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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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MEETING IN ITS ONE-HUNDRED-AND-EIGHTEENTH YEAR
SANTA FE, NEW MEXICO
JULY 9 - JULY 16, 2009

AMENDMENTS TO
UNIFORM COMMERCIAL CODE ARTICLE 9

WITH REPORTER’S PREFATORY NOTE AND COMMENTS

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ON UNIFORM STATE LAWS

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May 27, 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 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.
AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9

PART ONE

AMENDMENTS TO THE OFFICIAL TEXT AND RELATED COMMENTS

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

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

* * *

(7) “Authenticate” means:

(A) to sign; or

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

Reporter’s Note

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

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

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

* * *

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

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

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

the collateral.

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Official Comment

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Statutes often require applicants for a certificate of title to identify all security interests on the application and require the issuing agency to note the identified security interests on the certificate. Some of these statutes provide that perfection of a security interest in goods covered by the certificate occurs upon notation of the security interest on the certificate. Others contemplate that a notation will be made but provide that priority over the rights of a lien creditor (i.e., perfection) is achieved by another method, e.g., delivery of the application to the issuing agency. A certificate governed by either type of statute can qualify as a “certificate of title” under this Article, even if the statute requiring notation does not expressly state that compliance with specified requirements (e.g., the issuance of a certificate on which a security interest is noted or the delivery of the application to the issuing agency) results in perfection. A certificate can qualify as a “certificate of title” even if the issuing agency fails to note the security interest on the certificate, unless, of course, a statute provides that priority over the rights of a lien creditor is achieved by issuance of a certificate on which the security interest has in fact been noted.

In many states, a certificate of title covering goods that are encumbered by a security interest is delivered to the secured party by the issuing authority. To eliminate the need for the issuance of a paper certificate under these circumstances, several states have revised their certificate-of-title statutes to permit or require a state agency to maintain an electronic record that evidences ownership of the goods and in which a security interest in the goods may be noted. Such a record is a “certificate of title” if it is in fact maintained as an alternative to the issuance of a paper certificate of title, regardless of whether the certificate-of-title statute provides that the record is a certificate of title and even if the statute does not expressly state that the record is maintained instead of issuing a certificate of title.
SECTION 9-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY
SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES.

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

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

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

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

* * *

Reporter’s Note

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

SECTION 9-104. CONTROL OF DEPOSIT ACCOUNT.

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

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

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

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

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

***

Official Comment

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

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

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

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

***
SECTION 9-327. PRIORITY OF SECURITY INTERESTS IN DEPOSIT ACCOUNT. The following rules govern priority among conflicting security interests in the same deposit account:

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

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

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

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

Reporter’s Note

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

SECTION 9-106. CONTROL OF INVESTMENT PROPERTY.

* * *

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

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

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

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

* * *

SECTION 9-328. PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY. The following rules govern priority among conflicting security interests in the same investment property:

* * *

(2) Except as otherwise provided in paragraphs (3) and (4), conflicting security interests held by secured parties each of which has control under Section 9-106 rank according to priority in time of:

* * *

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

(i) if the secured party obtained control under Section 9-106(b)(2), the commodity intermediary’s agreement to apply any value distributed on account of the commodity contract as directed by the secured party; or
(ii) if the secured party obtained control through another person under Section 9-106(b)(3), the time on which priority would be based under this paragraph if the other person were the secured party.

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

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

* * *

Reporter’s Note

New Section 9-106(a)(3) conforms “control” of a commodity contract to “control” of a security entitlement in Section 8-106. The corresponding amendment to Section 9-328(2)(C) explains when a secured party that has control under Section 9-106(a)(3) obtains control for purposes of the first-in-time priority rule.

SECTION 9-105. CONTROL OF ELECTRONIC CHATTEL PAPER.

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

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

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

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

(4) copies or revisions amendments that add or change an identified assignee of the authoritative copy can be made only with the participation consent of the secured party;

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

(6) any revision amendment of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

Official Comment

* * *

2. "Control" of Electronic Chattel Paper. This Article covers security interests in "electronic chattel paper," a new term defined in Section 9-102. This section governs how "control" of electronic chattel paper may be obtained. Subsection (a), which derives from Section 16 of the Uniform Electronic Transactions Act, sets forth the general test for control. Subsection (b) sets forth a safe harbor test that if satisfied, results in control under the general test in subsection (a).

