           ~~(iii) an organizational identification number for the debtor or~~

17 ~~indicate that the debtor has none;~~

18           \* \* \*

19                                   **Reporter's Note**

20  
21           A financing statement is legally sufficient if it provides the information required by  
22 Section 9-502(a), even if it does provide the additional information specified in Section 9-  
23 516(b)(5). However, the filing office is required to reject a financing statement that does not  
24 provide this additional information. The additional information is meant to assist searchers in  
25 weeding out "false positives," i.e., records that a search reveals but which do not pertain to the  
26 debtor in question, and to assist filers by helping to ensure that the financing statement is filed in  
27 the proper jurisdiction. Experience has shown that the benefits afforded by requiring the filer to  
28 provide the information specified in paragraph (C) are less than the costs that the paragraph  
29 imposes.



1 (2) indicate that it is a ~~correction~~ statement of a claim; and

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

5 **[End of Alternatives]**

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

10 **[Subsection (d)—Alternative A]**

11 (d) [Sufficiency of statement under subsection (c).] A statement of a claim under  
12 subsection (c) must:

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

15 (2) indicate that it is a statement of a claim; and

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

18 **[Subsection (d)—Alternative B]**

19 (d) [Sufficiency of statement under subsection (c).] A statement of a claim under  
20 subsection (c) must:

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

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

24 (B) if the statement relates to a record filed [or recorded] in a filing office

1 described in Section 9-501(a)(1), the date [and time] that the initial financing statement was filed  
2 [or recorded] and the information specified in Section 9-502(b):

3 (2) indicate that it is a statement of a claim; and

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

6 **[End of Alternatives]**

7 ~~(c)~~(e) **[Record not affected by ~~correction~~ statement of claim.]** The filing of a  
8 ~~correction~~ statement of a claim under this Section does not affect the effectiveness of an initial  
9 financing statement or other filed record.

10 *Legislative Note: States whose real-estate filing offices require additional information in*  
11 *amendments and cannot search their records by both the name of the debtor and the file number*  
12 *should enact Alternative B to Sections 9-512(a), 9-518(b), 9-518(d), 9-519(f) and 9-522(a).*  
13  
14

15 **SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF**  
16 **FILING.**

17 \* \* \*

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

20 \* \* \*

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

22 \* \* \*

23 (B) in the case of an amendment or ~~correction~~ statement of a claim, the  
24 record:

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

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

3 \* \* \*

4 \* \* \*

5  
6 **Reporter's Note**  
7

8 1. Current Section 9-518 provides a mechanism whereby an aggrieved debtor may use  
9 the filing office to make a public declaration concerning the debtor's belief that a filed financing  
10 statement naming the debtor is inaccurate or was wrongfully filed. New subsections (c) and (d)  
11 would provide a similar mechanism to a secured party of record for a financing statement to  
12 express its belief that a person who filed a record relating to the financing statement was not  
13 entitled to do so. As the current text does with respect to subsection (b), the amendments would  
14 provide alternative versions of subsection (d). Each State would choose the alternative that is  
15 better suited to the method by which searches are conducted in the real-estate records maintained  
16 in the State.  
17

18 2. Because this section currently refers to the statement as a "correction statement,"  
19 some debtors have filed one under the misapprehension that the filing has legal effect. It does  
20 not. See subsection (c) (as amended, subsection (e)). To prevent future confusion, the  
21 amendment would refer to the statement as a "statement of a claim." The comments will be  
22 amended to reflect this change in terminology.  
23  
24

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

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

28 \* \* \*

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

34 \* \* \*

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

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

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

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

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

10 **Reporter's Note**

11  
12 The amendment to paragraph (b)(2)(A) is for clarification only; it does not reflect a  
13 change in meaning. Accordingly, the amendment should apply to all transactions governed by  
14 Article 9, including those that were entered into before the effective date of the amendment.  
15

16  
17 **SECTION 8-103. RULES FOR DETERMINING WHETHER CERTAIN**  
18 **OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS.**

19 \* \* \*

20 (h) An obligation, share, participation, or interest does not satisfy Section 8-  
21 102(a)(13)(ii) or 8-102(a)(15)(i) merely because the issuer or a person acting on its behalf:

22 (1) maintains records of the owner thereof for a purpose other than registration of  
23 transfer; or

24 (2) could, but does not, maintain books for the purpose of registration of transfer.

25 **Official Comment**

26 \* \* \*

27  
28  
29 9. Subsection (h) rejects the holding of *Highland Capital Management LP v. Schneider*, 8  
30 N.Y.3d 406 (2007). The registrability requirement in the definition of "registered form," and its

1 parallel in the definition of “security,” are satisfied only if books are maintained by or on behalf of  
2 the issuer for the purpose of registration of transfer, including the determination of rights under  
3 Section 8-207(a) (or if, in the case of a certificated security, the security certificate so states). It is  
4 not sufficient that the issuer records ownership, or records transfers thereof, for other purposes. Nor  
5 is it sufficient that the issuer, while not in fact maintaining books for the purpose of registration of  
6 transfer, could do so, for such is always the case. Subsection (h) is declaratory of the proper  
7 interpretation of the definitions of “registered form” and “security,” not a change in law.

8  
9 **Reporter’s Note**

10  
11 This proposed amendment to Section 8-103 would be wholly unnecessary but for the  
12 New York Court of Appeals’ opinion in *Highland Capital*. The opinion’s interpretation of the  
13 definitions of “registered form” and “security” in Section 8-102 cannot be supported by the  
14 existing statutory text.



1  
2  
3 **PART TWO**  
4 **MODIFICATIONS TO THE COMMENTS UNACCOMPANIED BY AMENDMENTS**  
5 **TO THE OFFICIAL TEXT**

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

7  
8 **Official Comment**

9  
10 **5. Receivables-related Definitions.**

11 \* \* \*

12  
13  
14 **b. “Chattel Paper”; “Electronic Chattel Paper”; “Tangible Chattel Paper.”**  
15 “Chattel paper” consists of a monetary obligation together with a security interest in or a lease of  
16 specific goods if the obligation and security interest or lease are evidenced by “a record or  
17 records.” The definition has been expanded from that found in former Article 9 to include  
18 records that evidence a monetary obligation and a security interest in specific goods and  
19 software used in the goods, a security interest in specific goods and license of software used in  
20 the goods, or a lease of specific goods and license of software used in the goods. The expanded  
21 definition covers transactions in which the debtor’s or lessee’s monetary obligation includes  
22 amounts owed with respect to software used in the goods. The monetary obligation with respect  
23 to the software need not be owed under a license from the secured party or lessor, and the  
24 secured party or lessor need not be a party to the license transaction itself. Among the types of  
25 monetary obligations that are included in “chattel paper” are amounts that have been advanced  
26 by the secured party or lessor to enable the debtor or lessee to acquire or obtain financing for a  
27 license of the software used in the goods. The definition also makes clear that rights to payment  
28 arising out of credit-card transactions are not chattel paper.

29  
30 Charters of vessels are expressly excluded from the definition of chattel paper; they are  
31 accounts. The term “charter” as used in this section includes bareboat charters, time charters,  
32 successive voyage charters, contracts of affreightment, contracts of carriage, and all other  
33 arrangements for the use of vessels.

