

D R A F T
FOR DISCUSSION ONLY

REVISION OF UNIFORM COMMERCIAL CODE ARTICLE 9 – SECURED TRANSACTIONS

AMERICAN LAW INSTITUTE
PROPOSED FINAL DRAFT (APRIL 6, 1998)

*WITH MEMORANDUM FROM REPORTERS,
DISCUSSION TOPICS, AND REPORTERS' PREFATORY COMMENTS*

Note: With one exception (Part 7, Transition), the statutory text of this draft is marked to reflect changes from the text of the March, 1998, draft considered during the Drafting Committee's meeting on March 20-22, 1998. Part 7 is marked to reflect changes from the text of draft transition provisions distributed and discussed at that meeting. Also, the Memorandum from Reporters, Discussion Topics, Reporters' Prefatory Comments, and the text of Appendix I (conforming amendments to other UCC articles, marked to reflect changes from current official text) and Appendix II (model production-money security interest definition and priority rule) are identical to those in the Proposed Final Draft (April 6, 1998).

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ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws, the American Law Institute, or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners, the Institute and its Members, and the Drafting Committee and its Members and Reporters. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

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**REVISION OF UNIFORM COMMERCIAL CODE
ARTICLE 9 – SECURED TRANSACTIONS**

**AMERICAN LAW INSTITUTE
PROPOSED FINAL DRAFT (APRIL 6, 1998)**

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1

MEMORANDUM

2

TO: The Membership of The American Law Institute

3

FROM: Steven L. Harris and Charles W. Mooney, Jr., Reporters, Uniform
4 Commercial Code Article 9 Drafting Committee

5

RE: UCC Article 9: Proposed Final Draft (April 6, 1998); Discussion topics for
6 Annual Meeting, May 13, 1998

7

DATE: April 6, 1996

8

This memorandum accompanies the American Law Institute Proposed Final Draft
9 (April 6, 1998) of revised UCC Article 9. The Reporters' Prefatory Comments, which
10 appear on pages xvi-xxxiv of the draft, contain a useful overview of revised Article 9.
11 We encourage you to review them.

12

Following is a topical outline of the provisions that we hope to discuss at the
13 Annual Meeting of the membership in May. Most relate to material differences
14 between the Proposed Final Draft and the draft discussed by the membership at its
15 annual meeting in May, 1997 (Discussion Draft No. 2 (April 14, 1997)).

16

We would be pleased to discuss any other topics raised by the draft, as time
17 permits.

18

S.L.H.

C.W.M.

Uniform Commercial Code Article 9
Discussion Topics

1. “Consumer-goods transactions” and “consumer transactions.”
 - A. Definitions. § 9-102(a)(16), (18).
 - B. Proposed compromise solution to consumer-consumer creditor differences.
 1. Background; proposed solution. See Prefatory Comment, 5.i., at xxx.
 2. Deleted provisions. See Prefatory Comment 5.i., at xxxi.
 3. Revised provisions. See Prefatory Comment 5.i., at xxxii.
 4. Resolution. See Prefatory Comment 5.i., at xxxiii.
 5. Additional consumer-related provisions. See Prefatory Comment 5.i., at xxxiii.
2. Filing.
 - A. Identity of person who files a record; authorization to file a record; debtor’s right to file termination statement. See Prefatory Comment 5.g., at xxvi; § 9-508.
 - B. Deletion of mandatory filing office communication requirement. See Prefatory Comment 5.g., at xxvii; § 9-520(a).
 - C. Extended (30-year) effectiveness of financing statement in a “manufactured-home transaction” or a “public-finance transaction. See Prefatory Comment 5.g., at xxxvii; §§ 9-102(a)(37), (44) (definitions); 9-516(c).
3. Scope of Article 9.
 - A. Sales of promissory notes. See Prefatory Comments 5.a., at xviii; 5.d., at xxii; 5.e., at xxxviii; §§ 9-102(a)(43) (definition); 9-112(a)(3) (scope); 9-308A(a)(4) (automatic perfection); 9-327 (priority).