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

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

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

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

4. Development of Control Systems. This Article leaves to the marketplace the development of systems and procedures, through a combination of suitable technologies and business practices, for dealing with control of electronic chattel paper in a commercial context. However, achieving control under this section requires more than the agreement of interested persons that the elements of control are satisfied. For example, paragraph (4) contemplates that control requires that it be a physical impossibility (or sufficiently unlikely or implausible so as to approach practical impossibility) to add or change an identified assignee without the participation of the secured party (or its authorized representative). It would not be enough for the assignor merely to agree that it will not change the identified assignee without the assignee-secured party’s consent. However, the standards applied to determine whether a party is in control of electronic chattel paper should not be more stringent than the standards now applied to determine whether a party is in possession of tangible chattel paper. Control of electronic chattel paper contemplates systems or procedures such that the secured party must take some action (either directly or through its designated custodian) to effect a change or addition to the authoritative copy. But just as a secured party does not lose possession of tangible chattel paper merely by virtue of the possibility that a person acting on its behalf could wrongfully redeliver the chattel paper to the debtor, so control of electronic chattel paper would not be defeated by the possibility that the secured party’s interest could be subverted by the wrongful conduct of a person (such as a custodian) acting on its behalf.
Systems that evolve for control of electronic chattel paper may or may not involve a third party custodian of the relevant records. However, this section and the concept of control of electronic chattel paper are not based on the same concepts as are control of deposit accounts (Section 9-104), security entitlements, a type of investment property (Section 9-106), and letter-of-credit rights (Section 9-107). The rules for control of that collateral are based on existing market practices and legal and regulatory regimes for institutions such as banks and securities intermediaries. Analogous practices for electronic chattel paper are developing nonetheless. The flexible approach adopted by this section, moreover, should not impede the development of these practices and, eventually, legal and regulatory regimes, which may become analogous to those for, e.g., investment property.

Reporter’s Note

1. Subsection (a) is new. With its addition, satisfaction of the requirements currently enumerated in Section 9-105 would become sufficient, but not necessary, to establish control. Control may arise under the general standard (new subsection (a)) even if the specific requirements are not satisfied.

Subsection (a) largely conforms to Section 7-106, which defines control of an electronic document of title. However, two changes were necessary. First, in keeping with the general usage in Article 9, Section 9-105 uses the term “assign” rather than “transfer.” Second, although Section 7-106 (which is not limited to secured parties) expands the control concept to include not only an assignee of an electronic document of title but also a person to which an electronic document is originally issued, under Section 9-105 only an assignee electronic chattel paper can have control of the chattel paper.

The amendments to paragraphs (4), (5), and (6) of subsection (b) are stylistic.

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

SECTION 9-316. CONTINUED PERFECTION OF SECURITY INTEREST

FOLLOWING EFFECT OF CHANGE IN GOVERNING LAW.

* * *

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

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

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

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

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

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

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

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

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

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

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

***

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

**Reporter’s Note**

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

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

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

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

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

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

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

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

* * *

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

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

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

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

**Reporter’s Note**

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

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

   Debtor is a Pennsylvania corporation. Debtor grants to Lender a security interest in
Debtor’s existing and after-acquired inventory. Lender perfects by filing in Pennsylvania. Debtor’s shareholders decide to “reincorporate” in Delaware. They form a Delaware corporation (Newcorp) into which they merge Debtor. By virtue of the merger, Newcorp becomes bound by Debtor’s security agreement. See Section 9-203.

After the merger, Newcorp acquires inventory to which Lender’s security interest attaches. Because Newcorp is located in Delaware, Delaware law governs perfection of a security interest in Newcorp’s inventory. See Sections 9-301, 9-307.

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

Under new subsection (i), however, the financing statement filed in Pennsylvania would be effective to perfect a security interest that attaches to the post-merger collateral. The new subsection would eliminate the risk that a change in Debtor’s location would result in security interests in post-relocation collateral being unperfected until Lender discovers the relocation and files in Delaware. The perfection afforded by the Pennsylvania financing statement would end four months after the merger (reincorporation) unless Lender perfects under Delaware law within the four-month period (or, if earlier, before the financing statement would have become ineffective under Pennsylvania law).