34  
35 Under former Section 9-105, only if the evidence of an obligation consisted of “a writing  
36 or writings” could an obligation qualify as chattel paper. In this Article, traditional, written  
37 chattel paper is included in the definition of “tangible chattel paper.” “Electronic chattel paper”  
38 is chattel paper that is stored in an electronic medium instead of in tangible form. The concept  
39 of an electronic medium should be construed liberally to include electrical, digital, magnetic,  
40 optical, electromagnetic, or any other current or similar emerging technologies.

41  
42 The definition of electronic chattel paper does not dictate that it be created in any  
43 particular fashion. For example, a record consisting of a tangible writing may be converted to  
44 electronic form (e.g., by creating electronic images of a signed writing). Or, records may be  
45 initially created and executed in electronic form (e.g., a lessee might authenticate an electronic  
46 record of a lease that is then stored in electronic form). In either case the resulting records are  
47 electronic chattel paper. Likewise, tangible chattel paper results when chattel paper in electronic

1 form is converted to tangible form.

2  
3 \* \* \*

4  
5 d. **“General Intangible”; “Payment Intangible.”** “General intangible” is the  
6 residual category of personal property, including things in action, that is not included in the other  
7 defined types of collateral. Examples are various categories of intellectual property and the right  
8 to payment of a loan of funds that is not evidenced by chattel paper or an instrument. As used in  
9 the definition of “general intangible,” “things in action” includes rights that arise under a license  
10 of intellectual property, including the right to exploit the intellectual property without liability  
11 for infringement. The definition has been revised to exclude commercial tort claims, deposit  
12 accounts, and letter-of-credit rights. Each of the three is a separate type of collateral. One  
13 important consequence of this exclusion is that tortfeasors (commercial tort claims), banks  
14 (deposit accounts), and persons obligated on letters of credit (letter-of-credit rights) are not  
15 “account debtors” having the rights and obligations set forth in Sections 9-404, 9-405, and  
16 9-406. In particular, tortfeasors, banks, and persons obligated on letters of credit are not  
17 obligated to pay an assignee (secured party) upon receipt of the notification described in Section  
18 9-404(a). See Comment 5.h. Another important consequence relates to the adequacy of the  
19 description in the security agreement. See Section 9-108.

20  
21 “Payment intangible” is a subset of the definition of “general intangible.” The sale of a  
22 payment intangible is subject to this Article. See Section 9-109(a)(3). Virtually any intangible  
23 right could give rise to a right to payment of money once one hypothesizes, for example, that the  
24 account debtor is in breach of its obligation. The term “payment intangible,” however, embraces  
25 only those general intangibles “under which the account debtor’s *principal* obligation is a  
26 monetary obligation.” (Emphasis added.)

27  
28 In classifying intangible collateral, a court should begin by identifying the particular  
29 rights that have been assigned. The account debtor (promisor) under a particular contract may  
30 owe several types of monetary obligations as well as other, nonmonetary obligations. If the  
31 promisee’s right to payment of money is assigned separately, the right is an account or payment  
32 intangible, depending on how the account debtor’s obligation arose. When all the promisee’s  
33 rights are assigned together, an account, a payment intangible, and a general intangible all may  
34 be involved, depending on the nature of the rights.

35  
36 [However, a] [A] right to the payment of money is frequently buttressed by ancillary  
37 covenants rights, such as covenants in a purchase agreement, note, or mortgage requiring  
38 insurance on the collateral or forbidding removal of the collateral, or covenants to preserve the  
39 creditworthiness of the promisor, such as covenants restricting dividends and the like. This  
40 Article does not treat these ancillary rights separately from the rights to payment to which they  
41 relate. For example, attachment and perfection of an assignment of a right to payment of a  
42 monetary obligation, whether it be an account or payment intangible, also carries these ancillary  
43 rights. Among these ancillary rights are the lessor’s rights with respect to leased goods that arise  
44 upon the lessee’s default. See Section 2A-523. Accordingly, and contrary to the opinion in *In re*  
45 *Commercial Money Center, Inc.*, 350 B.R. 465 (B.A.P. 9th Cir. 2006), if the lessor’s rights under  
46 a lease constitute chattel paper, an assignment of the lessor’s right to payment under the lease  
47 also would be chattel paper, even if the assignment excludes other rights.

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

5  
6 \* \* \*

7  
8 **Reporter’s Note**

9  
10 1. The point made in the sentence added to paragraph 5.b. will be further amplified.

11  
12 2. The addition to paragraph 5.d. illustrates the correct application of the Article 9  
13 classification system in the context of an assignment of the lessor’s right to payment under a  
14 lease that is chattel paper.

15  
16  
17 **SECTION 9-109. SCOPE.**

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

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

22 \* \* \*

23 \* \* \*

24 **Official Comment**

25  
26 \* \* \*

27  
28 2. **Basic Scope Provision.** Subsection (a)(1) derives from former Section 9-102(1) and  
29 (2). These subsections have been combined and shortened. No change in meaning is intended.  
30 Under subsection (a)(1), all consensual security interests in personal property and fixtures are  
31 covered by this Article, except for transactions excluded by subsections (c) and (d). As to which  
32 transactions give rise to a “security interest,” the definition of that term in Section 1-201 must be  
33 consulted. When a security interest is created, this Article applies regardless of the form of the  
34 transaction or the name that parties have given to it. Likewise, the subjective intention of the  
35 parties with respect to the legal characterization of their transaction is irrelevant to whether this  
36 Article applies, as it was to the application of former Article 9 under the proper interpretation of  
37 former Section 9-102.

38  
39 \* \* \*

1 **Reporter’s Note**

2  
3 Section 9-102(a)(1) provides that Article 9 applies to a transaction that creates a security  
4 interest. The addition to the comment emphasizes that this is the case, regardless of the  
5 subjective intention of the parties with respect to the legal characterization of their transaction.  
6

7  
8 **SECTION 9-301. LAW GOVERNING PERFECTION AND PRIORITY OF**  
9 **SECURITY INTERESTS.**

10 \* \* \*

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

14 (A) perfection of a security interest in the goods by filing a fixture filing;

15 \* \* \*

16 \* \* \*

17 **Official Comment**

18 \* \* \*

19  
20  
21 **5. Law Governing Perfection: Exceptions.** The general rule is subject to several  
22 exceptions. It does not apply to goods covered by a certificate of title (see Section 9-303),  
23 deposit accounts (see Section 9-304), investment property (see Section 9-305), or letter-of-credit  
24 rights (see Section 9-306). Nor does it apply to possessory security interests, i.e., security  
25 interests that the secured party has perfected by taking possession of the collateral (see paragraph  
26 (2)), security interests perfected by filing a fixture filing (see subparagraph (3)(A)), security  
27 interests in timber to be cut (subparagraph (3)(B)), or security interests in as-extracted collateral  
28 (see paragraph (4)).