- 1 B. “Healthcare insurance receivables. See Prefatory Comments 5.a, at xviii; 5.d.,
2 at xxii; §§ 9-103(c) (definition); 9-112(a)(3) (scope); 9-308A(12) (limited
3 automatic perfection).
- 4 C. Statutory liens other than agricultural liens no longer covered. See Prefatory
5 Comment 5.a, at xviii; § 9-112(a)(2).
- 6 4. New rule for secured party in possession who delivers possession to a third party.
7 See Prefatory Comment 5.d., at xxii; § 9-311(d) (perfection).
- 8 5. Software.
- 9 A. Purchase money security interests. See Prefatory Comment 5.e., at xxiii; §§
10 9-104(d) (definition); 9-322(g) (priority).
- 11 B. Security interests in software as part of “chattel paper. See Prefatory
12 Comment 5.e., at xxiii; § 9-102(a)(8) (definition).
- 13 6. Competing control priority for investment property, deposit accounts, and letter of
14 credit rights; temporal priority rule replaces equal priority rule. See Prefatory
15 Comment 5.e., at xxiv; §§ 9-324(3) (investment property), 9-325(2) (deposit
16 accounts), 9-326(1)(B) (letter-of-credit rights).
- 17 7. Priority for purchasers of chattel paper and instruments.
- 18 A. Generally. See Prefatory Comment 5.e., at xxiv; §§ 9-327.
- 19 B. “Electronic chattel paper. See Prefatory Comment 5.d., at xxi; §§ 9-
20 102(a)(8), (22) (definitions), 9-110A (control), 9-310(a) (perfection by filing),
21 9-312 (perfection by control), 9-327 (priority).
- 22 C. Sales of promissory notes. See 3.A., above.
- 23 8. Default; enforcement.
- 24 A. Prohibition of waiver of secondary obligor’s rights and secured party’s duties
25 to secondary obligor. See Prefatory Comment 5.h., at xxix; §§ 9-602 (general
26 prohibition); 9-623 (certain rights waivable).
- 27 B. Secured party relieved of duties upon assignment, assumption, or subrogation.
28 See Prefatory Comment 5.h., at xxix; § 9-616(b)(2).

1 **REVISION OF UNIFORM COMMERCIAL CODE**
2 **ARTICLE 9 – SECURED TRANSACTIONS**

3 **AMERICAN LAW INSTITUTE**
4 **PROPOSED FINAL DRAFT (APRIL 6, 1998)**

5 **REPORTERS’ PREFATORY COMMENTS**

6 **1. Introduction.** This draft contains proposed statutory text only, with the
7 exception of this Prefatory Comment, Reporters’ Comments to new Part 7 (transition
8 provisions), Reporters’ Comments to Appendix I (related and conforming revisions of
9 other articles of the Uniform Commercial Code (“UCC”), and Reporters’ Comments
10 to Appendix II (model provisions for production-money priority).

11 The draft has been revised to take account of the Drafting Committee’s
12 deliberations during its March, 1998, meeting, which was its last formal meeting.
13 However, the Drafting Committee has not yet reviewed the revisions. The draft is
14 submitted for final approval by the membership of the American Law Institute (“ALI”).
15 It will receive a final reading by the membership of the National Conference of
16 Commissioners on Uniform State Laws (“NCCUSL”) during its 1998 Annual Meeting.
17 We expect the final version of the text and Official Comments to be ready for
18 submission to state legislatures early in 1999.

19 **2. Background and History of Article 9 Revisions.**

20 In 1990, the Permanent Editorial Board for the Uniform Commercial Code
21 (“PEB”), with the support of its sponsors, the ALI and NCCUSL, established a
22 committee (“Study Committee”) to study Article 9 of the UCC. The PEB charged the
23 Study Committee to consider whether Article 9 and related provisions of the UCC are
24 in need of revision. The PEB also requested the Study Committee to recommend the
25 nature and the substance of any revisions that it thought desirable. The Study
26 Committee issued its report as of December 1, 1992 (“Report”).

27 The principal recommendation of the Report called for the creation of a
28 drafting committee (“Drafting Committee”) for the revision of Article 9. The Report
29 also recommended numerous specific changes to Article 9. The ALI and NCCUSL
30 acted favorably upon the Report’s principal recommendation. The Drafting
31 Committee was organized in 1993.

32 **3. Status and Schedule.**

33 The Drafting Committee has met fourteen times (November, 1993; March,
34 1994; September-October, 1994; December, 1994; March, 1995; June, 1995;

December, 1995; March, 1996; June, 1996; November, 1996; March, 1997; November, 1997; February, 1998; and March, 1998). Meetings of the ALI Members Consultative Group on Article 9 were held on December 16-17, 1994, November 17, 1995, and October 31, 1996. NCCUSL considered the 1995 Annual Meeting Draft of revised Article 9 at its annual meeting in August, 1995, the 1996 Annual Meeting Draft of revised Article 9 at its annual meeting in July, 1996, and the 1997 Annual Meeting Draft of revised Article 9 at its annual meeting in July, 1997. The ALI Council reviewed Council Draft No. 1 (November 15, 1995) at its meeting on December 8, 1995, Council Draft No. 2 (November 15, 1996) at its meeting on December 13, 1996, and Council Draft No. 3 (November 20, 1997) at its meeting on December 11, 1997. The Chair of the Drafting Committee and the Reporters made informational reports to the membership of the ALI during its annual meetings in May, 1995, May, 1996, and May, 1997. The draft before the ALI membership at its May, 1997, meeting was Discussion Draft No. 2 (April 14, 1997).