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

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

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

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

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

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

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

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

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

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

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

**Reporter’s Note**

Section 9-326 resolves the priority of conflicting security interests in situations like the following:

SP-D holds a security interest in the existing and after-acquired inventory of Debtor, a Pennsylvania corporation. In 2007 SP-D perfected its security interest by filing a financing statement against Debtor in Pennsylvania. SP-S holds a security interest in the existing and after-acquired inventory of Survivor, which also is a Pennsylvania corporation. In 2008 SP-S perfected its security interest by filing a financing statement against Survivor in Pennsylvania. In 2009 Debtor merges into Survivor.

Under current law, SP-D’s security interest would attach to inventory that Survivor had on hand at the time of the merger or acquired after the merger. Section 9-508 makes SP-D’s financing statement effective to perfect its security interest in this inventory, even though the financing statement was filed against Debtor. The first-to-file-or-perfect rule (Section 9-322(a)(1)) would award priority to SP-D. However, it is subject to Section 9-326, which awards priority to SP-S. Section 9-326 identifies the subordinated security interest as one that is "perfected by a filed financing statement that is effective solely under Section 9-508."

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

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

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

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

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

* * *

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

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

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

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

* * *

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

Reporter’s Note

Consider this example:

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

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

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

The amendments to Section 9-322(a) and (b) would preserve the subordination by dating SP-D’s priority, for purposes of the first-to-file-or-perfect rule, from the time of its Delaware filing. The amendments would relieve SP-S, which was the first secured party to file against Survivor, from any need to check for subsequent filings by competing secured parties. (Note that the amendments would not affect the rule in Section 9-325(a), which governs the priority of security interests in inventory that Debtor transferred to Survivor in the merger.)

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

* * *

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

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

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Official Comment

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6. Purchasers Other Than Secured Parties.

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

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

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

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

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

* * *

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

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

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

(e) [Inapplicability of subsection (d) to certain sales.] Subsection (d) does not apply to the sale, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620, of a payment intangible or promissory note.
SECTION 9-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY NOTES, HEALTH-CARE-INSURANCE RECEIVABLES, AND CERTAIN GENERAL INTANGIBLES INEFFECTIVE.

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

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

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

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

Reporter’s Note

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

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

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

Consider this example:

Lender makes a loan to Borrower. The loan is not evidenced by chattel paper. The loan agreement (or note) provides that Lender’s rights may not be assigned and, if Lender wrongfully assigns the rights, an assignee may not enforce Borrower’s obligation to pay. Lender assigns the right to payment (i.e., the payment intangible or instrument) to Assignee.

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

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

Section 9-406 is clear that a contractual restriction would not be effective to restrict the assignee’s right quia assignee to enforce the account debtor’s obligation under Section 9-607. The proposed amendment would eliminate any doubt that the restriction would not be effective to restrict the assignee’s right to enforce if the assignee became the owner of the payment intangible or promissory note by accepting it in a “strict foreclosure” under Section 9-620.
SECTION 9-515. DURATION AND EFFECTIVENESS OF FINANCING STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT.

* * *

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

* * *

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

* * *

Reporter’s Note

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

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

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

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

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

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

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

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

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.
(a) [Article 9 definitions.] In this article:

* * *

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

* * *

(67A) “Public organic record” means:

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

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

(C) a record or records composed of a charter, organizational certificate,
or similar record that is initially issued by a State or the United States and authorizes the
organization to commence business and any record [filed with or] issued by the State or United
States which effects an amendment or restatement of the initial record, if the record or records
are available to the public for inspection; and

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

* * *

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

* * *

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

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

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

2. The amendments to the definition of “registered organization” also are meant to clarify that the term includes an organization that is created without the need for a public record but that is “formed” only when a public filing has been made. For example, under Delaware law, a statutory trust is “created by a governing instrument,” Del. Code Ann. tit. 12, § 3801(g)(1), but is “formed at the time of the filing of the initial certificate of trust in the office of the Secretary of State or at any later date or time specified in the certificate of trust.” Del. Code Ann. § 3810(a)(2). The definition presents alternative approaches to clarifying that a Massachusetts business trust is a registered organization. The Joint Review Committee may wish to consider whether the approach taken should be extended to all organizations, not just statutory trusts.