29 \* \* \*

30  
31  
32 **b. ~~Fixtures~~Fixture Filings.** ~~Application of~~ Under the general rule in paragraph  
33 (1), a security interest in fixtures may be perfected by filing in the office specified by Section 9-  
34 501(a) as enacted in the jurisdiction in which the debtor is located. However, application of this  
35 rule to perfection of a security interest in fixtures by filing a fixture filing would yield strange  
36 results. For example, perfection of a security interest in fixtures located in Arizona and owned  
37 by a Delaware corporation would be governed by the law of Delaware. Although Delaware law  
38 would send one to a filing office in Arizona for the place to file a financing statement as a fixture

1 filing, see Section 9-501, Delaware law would not take account of local, nonuniform, real-  
2 property filing and recording requirements that Arizona law might impose. For this reason,  
3 paragraph (3)(A) contains a special rule for security interests perfected by a fixture filing; the  
4 law of the jurisdiction in which the fixtures are located governs perfection, including the formal  
5 requisites of a fixture filing. Under paragraph (3)(C), the same law governs priority. Fixtures  
6 are “goods” as defined in Section 9-102.  
7

8 The filing of a financing statement to perfect a security interest in collateral of a  
9 transmitting utility constitutes a fixture filing with respect to goods that are or become fixtures.  
10 See Section 9-501(b). Accordingly, to perfect a security interest in goods of this kind by a  
11 fixture filing, a financing statement must be filed in the office specified by Section 9-501(b) as  
12 enacted in the jurisdiction in which the goods are located. If the fixtures collateral is located in  
13 more than one State, filing in all of those States will be necessary to perfect a security interest in  
14 all the fixtures collateral by a fixture filing. Of course, a security interest in nearly all types of  
15 collateral (including fixtures) of a transmitting utility may be perfected by filing in the office  
16 specified by Section 9-501(a) as enacted in the jurisdiction in which the transmitting utility is  
17 located. However, such a filing will not be effective as a fixture filing except with respect to  
18 goods that are located in that jurisdiction.  
19

20 \* \* \*

21  
22  
23 **SECTION 9-501. FILING OFFICE.**

24 \* \* \*

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

29 \* \* \*

30 **Official Comment**

31 \* \* \*

32  
33  
34 **5. Transmitting Utilities.** The usual filing rules do not apply well for a transmitting  
35 utility (defined in Section 9-102). Many pre-UCC statutes provided special filing rules for  
36 railroads and in some cases for other public utilities, to avoid the requirements for filing with  
37 legal descriptions in every county in which such debtors had property. Former Section 9-401(5)  
38 recreated and broadened these provisions, and subsection (b) follows this approach. The nature  
39 of the debtor will inform persons searching the record as to where to make a search.  
40

1 A given State’s subsection (b) applies only if the local law of that State governs  
2 perfection. As to most collateral, perfection by filing is governed by the law of the jurisdiction  
3 in which the debtor is located. See Section 9-301(1). However, the law of the jurisdiction in  
4 which goods that are or become fixtures are located governs perfection by fixture filing. See  
5 Section 9-301(3)(A). As a consequence, filing in the filing office of more than one State may be  
6 necessary to perfect by fixture filing a security interest in fixtures collateral of a transmitting  
7 utility. See Section 9-301, Comment 5.b.

8  
9 **Reporter’s Note**

10  
11 The modifications to the comments to Sections 9-301 and 9-502 provide a fuller  
12 explanation of where a financing statement should be filed when the debtor is a transmitting  
13 utility.  
14

15  
16 **SECTION 9-307. LOCATION OF DEBTOR.**

17 (a) [**“Place of business.”**] In this section, “place of business” means a place where a  
18 debtor conducts its affairs.

19 (b) [**Debtor’s location: general rules.**] Except as otherwise provided in this section,  
20 the following rules determine a debtor’s location:

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

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

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

27 (c) [**Limitation of applicability of subsection (b).**] Subsection (b) applies only if a  
28 debtor’s residence, place of business, or chief executive office, as applicable, is located in a  
29 jurisdiction whose law generally requires information concerning the existence of a  
30 nonpossessory security interest to be made generally available in a filing, recording, or  
31 registration system as a condition or result of the security interest’s obtaining priority over the

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

3 **Official Comment**

4  
5 \* \* \*

6  
7 3. **Non-U.S. Debtors.** Under the general rules of this section, a non-U.S. debtor often  
8 would be located in a foreign jurisdiction and, as a consequence, foreign law would govern  
9 perfection. When foreign law affords no public notice of security interests, the general rule  
10 yields unacceptable results.

11  
12 Accordingly, subsection (c) provides that the normal rules for determining the location of  
13 a debtor (i.e., the rules in subsection (b)) apply only if they yield a location that is “a jurisdiction  
14 whose law generally requires information concerning the existence of a nonpossessory security  
15 interest to be made generally available in a filing, recording, or registration system as a condition  
16 or result of the security interest’s obtaining priority over the rights of a lien creditor with respect  
17 to the collateral.” The phrase “generally requires” is meant to include legal regimes that  
18 generally require notice in a filing or recording system as a condition of perfecting  
19 nonpossessory security interests, but which permit perfection by another method (e.g., control,  
20 automatic perfection, temporary perfection) in limited circumstances. A jurisdiction that has  
21 adopted this Article or an earlier version of this Article is such a jurisdiction. If the rules in  
22 subsection (b) yield a jurisdiction whose law does not generally require notice in a filing or  
23 registration system and none of the special rules in subsections (e), (f), (i), and (j) applies, the  
24 debtor is located in the District of Columbia.

25  
26 \* \* \*

27  
28 **Reporter’s Note**

29  
30 The proposed modification emphasizes that subsection (b), and therefore subsection (c),  
31 does not apply if one of the special rules in subsections (e), (f), (i), and (j) applies.

32  
33  
34 **SECTION 9-316. CONTINUED PERFECTION OF SECURITY INTEREST**  
35 **FOLLOWING CHANGE IN GOVERNING LAW.**

36 (a) [**General rule: effect on perfection of change in governing law.**] A security  
37 interest perfected pursuant to the law of the jurisdiction designated in Section 9-301(1) or  
38 9-305(c) remains perfected until the earliest of:

39 (1) the time perfection would have ceased under the law of that jurisdiction;

1 (2) the expiration of four months after a change of the debtor's location to another  
2 jurisdiction; or

3 (3) the expiration of one year after a transfer of collateral to a person that thereby  
4 becomes a debtor and is located in another jurisdiction.

5 \* \* \*

6 (d) **[Goods covered by certificate of title from this state.]** Except as otherwise  
7 provided in subsection (e), a security interest in goods covered by a certificate of title which is  
8 perfected by any method under the law of another jurisdiction when the goods become covered  
9 by a certificate of title from this State remains perfected until the security interest would have  
10 become unperfected under the law of the other jurisdiction had the goods not become so covered.

11 (e) **[When subsection (d) security interest becomes unperfected against purchasers.]**

12 A security interest described in subsection (d) becomes unperfected as against a purchaser of the  
13 goods for value and is deemed never to have been perfected as against a purchaser of the goods  
14 for value if the applicable requirements for perfection under Section 9-311(b) or 9-313 are not  
15 satisfied before the earlier of:

16 (1) the time the security interest would have become unperfected under the law of  
17 the other jurisdiction had the goods not become covered by a certificate of title from this State;

18 or

19 (2) the expiration of four months after the goods had become so covered.