4. Reorganization and Renumbering; Style.

Discussion Draft No. 2 reflected a substantial reorganization of Article 9 and renumbering of many sections. That reorganization and renumbering largely survives in this draft. However, during the last year's drafting process several sections have been deleted and several have been added or subdivided. Consequently, some sections in this draft are missing and some have a suffix "A" or "B." The draft to be submitted to the NCCUSL Annual Meeting in 1998 will be renumbered consecutively and its cross-references will be adjusted accordingly. In addition, that draft may reorder certain sections and will reflect revisions suggested by NCCUSL's Committee on Style, which will consider the draft at its meeting on April 17, 1998.

5. Summary of Revisions.

Following is a brief summary of some of the more significant proposed revisions of Article 9 that are included in the draft. The summary focuses on substantive revisions that would change current law. No effort is made to summarize all of the proposed revisions of Article 9.

a. Scope of Article 9.

The draft expands the scope of Article 9 in several respects.

Deposit accounts. Section 9-112 includes within Article 9's scope deposit accounts as original collateral, except in consumer transactions. Current Article 9 deals with deposit accounts only as proceeds of other collateral.

1 *Sales of payment intangibles.* Section 9-112 also includes within the scope of
2 Article 9 most sales of “payment intangibles, defined in Section 9-103 as general
3 intangibles under which an account debtor’s principal obligation is a monetary
4 obligation. Current Article 9 includes sales of accounts and chattel paper, but not sales
5 of payment intangibles. In its inclusion of sales of payment intangibles, the draft
6 continues the drafting convention found in current Article 9, which provides that the
7 sale of accounts, chattel paper, or payment intangibles creates a “security interest.
8 The definition of “account in Section 9-103 has been expanded to include various
9 rights to payment that would be general intangibles under current Article 9.

10 *Sales of promissory notes.* Under the draft the scope of Article 9 also includes
11 sales of promissory notes. See Section 9-102 (defining “promissory note), 9-112.
12 The Drafting Committee, as well as a task force organized to advise it, concluded that
13 sales of these rights to payment should not be distinguished from sales of payment
14 intangibles.

15 *Healthcare insurance receivables.* Section 9-112 narrows Article 9's exclusion
16 of transfers of interests in insurance policies by carving out “healthcare insurance
17 receivables (defined in Section 9-103) transferred by or to a healthcare provider. See
18 Section 9-112. A healthcare insurance receivable is included within the definition of
19 “account in Section 9-103.

20 *Nonpossessory statutory agricultural liens.* Section 9-112 brings
21 nonpossessory statutory agricultural liens within the scope of Article 9. See Section
22 9-112. In doing so, it relies heavily upon the report and recommendations of the
23 Article 9 Task Force of the Subcommittee on Agricultural and Agri-Business
24 Financing, Committee on Commercial Financial Services, Section of Business Law,
25 American Bar Association (“Agricultural Financing Task Force). However, unlike
26 Discussion Draft No. 2, this draft no longer extends the scope of Article 9 to statutory
27 liens other than agricultural liens.

28 *Consignments.* Section 9-112 provides that “true consignments—bailments for
29 the purpose of sale by the bailee—are security interests covered by Article 9, with
30 certain exceptions. See Sections 9-102 (defining “consignment), 9-112. Currently,
31 many consignments are subject to Article 9’s filing requirements by operation of
32 Section 2-326.

33 *Support obligations and property securing rights to payment.* The draft also
34 addresses explicitly (i) obligations, such as guaranties and letters of credit, that support
35 payment or performance of collateral such as accounts, chattel paper, and payment
36 intangibles, and (ii) and property (including real property) that secures a right to
37 payment that is subject to an Article 9 security interest. See Sections 9-203, 9-308.

1 *Commercial tort claims.* Section 9-112 expands the scope of Article 9 to
2 include the assignment of commercial tort claims by narrowing the exclusion of tort
3 claims generally. However, the draft continues to exclude tort claims for bodily injury
4 or other non-business tort claims of a natural person. See Section 9-102 (defining
5 “commercial tort claim”).