Reporter’s Prefatory Note to Provisions Concerning the Name of an Individual Debtor

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

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

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

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

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

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

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

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

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

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

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

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

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

Adoption of any of the alternatives under discussion would change current law. A financing statement that is effective under only under Section 9-503 as amended and is filed before the section’s effective date should take effect on the effective date, which would be the “time of filing” for purposes of Section 9-322(a)(1). Additional text (i.e., transition rules) will be necessary for implementation. The complexity of this text is likely to vary with the complexity of the approach adopted.

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

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

(a) **[Sufficiency of debtor’s name.]** A financing statement sufficiently provides the name of the debtor:
(B) indicates, in the debtor’s name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

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

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

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

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

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

(4)(5) in other cases:

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

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

* * *

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

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

* * *

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.

* * *

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

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

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

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

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

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

Reporter’s Note

1. Alternative A uses a cascade, or waterfall, to determine the name of an individual debtor which is sufficient for a financing statement. Although the particular steps in the cascade remain under discussion, the three steps under the draft are the debtor’s driver’s license, identification card, and U.S. passport, in that order. Because States use different terms for the driver’s licenses and identification cards they issue, the words “driver’s license” and “identification card” appear in brackets. If a debtor has been issued more than one identity document (i.e., license, identification card, or passport) described in the applicable paragraph of Section 9-503(a)(4), the document that was issued most recently would be the one that indicates the debtor’s name for purposes of that paragraph.

The last step in the cascade (draft Section 9-503(a)(4)(D)) is based upon the approach taken by the filing-office regulations of some Canadian provinces. It is independent from the remainder of Alternative A and can be deleted or revised without affecting the remaining provisions. If the Joint Review Committee wishes to retain this approach, it may wish to consider whether paragraph (D) is too limiting. For example, should it be expanded to include debtors whose names do not include both a surname and a first given name? Should a special rule be provided for debtors whose names include both a matronymic and patronymic, e.g.,
2. The draft refers to a license or ID card issued by "this State." Perfection of a security interest by filing is determined by the law of the jurisdiction in which the debtor is located. See Section 9-301(1). A debtor who is an individual is located at the individual’s principal residence. Thus, a given State’s Section 9-503 will apply during any period when the debtor maintains his principal residence in that State. Consider the following example:

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

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

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

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

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

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

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

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

6. If the debtor is a trust whose organic documents do not specify a name for the trust, Section 9-503(a)(3) requires a financing statement to provide the name of an individual as debtor. If the draft’s “driver’s license/identification card” approach is acceptable, the Joint Review Committee should consider whether the same approach should be taken with respect to the name of an individual shown as debtor under Section 9-503(a)(3). Any such expansion would likely require additional changes to the filing provisions.

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

[Alternative B: Name for Individual Debtor—“Safe Harbor” Approach]
[Alternative B1—Name on official document]

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

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

* * *

(4) in other cases:

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

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

* * *

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

(h) [Multiple licenses or cards.] If this State has issued to an individual more than one [driver’s license] or [identification card] of a kind described in subsection (g), the one that was issued most recently is the one to which the subsection refers.
SECTION 9-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF FINANCING STATEMENT.

* * *

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

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

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

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

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

(2) this State issues to the debtor a [driver’s license] or [identification card] that indicates a name different from the name provided and from the name that, immediately upon the issuance, would be sufficient under Section 9-503(a)(4).

SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.

* * *

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

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

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

(e) [Individual “debtor’s correct name.”] If a debtor who is an individual changes the debtor’s name under Section 9-507(d), the “debtor’s correct name” in subsection (c) means the name of the debtor which, immediately after the change, would be sufficient under Section 9-504(a)(4) or (g).

[End of Alternative B1]

[Alternative B2—Form of Name]

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

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

* * *

(4) in other cases:

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

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

* * *

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

[End of Alternative B: “Safe Harbor” Approach]

Reporters Note

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

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

Even if the debtor’s name changes, the filed financing statement does not become seriously misleading if it can be found by searching under the debtor’s “correct” name, using the filing office’s standard search logic. Draft Section 9-506(e) explains what is meant by the debtor’s “correct name” when the debtor’s name changes under Section 9-507(d): The name that Section 9-503(a)(4) or (g) would yield immediately after the debtor’s name changes.

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

[Alternative C: Name for Individual Debtor—“Priority Approach”]
SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

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

* * *

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

* * *

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

* * *

* * *

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

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

* * *

(3) * * *

* * *

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

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

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

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

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

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

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

(4)(5) in other cases:

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

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

* * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9-320. BUYER OF GOODS.