20 \* \* \*

## 21 Official Comment

22 \* \* \*

23  
24  
25 **5. Goods Covered by Certificate of Title.** Subsections (d) and (e) address continued  
26 perfection of a security interest in goods covered by a certificate of title. The following  
27 examples explain the operation of those subsections.



1 **Example 8:** Debtor's automobile is covered by a certificate of title issued by Illinois.  
2 Lender perfects a security interest in the automobile by complying with Illinois'  
3 certificate-of-title statute. Thereafter, Debtor applies for a certificate of title in Indiana.  
4 Six months thereafter, Creditor acquires a judicial lien on the automobile. Under Section  
5 9-303(b), Illinois law ceases to govern perfection; rather, once Debtor delivers the  
6 application and applicable fee to the appropriate Indiana authority, Indiana law governs.  
7 Nevertheless, under Indiana's Section 9-316(d), Lender's security interest remains  
8 perfected until it would become unperfected under Illinois law had no certificate of title  
9 been issued by Indiana. (For example, Illinois' certificate-of-title statute may provide  
10 that the surrender of an Illinois certificate of title in connection with the issuance of a  
11 certificate of title by another jurisdiction causes a security interest noted thereon to  
12 become unperfected.) If Lender's security interest remains perfected, it is senior to  
13 Creditor's judicial lien.  
14

15 **Example 9:** Under the facts in Example 8, five months after Debtor applies for an  
16 Indiana certificate of title, Debtor sells the automobile to Buyer. Under subsection (e)(2),  
17 because Lender did not reperfect within the four months after the goods became covered  
18 by the Indiana certificate of title, Lender's security interest is deemed never to have been  
19 perfected against Buyer. Under Section 9-317(b), Buyer is likely to take free of the  
20 security interest. Lender could have protected itself by perfecting its security interest  
21 either under Indiana's certificate-of-title statute, see Section 9-311, or, if it had a right to  
22 do so under an agreement or Section 9-609, by taking possession of the automobile. See  
23 Section 9-313(b).  
24

25 The results in Examples 8 and 9 do not depend on the fact that the original perfection was  
26 achieved by notation on a certificate of title. Subsection (d) applies regardless of the method by  
27 which a security interest is perfected under the law of another jurisdiction when the goods  
28 became covered by a certificate of title from this State.  
29

30 **Example 9A.** Debtor, whose principal residence is in Mississippi, owns a recreational  
31 boat that is subject to Lender's security interest. Mississippi's certificate-of-title statutes  
32 do not cover watercraft, and so Lender perfects by filing a financing statement in  
33 Mississippi. Debtor wishes to use the boat exclusively on a lake in Alabama, but  
34 Alabama law prohibits Debtor from doing so without first applying for an Alabama  
35 certificate of title. When Debtor delivers an application for an Alabama certificate to the  
36 appropriate authority and pays the applicable fee, the boat becomes covered by an  
37 Alabama certificate of title and Alabama law governs perfection, the effect of perfection  
38 or nonperfection, and priority of the security interest. See Section 9-303. Under  
39 Alabama's Section 9-316(d), Lender's security interest remains perfected until it would  
40 have become unperfected under Mississippi law had the boat not become covered by the  
41 Alabama certificate of title (e.g., because the effectiveness of the filed financing  
42 statement lapses). However, as against a purchaser of the boat for value, Lender's  
43 security interest would become unperfected and would be deemed never to have been  
44 perfected if Lender fails to reperfect under Alabama's Section 9-311(b) or 9-313 in a  
45 timely manner. See subsection (e).  
46

47 Subsections (d) and (e) would not govern if, under the facts of Example 9A, Debtor

1 applied for an Alabama certificate of title after having relocated to Alabama. From the time that  
2 Debtor relocates, the local law of Alabama would govern perfection. See Sections 9-301(1),  
3 9-303. Under Alabama’s Section 9-316(a), the perfected status of the security interest would  
4 continue until the earlier of the time perfection would have ceased under Mississippi law and  
5 four months after the change of location. If Lender fails to perfect under Alabama law before  
6 the earlier of those times, its security interest would become unperfected and be deemed never to  
7 have been perfected against a purchaser for value under Alabama’s Section 9-316(b).  
8 Accordingly, Alabama’s subsection (d), which governs security interests that are perfected under  
9 the law of another jurisdiction when the boat becomes covered by an Alabama certificate of title,  
10 would not apply, nor would Alabama’s subsection (e).

11  
12 Section 9-337 affords protection to a limited class of persons buying or acquiring a  
13 security interest in the goods while a security interest is perfected under the law of another  
14 jurisdiction but after this State has issued a clean certificate of title.

15 \* \* \*

16  
17  
18 **Reporter’s Note**

19  
20 The modification would provide examples of when Section 9-316(d) does and does not  
21 apply and how it operates.

22  
23  
24 **SECTION 9-318. NO INTEREST RETAINED IN RIGHT TO PAYMENT THAT**  
25 **IS SOLD; RIGHTS AND TITLE OF SELLER OF ACCOUNT OR CHATTEL PAPER**  
26 **WITH RESPECT TO CREDITORS AND PURCHASERS.**

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

30 \* \* \*

31 **Official Comment**

32 \* \* \*

33  
34  
35 **3. Buyers of Accounts and Chattel Paper.** Another aspect of sales of accounts and  
36 chattel paper also was implicit, and equally obvious, under former Article 9: If the buyer’s  
37 security interest is unperfected, then for purposes of determining the rights of certain third  
38 parties, the seller (debtor) is deemed to have all rights and title that the seller sold. The seller is  
39 deemed to have these rights even though, as between the parties, it has sold all its rights to the  
40 buyer. Subsection (b) makes this explicit. As a consequence of subsection (b), if the buyer’s

1 security interest is unperfected, the seller can transfer, and the creditors of the seller can reach,  
2 the account or chattel paper as if it had not been sold.

3  
4 **Example 1:** Debtor sells accounts or chattel paper to Buyer-1 and retains no interest in  
5 them. Buyer-1 does not file a financing statement. Debtor then sells the same  
6 receivables to Buyer-2. Buyer-2 files a proper financing statement. Having sold the  
7 receivables to Buyer-1, Debtor would not have any rights in the collateral so as to permit  
8 Buyer-2's security (ownership) interest to attach. Nevertheless, under this section, for  
9 purposes of determining the rights of purchasers for value from Debtor, Debtor is  
10 deemed to have the rights that Debtor sold. Accordingly, Buyer-2's security interest  
11 attaches, is perfected by the filing, and, under Section 9-322, is senior to Buyer-1's  
12 interest.

13  
14 \* \* \*

15  
16 **5. Not a Priority Rule.** If a debtor sells an account, chattel paper, payment intangible or  
17 promissory note to a buyer, and the debtor later purports to transfer an interest in the same  
18 receivable to another purchaser, a priority contest arises. If the interests are such that the priority  
19 contest is governed by Article 9, it is resolved by application of the priority rules of Article 9.  
20 Subsection (a) does not import the common-law principle of *nemo dat quod non habet* to  
21 displace those rules. In some circumstances the priority rules of Article 9 will give the interest  
22 of the second purchaser priority over the buyer's previously-acquired ownership interest. In  
23 such circumstances the security interest granted to the second purchaser attaches, even though  
24 the debtor lacks any rights in the collateral, because the debtor has "power to transfer rights in  
25 the collateral" within the meaning of Section 9-203(b)(3) by virtue of those priority rules. See  
26 Section 9-203(b)(3), Comment 6. Subsection (b) is essentially a codification of the foregoing  
27 principles as applied to a particular contest of the foregoing type, and various comments note  
28 that these principles apply to other particular contests. See Section 9-318, Comment 4; Section  
29 9-317, Comment 6. These principles apply generally to all priority contests of the foregoing  
30 type. However, when a buyer's ownership interest is awarded priority under the applicable  
31 Article 9 priority rule, the identification of the applicable rule as one of "priority" does not imply  
32 that the seller has retained any interest in the transferred assets.