6 *Transfers by States and governmental units of States.* Section 9-112 narrows
7 the exclusion of transfers by States and their governmental units. It excludes only
8 transfers covered by another statute (other than a statute generally applicable to
9 security interests), to the extent the statute governs the creation, perfection, priority,
10 or enforcement of security interests.

11 *Nonassignable general intangibles, healthcare insurance receivables, and*
12 *letter-of-credit rights.* Finally, the draft enables a security interest to attach to letter-of-
13 credit rights, healthcare insurance receivables, and general intangibles, including
14 contracts, permits, licenses, and franchises, notwithstanding a contractual or statutory
15 prohibition against or limitation on assignment. The draft explicitly protects third
16 parties against any adverse effect of the creation or attempted enforcement of the
17 security interest. See Sections 9-406 and 9-406A.

18 Subject to these exceptions and two others (Sections 9-404B, concerning
19 accounts, chattel paper, and payment intangibles, and 9-405, concerning interests in
20 leased goods), Section 9-401 establishes a baseline rule that the inclusion of
21 transactions and collateral within the scope of Article 9 has no effect on non-Article
22 9 law dealing with the alienability or inalienability of property. For example, if the
23 assignment of a commercial tort claim is invalid under other applicable law, the fact
24 that a security interest in the claim is within the scope of Article 9 does not override
25 the other applicable law.

26 **b. Choice of Law.**

27 The choice-of-law rules for the law governing perfection, the effect of
28 perfection or nonperfection, and priority are found in Part 3, Subpart 1, of the draft
29 (Sections 9-301 through 9-307).

30 *Where to file: Location of debtor.* The draft changes the choice-of-law rule
31 governing perfection (i.e., where to file) for most collateral to the law of the
32 jurisdiction where the debtor is located. See Section 9-301. Under current law, the
33 jurisdiction of the debtor’s location governs only perfection and priority of a security
34 interest in accounts, general intangibles, mobile goods, and, for purposes of perfection
35 by filing, chattel paper and investment property.

1 *Determining debtor's location.* As a general matter, Section 9-307 of the draft
2 follows current law, under which the location of the debtor is the debtor's place of
3 business (or chief executive office, if the debtor has more than one place of business).
4 Section 9-307 provides three exceptions. First, a "registered organization, such as a
5 corporation or limited liability company, is located in the State under whose law the
6 debtor is organized, e.g., a corporate debtor's State of incorporation. Second, an
7 individual debtor (i.e., human being) is located at his or her principal residence. Third,
8 the draft contains special rules for determining the location of the United States and
9 registered organizations organized under the law of the United States.

10 *Location of non-U.S. debtors.* If, applying the foregoing rules, a debtor is
11 located in a jurisdiction whose laws do not require public notice as a condition of
12 perfection of a security interest, the entity is deemed located in the District of
13 Columbia. See Section 9-307. Thus, to the extent that revised Article 9 applies to
14 non-U.S. debtors, perfection could be accomplished in many cases by a domestic
15 filing.

16 *Priority.* For tangible collateral such as goods and instruments, Section 9-301
17 provides that the law applicable to priority and the effect of perfection or nonperfection
18 will remain the law of the jurisdiction where the collateral is located, as under current
19 law. For intangible collateral, such as accounts, the applicable law for priority will be
20 that of the jurisdiction in which the debtor is located.

21 *Agricultural liens.* Section 9-302 provides that perfection, the effect of
22 perfection or nonperfection, and priority of an agricultural lien are governed by the law
23 of the jurisdiction where the farm products subject to the lien are located.

24 *Goods covered by certificates of title; deposit accounts; letter-of-credit rights;*
25 *investment property.* The draft also includes several refinements to the treatment of
26 choice-of-law matters for goods covered by certificates of title. See Section 9-303.
27 It also provides special choice-of-law rules, similar to those for investment property
28 under current Articles 8 and 9, for deposit accounts (Section 9-304), letter-of-credit
29 rights (Section 9-304A), and investment property (Section 9-305).

30 **c. Duties of Secured Party.**

31 The draft provides for expanded duties of secured parties.

32 *Release of control.* Section 9-208 of the draft imposes upon a secured party
33 with control over a deposit account, investment property, or letter-of-credit rights the
34 duty to release control when there is no secured obligation and no commitment to give
35 value. Section 9-208A contains analogous provisions when an account debtor has
36 been notified to pay a secured party.