* * * 

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

(1) without knowledge of the security interest;
(2) for value;

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

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

* * *

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

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

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

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

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

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

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

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

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

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

(3) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.
(c) [Holders of conflicting inventory security interests to be notified.] Subsections (b)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

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

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

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

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

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

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

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

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

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

4. (g) **[Conflicting purchase-money security interests.]** If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f):

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

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

5. (h) **[Exception for low-priority filing.]** This section does not accord priority to the holder of a security interest that is perfected by a low-priority filing except as against a competing security interest that is perfected by a low-priority filing or when it attaches under Section 9-309.
SECTION 9-318. NO INTEREST RETAINED IN RIGHT TO PAYMENT THAT
IS SOLD; RIGHTS AND TITLE OF SELLER OF ACCOUNT OR CHATTEL PAPER
WITH RESPECT TO CREDITORS AND PURCHASERS.

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

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

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

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

* * *

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

(1) the financing statement is effective to perfect a security interest in collateral

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.

* * *

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

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

(d) [“Debtor’s correct name.”] For purposes of Section 9-508(b), the “debtor’s correct
(e) [Individual “debtor’s correct name.”] If a debtor who is an individual changes the debtor’s name by virtue of Section 9-507(d), the “debtor’s correct name” in subsection (c) means:

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

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

SECTION 9-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL.

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

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

(1) the debtor;

(2) any secondary obligor; and

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

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

(i) identified the collateral;

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

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

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

* * *

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

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

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

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

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

(f) [“Debtor’s name.”] If the debtor is an individual, the “debtor’s name” for purposes of subsections (c) and (e) is the name specified in Section 9-503(a)(4).
SECTION 9-621. NOTIFICATION OF PROPOSAL TO ACCEPT COLLATERAL.

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

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

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

      (A) identified the collateral;

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

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

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

   * * *

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

Reporter’s Note

The amendments to Sections 9-611 and 9-621 make clear that an enforcing secured party need not give notice to the holder of a security interest perfected by a low-priority filing unless the enforcing party has received an authenticated notification from the holder.
1. **Classes of Security Interests Perfected by Filing.** Alternative C divides security interests perfected by filing into two classes. A financing statement that provides the name determined under the cascade, or waterfall, in Section 9-503(a)(4) would afford to the secured party all the benefits that current law affords to a security interest perfected by filing. The draft uses the term “high-priority filing” for a filing of this kind.

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

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

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

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

The amendment to subsection (a)(1) can result in a circular priority. Suppose, for example, that after SP-1 perfects by a low-priority filing, SP-2 perfects by taking possession. Under the first-to-file-or-perfect rule, SP-1’s perfected security interest has priority over SP-2’s. Thereafter, SP-3 perfects by a high-priority filing. Under the first-to-file-or-perfect rule, SP-2’s security interest is senior to SP-3’s; however, under the new exception in subsection (a)(1), SP-3’s security interest would be senior to SP-1’s, which is senior to SP-2’s, which is senior to SP-3’s, etc. One way in which to prevent this circular priority from arising would be to provide that a security interest perfected by a low-priority filing is subordinate to a security interest perfected by possession.
3. **Purchase-money Priority.** New Section 9-324(h) would implement the “priority” rule as it affects purchase-money security interests. This subsection does not affirmatively state that a security interest perfected by a high-priority filing is senior to a security interest perfected by a low-priority filing (which would be the case under the general rule in amended Section 9-322(a)(1)). Rather, subsection (h) prevents Section 9-324 from giving a “superpriority” to a PMSI perfected by a low-priority filing as against a security interest perfected by a high-priority filing. Under these circumstances, subsection (h) disapplies the PMSI “superpriority” rules with respect to both the purchase-money collateral itself and the proceeds of the purchase-money collateral.