33  
34 **Example 2:** SP-1, having authority to do so, files a financing statement against Debtor  
35 covering accounts. Debtor then sells to SP-2 a particular account, with requisites for  
36 attachment satisfied, and SP-2 files a financing statement against Debtor covering the  
37 account. Debtor later grants to SP-1 a security interest (either by sale or by security  
38 transfer) in the account, authenticating an appropriate security agreement and with value  
39 being given. SP-2 cannot invoke *nemo dat* to claim priority over SP-1 in the account.  
40 Rather, the priority dispute is resolved under the relevant priority rule of Article 9. In  
41 this case, SP-1 has priority over SP-2 as first to file, under Section 9-322(a)(1). SP-1's  
42 security interest in the account attached because Debtor had "power to transfer rights in  
43 the collateral" within the meaning of 9-203(b)(3). If the grant to SP-1 was a sale, SP-2  
44 has no interest in the account; if the grant to SP 1 was a security transfer, SP-2 owns the  
45 account subject to SP-1's security interest.

46  
47 **Example 3:** SP-1 buys chattel paper from Debtor and takes possession of it. Debtor

1 later purports to grant to SP-2 a security interest (either by sale or by security transfer) in  
2 the chattel paper, authenticating an appropriate security agreement and with value being  
3 given. SP-2 purports to perfect its security interest by filing a proper financing statement  
4 in the appropriate office. SP-2's purported security interest is not entitled to priority over  
5 SP-2's security interest. See Section 9-322(a)(1), Debtor did not have rights in the  
6 chattel paper or power to transfer rights in the chattel paper to SP-2. Hence SP-2 in fact  
7 acquired no security interest at all.

8  
9 **Reporter's Note**

10  
11 New comment 5 has been revised. Example 3 is new.

12  
13  
14 **SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY**

15 **INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.**

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

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

23 \* \* \*

24 **Official Comment**

25 \* \* \*

26  
27  
28 **4. Competing Perfected Security Interests.** When there is more than one perfected  
29 security interest, the security interests rank according to priority in time of filing or perfection.  
30 "Filing," of course, refers to the filing of an effective financing statement. "Perfection" refers to  
31 the acquisition of a perfected security interest, i.e., one that has attached and as to which any  
32 required perfection step has been taken. See Sections 9-308 and 9-309.

33  
34 **Example 1:** On February 1, A files a financing statement covering a certain item of  
35 Debtor's equipment. On March 1, B files a financing statement covering the same  
36 equipment. On April 1, B makes a loan to Debtor and obtains a security interest in the  
37 equipment. On May 1, A makes a loan to Debtor and obtains a security interest in the

1 same collateral. A has priority even though B’s loan was made earlier and was perfected  
2 when made. It makes no difference whether A knew of B’s security interest when A  
3 made its advance.  
4

5 The problem stated in Example 1 is peculiar to a notice-filing system under which filing  
6 may occur before the security interest attaches (see Section 9-502). The justification for  
7 determining priority by order of filing lies in the necessity of protecting the filing system—that is,  
8 of allowing the first secured party who has filed to make subsequent advances without each time  
9 having to check for subsequent filings as a condition of protection. Note, however, that this  
10 first-to-file protection is not absolute. For example, Section 9-324 affords priority to certain  
11 purchase-money security interests, even if a competing secured party was the first to file or  
12 perfect.  
13

14 Under a notice-filing system, a filed financing statement indicates to third parties that a  
15 person may have a security interest in the collateral indicated. With further inquiry, they may  
16 discover the complete state of affairs. When a financing statement that is ineffective when filed  
17 becomes effective thereafter, the policy underlying the notice-filing system determines the “time  
18 of filing” for purposes of subsection (a)(1). For example, the unauthorized filing of an otherwise  
19 sufficient initial financing statement becomes authorized, and the financing statement becomes  
20 effective, upon the debtor’s post-filing authorization or ratification of the filing. See Section 9-  
21 509, Comment 3. Because the authorization or ratification does not increase the notice value of  
22 the financing statement, the time of the unauthorized filing is the “time of filing” for purposes of  
23 subsection (a)(1). The same policy applies to the other priority rules in this part.  
24

25 **Example 2:** A and B make non-purchase-money advances secured by the same  
26 collateral. The collateral is in Debtor’s possession, and neither security interest is  
27 perfected when the second advance is made. Whichever secured party first perfects its  
28 security interest (by taking possession of the collateral or by filing) takes priority. It  
29 makes no difference whether that secured party knows of the other security interest at the  
30 time it perfects its own.  
31

32 The rule of subsection (a)(1), affording priority to the first to file or perfect, applies to  
33 security interests that are perfected by any method, including temporarily (Section 9-312) or  
34 upon attachment (Section 9-309), even though there may be no notice to creditors or subsequent  
35 purchasers and notwithstanding any common-law rule to the contrary. The form of the claim to  
36 priority, i.e., filing or perfection, may shift from time to time, and the rank will be based on the  
37 first filing or perfection as long as there is no intervening period without filing or perfection.  
38 See Section 9-308(c).  
39

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

1 by A beyond the 20-day period, its security interest would be subordinate to B's,  
2 inasmuch as B was the first to file.

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

8  
9  
10 **SECTION 9-509. PERSONS ENTITLED TO FILE A RECORD.**

11 \* \* \*

12  
13 **Official Comment**

14 \* \* \*

15  
16  
17  
18 3. **Unauthorized Filings.** Records filed in the filing office do not require signatures for  
19 their effectiveness. Subsection (a)(1) substitutes for the debtor's signature on a financing  
20 statement the requirement that the debtor authorize in an authenticated record the filing of an  
21 initial financing statement or an amendment that adds collateral. Also, under subsection (a)(1),  
22 if an amendment adds a debtor, the debtor who is added must authorize the amendment. A  
23 person who files an unauthorized record in violation of subsection (a)(1) is liable under Section  
24 9-625(b) and (e) for actual and statutory damages. Of course, a filed financing statement is  
25 ineffective to perfect a security interest if the filing is not authorized. See Section 9-510(a).  
26 Law other than this Article, including the law with respect to ratification of past acts, generally  
27 determines whether a person has the requisite authority to file a record under this section. See  
28 Sections 1-103, 9-502, Comment 3. This Article applies to other issues, such as the priority of a  
29 security interest perfected by the filing of a financing statement. See Section 9-322, Comment 4.

30  
31 **Reporter's Note**

32  
33 A record that is filed without the required authorization is ineffective. In some cases the  
34 filing of a record is authorized after the record is filed or an unauthorized filing is ratified. The  
35 modifications to the comments to Sections 9-322 and 9-509 illustrate the effect of such post-  
36 filing authorizations and ratifications.