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

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

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

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

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

6. **Other Priority Rules.** The draft does not distinguish between security interests perfected by a high-priority filing and those perfected by a low-priority filing in the following circumstances:
a. Section 9-334, which deals with the priority of a security interest in fixtures as against a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

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

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

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

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

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

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

Example 2: A owns an item of equipment subject to a perfected security interest in favor of SP-A. A sells the equipment to B, not in the ordinary course of business. B acquires its interest subject to SP-A’s security interest. Under current Section 9-325, if B creates a security interest in the equipment in favor of SP-B, SP-B’s security interest is subordinate to SP-A’s security interest, even if SP-B filed against B before SP-A filed against A, and even if SP-B took a purchase-money security interest. Normally, SP-B could have investigated the source of the equipment and discovered SP-A’s filing before making an advance against the equipment, whereas SP-A had no reason to search the filings against someone other than its debtor, A.
Under the current draft, a non-ordinary course buyer would take free of a security interest perfected by a low-priority filing, and so it will not be possible for the situation described in Example 1 to arise if SP-A has perfected by a low-priority filing. However, if the Joint Review Committee decides not to distinguish between low- and high-priority filings as against buyers, or if it decides that a buyer with knowledge of a security interest perfected by a low-priority filing take subject to the security interest (i.e., if it approves the bracketed language in draft subsections (b), (c), and (d) of Section 9-317, then the situation in Example 1 might arise when SP-A has perfected by a low-priority filing. If so, the Joint Review Committee should consider whether SP-A’s security interest should be senior to SP-B’s if SP-B has perfected by a high-priority filing.

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

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

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

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

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

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

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

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

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

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

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

[End of Alternative Approaches to Name of Individual Debtor]

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

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

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

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

(3) if the debtor is a trust that is not a registered organization or a trustee acting
with respect to property held in trust, only if the financing statement:

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

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

(4) in other cases:

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

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

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**Official Comment**

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2. **Debtor’s Name.** The requirement that a financing statement provide the debtor’s
name is particularly important. Financing statements are indexed under the name of the debtor,
and those who wish to find financing statements search for them under the debtor’s name.
Subsection (a) explains what the debtor’s name is for purposes of a financing statement. If the
debtor is a “registered organization” (defined in Section 9-102 so as to ordinarily include
corporations, limited partnerships, and limited liability companies), then the debtor’s name is the
name shown on the public records of the debtor’s “jurisdiction of organization” (also defined in
Section 9-102). Subsections (a)(2) and (a)(3) contain special rules for decedent’s estates and
common-law trusts. (Subsection (a)(1) applies to business trusts that are registered
organizations; however it does not apply to a trustee acting with respect to property held in trust,
even if the trustee is a registered organization.)

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**Reporter’s Note**
The amendments are meant to clarify current law. The Joint Review Committee did not discuss the proposed change to subsection (a)(3)(A).

SECTION 9-307. LOCATION OF DEBTOR.

* * *

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

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

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

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

* * *

Official Comment

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

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

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

Reporter’s Note

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

2. The amendment to the comment would correct a typographical error.

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

* * *

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

* * *

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

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

(B) indicate whether the debtor is an individual or an organization; or
(C) if the financing statement indicates that the debtor is an organization;

provide:

(i) a type of organization for the debtor;

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

(iii) an organizational identification number for the debtor or

indicate that the debtor has none;

* * *

Reporter’s Note

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

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

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

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

[Alternative A]

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

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

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

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

[Alternative B]

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

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

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

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

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

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

[End of Alternatives]

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

[Subsection (d)—Alternative A]
(d) [Sufficiency of statement under subsection (c).] A statement of a claim under subsection (c) must:

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

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

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

[Subsection (d)—Alternative B]

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

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

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

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

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

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

[End of Alternatives]

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

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

SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF

FILING.

* * *

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

* * *

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

* * *

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

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

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

* * *

* * *

Reporter’s Note

1. Current Section 9-518 provides a mechanism whereby an aggrieved debtor may use
the filing office to make a public declaration concerning the debtor’s belief that a filed financing
statement naming the debtor is inaccurate or was wrongfully filed. New subsections (c) and (d)
would provide a similar mechanism to a secured party of record for a financing statement to
express its belief that a person who filed a record relating to the financing statement was not
entitled to do so. As the current text does with respect to subsection (b), the amendments would
provide alternative versions of subsection (d). Each State would choose the alternative that is
better suited to the method by which searches are conducted in the real-estate records maintained
in the State.
2. Because this section currently refers to the statement as a “correction statement,” some debtors have filed one under the misapprehension that the filing has legal effect. It does not. See subsection (c) (as amended, subsection (e). To prevent future confusion, the amendment would refer to the statement as a “statement of a claim.” The comments will be amended to reflect this change in terminology.