37  
38  
39 **SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY**  
40 **INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.**

41 \* \* \*

42 (c) [**Special priority rules: proceeds and supporting obligations.**] Except as  
43 otherwise provided in subsection (f), a security interest in collateral which qualifies for priority

1 over a conflicting security interest under Section 9-327, 9-328, 9-329, 9-330, or 9-331 also has  
2 priority over a conflicting security interest in:

3 (1) any supporting obligation for the collateral; and

4 (2) proceeds of the collateral if:

5 (A) the security interest in proceeds is perfected;

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

7 and

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

11 \* \* \*

### 12 Official Comment

13 \* \* \*

14  
15  
16 **8. Proceeds of Non-Filing Collateral: Non-Temporal Priority.** Subsection (c)(2)  
17 provides a baseline priority rule for proceeds of non-filing collateral which applies if the secured  
18 party has taken the steps required for non-temporal priority over a conflicting security interest in  
19 non-filing collateral (e.g., control, in the case of deposit accounts, letter-of-credit rights, and  
20 investment property). This rule determines priority in proceeds of non-filing collateral whether  
21 or not there exists an actual conflicting security interest in the original non-filing collateral.  
22 Under subsection (c)(2), the priority in the original collateral continues in proceeds if the  
23 security interest in proceeds is perfected and the proceeds are cash proceeds or non-filing  
24 proceeds “of the same type” as the original collateral. As used in subsection (c)(2), “type”  
25 means a type of collateral defined in the Uniform Commercial Code and should be read broadly.  
26 For example, a security is “of the same type” as a security entitlement (i.e., investment property),  
27 and a promissory note is “of the same type” as a draft (i.e., an instrument).

28 \* \* \*

29  
30  
31 The proceeds of proceeds are themselves proceeds. See Section 9-102 (defining  
32 “proceeds” and “collateral”). Sometimes competing security interests arise in proceeds that are  
33 several generations removed from the original collateral. As the following example explains, the  
34 applicability of subsection (c) may turn on the nature of the intervening proceeds.  
35

36 **Example 11:** SP-1 perfects its security interest in Debtor’s deposit account by obtaining

1 control. Thereafter, SP-2 files against inventory, (presumably) searches, finds no  
2 indication of a conflicting security interest, and advances against Debtor's existing and  
3 after-acquired inventory. Debtor uses funds from the deposit account to purchase  
4 inventory, which SP-1 can trace as identifiable proceeds of its security interest in  
5 Debtor's deposit account, and which SP-2 claims as original collateral. The inventory is  
6 sold and the proceeds deposited into *another* deposit account, as to which SP-1 has not  
7 obtained control. Subsection (c) does not govern priority in this other deposit account.  
8 This deposit account is cash proceeds and is also the same type of collateral as SP-1's  
9 original collateral, as required by subsections (c)(2)(A) and (B). However, SP-1's  
10 security interest does not satisfy subsection (c)(2)(C) because the inventory proceeds,  
11 which intervened between the original deposit account and the deposit account  
12 constituting the proceeds at issue, are not cash proceeds, proceeds of the same type as the  
13 collateral (original deposit account), or an account relating to the collateral. Stated  
14 otherwise, once proceeds other than cash proceeds, proceeds of the same type as the  
15 original collateral, or an account relating to the original collateral intervene in the chain  
16 of proceeds, priority under subsection (c) is thereafter unavailable. The special priority  
17 rule in subsection (d) also is inapplicable to this case. See Comment 9, Example 13,  
18 below. Instead, the general first-to-file-or-perfect rule of subsections (a) and (b) apply.  
19 Under that rule, SP-1 has priority unless its security interest in the inventory proceeds  
20 became unperfected under Section 9-315(d). Had SP-2 filed against inventory before SP-  
21 1 obtained control of the original deposit account, the SP-2 would have had priority even  
22 if SP-1's security interest in the inventory proceeds remained perfected.

23  
24 If two security interests in the same original collateral are entitled to priority in an item of  
25 proceeds under subsection (c)(2), the security interest having priority in the original collateral  
26 has priority in the proceeds.

#### 27 28 **Reporter's Note**

29  
30 The added language would complete the explanation of the complicated priority rules  
31 applicable to proceeds.

#### 32 33 34 **SECTION 9-326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW** 35 **DEBTOR.**

36 \* \* \*

#### 37 **Official Comment**

38 \* \* \*

39  
40  
41 **2. Subordination of Security Interests Created by New Debtor.** This section  
42 addresses the priority contests that may arise when a new debtor becomes bound by the security  
43 agreement of an original debtor and each debtor has a secured creditor.



1 Subsection (a) subordinates the original debtor's secured party's security interest  
2 perfected against the new debtor solely under Section 9-508. The security interest is  
3 subordinated to security interests in the same collateral perfected by another method, e.g., by  
4 filing against the new debtor. As used in this section, "a filed financing statement that is  
5 effective solely under Section 9-508" refers to a financing statement filed against the *original*  
6 *debtor* that ~~continues to be~~ is effective under Section 9-508 to perfect a security interest in the  
7 collateral in question. It does not encompass a new initial financing statement providing the  
8 name of the new debtor, even if the initial financing statement is filed to maintain the  
9 effectiveness of a financing statement under the circumstances described in Section 9-508(b).  
10 Nor does it encompass a financing statement filed against the original debtor which remains  
11 effective against collateral transferred by the original debtor to the new debtor. See Section 9-  
12 508(c). Concerning priority contests involving transferred collateral, see Sections 9-325 and 9-  
13 507.

### 14 **Reporter's Note**

15  
16  
17 Under the rules in Section 9-326, the priority of a security interest depends in part on  
18 whether a financing statement "is effective solely under Section 9-508." The modification  
19 would emphasize that one must look only at the collateral in question when making this  
20 determination.

### 21 22 23 **SECTION 9-330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR** 24 **INSTRUMENT.**

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

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

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

33 (b) [**Purchaser's priority: other security interests.**] A purchaser of chattel paper has  
34 priority over a security interest in the chattel paper which is claimed other than merely as  
35 proceeds of inventory subject to a security interest if the purchaser gives new value and takes

1 possession of the chattel paper or obtains control of the chattel paper under Section 9-105 in  
2 good faith, in the ordinary course of the purchaser’s business, and without knowledge that the  
3 purchase violates the rights of the secured party.

4 \* \* \*

5 **Official Comment**

6 \* \* \*

7  
8  
9 **3. Chattel Paper.** Subsections (a) and (b) follow former Section 9-308 in distinguishing  
10 between earlier-perfected security interests in chattel paper that is claimed merely as proceeds of  
11 inventory subject to a security interest and chattel paper that is claimed other than merely as  
12 proceeds. Like former Section 9-308, this section does not elaborate upon the phrase “merely as  
13 proceeds.” For an elaboration, see PEB Commentary No. 8.

14  
15 For a security interest to qualify for priority under subsection (a) or (b), the secured party  
16 must “take[] possession of the chattel paper or obtain[] control of the chattel paper under Section  
17 9-105.” When chattel paper comprises one or more tangible records and one or more electronic  
18 records, a secured party satisfies this requirement if it has possession of the tangible records and  
19 control of the electronic records.

20  
21 This section makes explicit the “good faith” requirement and retains the requirements of  
22 “the ordinary course of the purchaser’s business” and the giving of “new value” as conditions for  
23 priority. Concerning the last, this Article deletes former Section 9-108 and adds to Section 9-  
24 102 a completely different definition of the term “new value.” Under subsection (e), the holder  
25 of a purchase-money security interest in inventory is deemed to give “new value” for chattel  
26 paper constituting the proceeds of the inventory. Accordingly, the purchase-money secured  
27 party may qualify for priority in the chattel paper under subsection (a) or (b), whichever is  
28 applicable, even if it does not make an additional advance against the chattel paper.

29  
30 If a possessory security interest in tangible chattel paper or a perfected-by-control  
31 security interest in electronic chattel paper does not qualify for priority under this section, it may  
32 be subordinate to a perfected-by-filing security interest under Section 9-322(a)(1).

33  
34 **Reporter’s Note**

35  
36 There are occasions when “hybrid” chattel paper may arise, e.g., when an amendment to  
37 electronic chattel paper is evidenced by a tangible record. The new paragraph in the comment  
38 would emphasize what is implicit in the statute, i.e., that a secured party may achieve priority  
39 with respect to the “hybrid” chattel paper under Section 9-330(a) or (b).

40  
41 **SECTION 9-509. PERSONS ENTITLED TO FILE A RECORD.**

42 (a) **[Person entitled to file record.]** A person may file an initial financing statement,

1 amendment that adds collateral covered by a financing statement, or amendment that adds a  
2 debtor to a financing statement only if:

3 (1) the debtor authorizes the filing in an authenticated record or pursuant to  
4 subsection (b) or (c); or

5 (2) the person holds an agricultural lien that has become effective at the time of  
6 filing and the financing statement covers only collateral in which the person holds an agricultural  
7 lien.

8 \* \* \*

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

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

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

17 \* \* \*

### 18 **Official Comment**

19 \* \* \*

20  
21  
22 **6. Amendments; Termination Statements Authorized by Debtor.** Most amendments  
23 may not be filed unless the secured party of record, as determined under Section 9-511,  
24 authorizes the filing. See subsection (d)(1). However, under subsection (d)(2), the authorization  
25 of the secured party of record is not required for the filing of a termination statement if the  
26 secured party of record failed to send or file a termination statement as required by Section 9-  
27 513, the debtor authorizes it to be filed, and the termination statement so indicates. An  
28 authorization to file a record under subsection (d) is effective even if the authorization is not in  
29 an authenticated record. Compare subsection (a)(1). However, the person filing the record  
30 would be prudent to obtain and retain an authenticated record authorizing the filing.



1 the right to a special method of calculating a surplus or deficiency in certain dispositions to a  
2 secured party, a person related to secured party, or a secondary obligor (Section 9-615), (vii) the  
3 duty to give an explanation of the calculation of a surplus or deficiency (Section 9-616), (viii)  
4 the right to limitations on the effectiveness of certain waivers (Section 9-624), and (ix) the right  
5 to hold a secured party liable for failure to comply with this Article (Sections 9-625 and 9-626).  
6 For clarity and consistency, this Article uses the term “waive or vary” instead of “renounc[e] or  
7 modify[,],” which appeared in former Section 9-504(3).  
8

9 This section provides generally that the specified rights and duties “may not be waived or  
10 varied.” However, it does not restrict the ability of parties to agree to settle, compromise, or  
11 renounce claims for past conduct that may have constituted a violation or breach of those rights  
12 and duties, even if the settlement involves an express “waiver.”  
13

14 Section 9-610(c) limits the circumstances under which a secured party may purchase at  
15 its own private disposition. Transactions of this kind are equivalent to “strict foreclosures” and  
16 are governed by Sections 9-620, 9-621, and 9-622. The provisions of these sections can be  
17 waived only as provided in Section 9-624(b).  
18

19 **4. Waiver by Debtors and Obligors.** The restrictions on waiver contained in this  
20 section apply to obligors as well as debtors. This resolves a question under former Article 9 as  
21 to whether secondary obligors, assuming that they were “debtors” for purposes of former Part 5,  
22 were permitted to waive, under the law of suretyship, rights and duties under that Part.  
23

24 **5. Certain Post-Default Waivers.** Section 9-624 permits post-default waivers in  
25 limited circumstances. These waivers must be made in agreements that are authenticated.  
26 Under Section 1-201, an “‘agreement’ means the bargain of the parties in fact.” In considering  
27 waivers under Section 9-624 and analogous agreements in other contexts, courts should carefully  
28 scrutinize putative agreements that appear in records that also address many additional or  
29 unrelated matters.  
30

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

32 \* \* \*

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

34 (1) at a public disposition; or

35 (2) at a private disposition only if the collateral is of a kind that is customarily

36 sold on a recognized market or the subject of widely distributed standard price quotations.  
37

### 38 **Official Comment**

39 \* \* \*  
40  
41



1 prohibiting a secured party from buying at its own private disposition. Transactions of this kind  
2 are equivalent to “strict foreclosures” and are governed by Sections 9-620, 9-621, and 9-622.

3 **Reporter’s Note**

4  
5 The thought that currently appears in the comment to Section 9-624 would be added to  
6 the comments to Sections 9-602 and 9-610, where it may be more likely to be discovered.  
7

8  
9 **SECTION 9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT.**

10 \* \* \*

11 (b) [**Commercially reasonable disposition.**] Every aspect of a disposition of collateral,  
12 including the method, manner, time, place, and other terms, must be commercially reasonable.  
13 If commercially reasonable, a secured party may dispose of collateral by public or private  
14 proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on  
15 any terms.

16 \* \* \*

17 **Official Comment**

18  
19 \* \* \*

20  
21 2. **Commercially Reasonable Dispositions.** Subsection (a) follows former Section 9-  
22 504 by permitting a secured party to dispose of collateral in a commercially reasonable manner  
23 following a default. Although subsection (b) permits both public and private dispositions,  
24 including public and private dispositions conducted over the Internet. “every aspect of a  
25 disposition . . . must be commercially reasonable.” This section encourages private dispositions  
26 on the assumption that they frequently will result in higher realization on collateral for the  
27 benefit of all concerned. Subsection (a) does not restrict dispositions to sales; collateral may be  
28 sold, leased, licensed, or otherwise disposed. Section 9-627 provides guidance for determining  
29 the circumstances under which a disposition is “commercially reasonable.”

30  
31 \* \* \*

32  
33  
34 **SECTION 9-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL.**

35 \* \* \*

36 **Official Comment**

1  
2 \* \* \*

3  
4 10. Other Law. Other law may require that notification of disposition be given to  
5 additional parties. For example, federal law imposes notification requirements with respect to  
6 the enforcement of mortgages on federally documented vessels.  
7

8  
9 **SECTION 9-613. CONTENTS AND FORM OF NOTIFICATION BEFORE**

10 **DISPOSITION OF COLLATERAL: GENERAL.** Except in a consumer-goods transaction,  
11 the following rules apply:

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

13 (A) describes the debtor and the secured party;

14 (B) describes the collateral that is the subject of the intended disposition;

15 (C) states the method of intended disposition;

16 (D) states that the debtor is entitled to an accounting of the unpaid indebtedness  
17 and states the charge, if any, for an accounting; and

18 (E) states the time and place of a public disposition or the time after which any  
19 other disposition is to be made.