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

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

* * *

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

* * *

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

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

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

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

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

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

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

* * *

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

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

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

Official Comment

* * *

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

Reporter’s Note

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

MODIFICATIONS TO THE COMMENTS
UNACCOMPANIED BY AMENDMENTS
TO THE OFFICIAL TEXT

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

Official Comment

5. Receivables-related Definitions.

* * *


“Chattel paper” consists of a monetary obligation together with a security interest in or a lease of
specific goods if the obligation and security interest or lease are evidenced by “a record or
records.” The definition has been expanded from that found in former Article 9 to include
records that evidence a monetary obligation and a security interest in specific goods and
software used in the goods, a security interest in specific goods and license of software used in
the goods, or a lease of specific goods and license of software used in the goods. The expanded
definition covers transactions in which the debtor’s or lessee’s monetary obligation includes
amounts owed with respect to software used in the goods. The monetary obligation with respect
to the software need not be owed under a license from the secured party or lessor, and the
secured party or lessor need not be a party to the license transaction itself. Among the types of
monetary obligations that are included in “chattel paper” are amounts that have been advanced
by the secured party or lessor to enable the debtor or lessee to acquire or obtain financing for a
license of the software used in the goods. The definition also makes clear that rights to payment
arising out of credit-card transactions are not chattel paper.

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

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

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

***

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

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

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

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

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

***

Reporter’s Note

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

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

SECTION 9-109. SCOPE.

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

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

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Official Comment

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

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

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

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

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

**Official Comment**

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

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

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

* * *

SECTION 9-501. FILING OFFICE.

* * *

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

* * *

Official Comment

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

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

**Reporter’s Note**

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

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

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

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

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

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

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

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

Official Comment

* * *

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

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

* * *

Reporter’s Note

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

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

(a) [General rule: effect on perfection of change in governing law.] A security
interest perfected pursuant to the law of the jurisdiction designated in Section 9-301(1) or
9-305(c) remains perfected until the earliest of:
(1) the time perfection would have ceased under the law of that jurisdiction;

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

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

* * *

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

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

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

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

* * *

Official Comment

* * *

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

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

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

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

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

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

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

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Reporter’s Note

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

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

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

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Official Comment

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3. Buyers of Accounts and Chattel Paper. Another aspect of sales of accounts and chattel paper also was implicit, and equally obvious, under former Article 9: If the buyer’s security interest is unperfected, then for purposes of determining the rights of certain third
parties, the seller (debtor) is deemed to have all rights and title that the seller sold. The seller is
deemed to have these rights even though, as between the parties, it has sold all its rights to the
buyer. Subsection (b) makes this explicit. As a consequence of subsection (b), if the buyer’s
security interest is unperfected, the seller can transfer, and the creditors of the seller can reach,
the account or chattel paper as if it had not been sold.

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

* * *

5. Not a Priority Rule. If a debtor sells an account, chattel paper, payment intangible or
promissory note to a buyer, and the debtor later transfers an interest in the same receivable to
another purchaser, a priority contest arises. If the interests are such that the priority contest is
governed by Article 9, it is resolved by application of the priority rules of Article 9. Subsection
(a) does not import the common-law principle of nemo dat quod non habet to displace those
rules. In many circumstances the priority rules of Article 9 will give the interest of the second
purchaser priority over the buyer’s previously-acquired ownership interest. To the extent that
the priority rules entail such priority, the debtor necessarily has “power to transfer rights in the
collateral” within the meaning of Section 9-203(b)(3). See Section 9-203(b)(3), Comment 6.
Subsection (b) is essentially a codification of the foregoing principles as applied to a particular
contest of the foregoing type, and various comments note that these principles apply to other
particular contests. See Section 9-318, Comment 4; Section 9-317, Comment 6. These
principles apply generally to all priority contests of the foregoing type. However, when a
buyer’s ownership interest is awarded priority under the applicable Article 9 priority rule, the
identification of the applicable rule as one of “priority” does not imply that the seller has
retained any interest.

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

New comment 5 appears as it was submitted by Ken Kettering and Chuck Mooney, with slight emendations.

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

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

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

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Official Comment

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

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

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

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

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

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

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

In general, the rule in subsection (a)(1) does not distinguish among various advances made by a secured party. The priority of every advance dates from the earlier of filing or perfection. However, in rare instances, the priority of an advance dates from the time the advance is made. See Example 3 and Section 9-323.
SECTION 9-509. PERSONS ENTITLED TO FILE A RECORD.

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Official Comment

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

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

Reporter’s Note

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

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

* * *

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

1. any supporting obligation for the collateral; and

2. proceeds of the collateral if:
(A) the security interest in proceeds is perfected;

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

and

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

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Official Comment

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

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

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

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

**Reporter’s Note**

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

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

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**Official Comment**

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

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

Reporter’s Note

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

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

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

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

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

(b) [Purchaser’s priority: other security interests.] A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 9-105 in good faith, in the ordinary course of the purchaser’s business, and without knowledge that the purchase violates the rights of the secured party.

* * *
**Official Comment**

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

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

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

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

**Reporter’s Note**

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

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

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

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

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

* * *

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

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

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

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Official Comment

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

* * *

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

* * *

(7) Sections 9-610(b), 9-611, 9-613, and 9-614, which deal with disposition of collateral;

* * *

(10) Sections 9-620, 9-621, and 9-622, which deal with acceptance of collateral in

satisfaction of obligation;

* * *

Official Comment

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

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

3. Nonwaivable Rights and Duties. This section revises former Section 9-501(3) by
restricting the ability to waive or modify additional specified rights and duties: (i) duties under
Section 9-207(b)(4)(C), which deals with the use and operation of consumer goods, (ii) the right
to a response to a request for an accounting, concerning a list of collateral, or concerning a
statement of account (Section 9-210), (iii) the duty to collect collateral in a commercially
reasonable manner (Section 9-607), (iv) the implicit duty to refrain from a breach of the peace in
taking possession of collateral under Section 9-609, (v) the duty to apply noncash proceeds of
collection or disposition in a commercially reasonable manner (Sections 9-608 and 9-615), (vi)
the right to a special method of calculating a surplus or deficiency in certain dispositions to a
secured party, a person related to secured party, or a secondary obligor (Section 9-615), (vii) the
duty to give an explanation of the calculation of a surplus or deficiency (Section 9-616), (viii)
the right to limitations on the effectiveness of certain waivers (Section 9-624), and (ix) the right
to hold a secured party liable for failure to comply with this Article (Sections 9-625 and 9-626).
For clarity and consistency, this Article uses the term “waive or vary” instead of “renounc[e] or modify[ ],” which appeared in former Section 9-504(3).

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

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

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

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

SECTION 9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT.

** *

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

(1) at a public disposition; or

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

Official Comment

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

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

* * *

SECTION 9-624. WAIVER.

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

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

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

Official Comment


2. Waiver. This section is a limited exception to Section 9-602, which generally
prohibits waiver by debtors and obligors. It makes no provision for waiver of the rule
prohibiting a secured party from buying at its own private disposition. Transactions of this kind
are equivalent to “strict foreclosures” and are governed by Sections 9-620, 9-621, and 9-622.
The thought that currently appears in the comment to Section 9-624 would be added to the comments to Sections 9-602 and 9-610, where it may be more likely to be discovered.

SECTION 9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT.

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

* * *

Official Comment

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

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SECTION 9-613. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL: GENERAL. Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:
(A) describes the debtor and the secured party;

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

(C) states the method of intended disposition;

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

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

* * *

**Official Comment**

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

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

**Reporter’s Note**

The additions to the comments to Sections 9-610 and 9-613 would illustrate how these sections are to be applied to electronic dispositions.
SECTION 9-621. NOTIFICATION OF PROPOSAL TO ACCEPT COLLATERAL.

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

* * *

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Official Comment

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

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

Reporter’s Note

The modification would correct an error in the official comment.
SECTION 9-625. REMEDIES FOR SECURED PARTY’S FAILURE TO
COMPLY WITH ARTICLE.

* * *

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

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

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

* * *

Reporter’s Note

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

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

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

(1) the filing of an initial financing statement in that office would be effective to
perfect a security interest under this [Act];
(2) the pre-effective-date financing statement was filed in an office in another
State or another office in this State; and

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

* * *

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

(1) satisfy the requirements of Part 5 for an initial financing statement;

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

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

Official Comment

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

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

Reporter’s Note

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

ARTICLE 11

EFFECTIVE DATE AND TRANSITION PROVISIONS

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

Reporter’s Note

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