20 \* \* \*

21 **Official Comment**

22 \* \* \*

23  
24  
25 **2. Contents of Notification.** To comply with the “reasonable authenticated notification”  
26 requirement of Section 9-611(b), the contents of a notification must be reasonable. Except in a  
27 consumer-goods transaction, the contents of a notification that includes the information set forth  
28 in paragraph (1) are sufficient as a matter of law, unless the parties agree otherwise. (The  
29 reference to “time” of disposition means here, as it did in former Section 9-504(3), not only the  
30 hour of the day but also the date.) Although a secured party may choose to include additional  
31 information concerning the transaction or the debtor’s rights and obligations, no additional  
32 information is required unless the parties agree otherwise. A notification that lacks some of the  
33 information set forth in paragraph (1) nevertheless may be sufficient if found to be reasonable by  
34 the trier of fact, under paragraph (2). A properly completed sample form of notification in  
35 paragraph (5) or in Section 9-614(a)(3) is an example of a notification that would contain the



1 information set forth in paragraph (1). Under paragraph (4), however, no particular phrasing of  
2 the notification is required.

3  
4 This section applies to a notification of a public disposition conducted electronically. A  
5 notification of an electronic disposition satisfies paragraph (1)(E) if it states the time when the  
6 disposition is scheduled to begin and states the electronic location. For example, under the  
7 technology current in 2009, the Uniform Resource Locator (URL) or other Internet address  
8 where the site of the public disposition can be accessed suffices as an electronic location.  
9

### 10 **Reporter’s Note**

11  
12 The additions to the comments to Sections 9-610 and 9-613 would illustrate how these  
13 sections are to be applied to electronic dispositions.  
14

## 15 **SECTION 9-621. NOTIFICATION OF PROPOSAL TO ACCEPT**

### 16 **COLLATERAL.**

17  
18 (a) **[Persons to which proposal to be sent.]** A secured party that desires to accept  
19 collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

20 \* \* \*

21 \* \* \*

### 22 **Official Comment**

23 \* \* \*

24  
25  
26 **2. Notification Requirement.** Subsection (a) specifies three classes of competing  
27 claimants to whom the secured party must send notification of its proposal: (i) those who notify  
28 the secured party that they claim an interest in the collateral, (ii) holders of certain security  
29 interests and liens who have filed against the debtor, and (iii) holders of certain security interests  
30 who have perfected by compliance with a statute (including a certificate-of-title statute),  
31 regulation, or treaty described in Section 9-311(a). With regard to (ii), see Section 9-611,  
32 Comment 4. Subsection (b) also requires notification to any secondary obligor if the proposal is  
33 for acceptance in partial satisfaction.  
34

35 Unlike Section 9-611, this section contains no “safe harbor,” which excuses an enforcing  
36 secured party from notifying certain secured parties and other lienholders. This is because,  
37 unlike Section 9-610, which requires that a disposition of collateral be commercially reasonable,  
38 Section 9-620 permits the debtor and secured party to set the amount of credit the debtor will  
39 receive for the collateral subject only to the requirement of good faith. An effective acceptance  
40 discharges subordinate security interests and other subordinate liens. See Section 9-622. If  
41 collateral is subject to several liens securing debts much larger than the value of the collateral,

1 the debtor may be disinclined to refrain from consenting to an acceptance by the holder of the  
2 senior security interest, even though, had the debtor objected and the senior disposed of the  
3 collateral under Section 9-610, the collateral may have yielded more than enough to satisfy the  
4 senior security interest (but not enough to satisfy all the liens). Accordingly, this section  
5 imposes upon the enforcing secured party the risk of the filing office's errors and delay. The  
6 holder of a security interest who is entitled to notification under this section but ~~does not receive~~  
7 it to whom the enforcing secured party does not send notification has the right to recover under  
8 Section 9-625(b) any loss resulting from the ~~enforcing~~-secured party's noncompliance with this  
9 section.

10  
11 **Reporter's Note**

12  
13 The modification would correct an error in the official comment.

14  
15  
16 **SECTION 9-625. REMEDIES FOR SECURED PARTY'S FAILURE TO**  
17 **COMPLY WITH ARTICLE.**

18 \* \* \*

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

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

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

28 \* \* \*

29  
30 **Reporter's Note**

31 The heading for subsection (c) would be conformed to the text. Article 9 includes  
32 headings for the subsections as an aid to readers. Unlike section captions, which are part of the  
33 UCC, see Section 1-107, subsection headings are not a part of the official text itself.



1 locate and discover the attributes of the other financing statement. The notice-filing policy of  
2 this Article applies to the initial financing statements described in this section. Accordingly, an  
3 initial financing statement that substantially satisfies the requirements of subsection (c) is  
4 effective, even if it has minor errors or omissions, unless the errors or omissions make the  
5 financing statement seriously misleading. See Section 9-506.  
6

7 A single initial financing statement may continue the effectiveness of more than one  
8 financing statement filed before this Article's effective date. See Section 1-102(5)(a) (words in  
9 the singular include the plural). If a financing statement has been filed in more than one office in  
10 a given jurisdiction, as may be the case if the jurisdiction had adopted former Section 9-401(1),  
11 third alternative, then an identification of the filing in the central filing office suffices for  
12 purposes of subsection (c)(2). If under this Article the collateral is of a type different from its  
13 type under former Article 9—as would be the case, e.g., with a right to payment of lottery  
14 winnings (a “general intangible” under former Article 9 and an “account” under this Article),  
15 then subsection (c) requires that the initial financing statement indicate the type under this  
16 Article.  
17

### 18 **Reporter’s Note**

19  
20 The additional sentences would remove any doubt that the “minor error” rule in Section  
21 9-506(a) applies to an initial financing statement, including one that is filed to continue the  
22 effectiveness of a financing statement that was filed before revised Article 9 took effect.  
23  
24

## 25 **ARTICLE 11**

### 26 **EFFECTIVE DATE AND TRANSITION PROVISIONS**

27 \* \* \*

28 **Legislative Note:** Article 11 affects transactions that were entered into before the effective date  
29 of the 1972 amendments to Article 9, which were supplanted by the version of Article 9 that has  
30 been in effect in all States since at least January 1, 2002. Inasmuch as very few, if any, of these  
31 transactions remain outstanding, States may wish to repeal Article 11.  
32

### 33 **Reporter’s Note**

34  
35 When Article 9 was revised in 1972, it was accompanied by an Article 11, which  
36 provides the effective date of the revisions as well as transition rules for transactions entered into  
37 before the effective date of the revisions. It is now 36 years since the promulgation of the 1972  
38 amendments and over a quarter-century since their widespread enactment. As such, it is quite  
39 unlikely that there are more than a trivial number of outstanding transactions (if any) that were  
40 entered into before the effective date of the 1972 amendments and for which transition rules to  
41 the 1972 text of Article 9 (now supplanted by revised Article 9) remain relevant.