1 *Information.* Section 9-209 of the draft expands a secured party’s duties to
2 provide the debtor with information concerning collateral and the obligations that it
3 secures.

4 **d. Perfection.**

5 The rules governing perfection of security interests and agricultural liens are
6 found in Part 3, Subpart 2, of the draft (Sections 9-308 through 9-314).

7 *Deposit accounts; letter-of-credit rights: Control.* With certain exceptions,
8 the draft provides that a security interest in a deposit account or letter-of-credit rights
9 may be perfected *only* by the secured party’s acquiring “control over the deposit
10 account or letter-of-credit rights. See Sections 9-310 and 9-312. Under Section 9-109,
11 a secured party has “control of a deposit account when, with the consent of the debtor,
12 the secured party obtains the depositary bank’s agreement to act on the secured party’s
13 instructions (including when the secured party becomes the account holder) or when
14 the secured party is itself the depositary bank. The control requirements are patterned
15 on current Section 8-106, which specifies the requirements for control over investment
16 property. Under Section 9-110, “control of a letter-of-credit right occurs when the
17 issuer or nominated person consents to an assignment of proceeds or the letter-of-
18 credit is transferred to the secured party.

19 *Investment property: Control.* The perfection requirements for “investment
20 property (defined in Section 9-107), including perfection by control under Section 9-
21 108, remain substantially as under current law. However, a new provision in Section
22 9-312 is designed to ensure that a secured party remains in control in “repledge
23 transactions that are typical in the securities markets.

24 *Electronic chattel paper: Control.* Responding to industry requests concerning
25 emerging practices in electronic contracting and to the suggestions of a working group
26 established within the ABA Business Law Section, Section 9-102 of the draft includes
27 a new defined term: “electronic chattel paper. This type of collateral is chattel paper
28 that consists of information stored in an electronic medium and retrievable in
29 perceivable form (i.e., it is not written). Perfection of a security interest in electronic
30 chattel paper may be by control or filing. See Sections 9-110A (*sui generis* definition
31 of control over electronic chattel paper), 9-312 (perfection by control), 9-310 (filing).

32 *Instruments, agricultural liens, and commercial tort claims: Filing.* The draft
33 expands the types of collateral in which a security interest may be perfected by filing
34 to include instruments. See Section 9-310. Agricultural liens and security interests in
35 commercial tort claims also are perfected by filing, under the draft. See Sections 9-308
36 and 9-309.

1 *Sales of payment intangibles and promissory notes: Automatic perfection.*
2 Current Article 9 covers the outright sale of accounts and chattel paper. The Drafting
3 Committee recognizes that sales of most other types of receivables likewise are
4 financing transactions to which Article 9 should apply. Accordingly, Section 9-103
5 expands the definition of “account” to include many types of receivables that Article
6 9 currently classifies as “general intangibles,” including the newly defined “healthcare
7 insurance receivable.” It thereby subjects to Article 9’s filing system sales of more
8 types of receivables than does current law. Certain sales of payment
9 intangibles—primarily bank loan participation transactions—should not be subject to the
10 Article 9 filing rules. These transactions fall in a residual category of collateral,
11 “payment intangibles” (general intangibles under which the account debtor’s principal
12 obligation is monetary), the sale of which is exempt from the filing requirements of
13 Article 9. See Sections 9-103, 9-112, 9-308A (perfection upon attachment). The
14 perfection rules for sales of promissory notes are the same as those for sales of
15 payment intangibles.

16 *Possessory security interests.* Several provisions of the draft address aspects
17 of security interests when the secured party or a third party is in possession of the
18 collateral. In particular, Section 9-311 resolves a number of uncertainties under
19 current law. It provides that a security interest in collateral in the possession of a third
20 party is perfected when the third party acknowledges in an authenticated record that
21 it holds for the secured party’s benefit. Section 9-311 also provides that a third party
22 need not so acknowledge and that its acknowledgment does not impose any duties on
23 it, unless it otherwise agrees. A special rule in Section 9-311 (which did not appear
24 in Discussion Draft No. 2) provides that if a secured party is already in possession of
25 collateral, its security interest remains perfected by possession if it delivers the
26 collateral to a third party accompanied by instructions to hold it for the secured party
27 or to redeliver it to the secured party. The draft also clarifies the circumstances under
28 which a security interest in goods covered by a certificate of title may be perfected by
29 the secured party’s taking possession.

30 *Automatic perfection.* Section 9-308A of the draft lists various types of
31 security interests as to which no public-notice step is required for perfection (e.g.,
32 purchase-money security interests in consumer goods other than automobiles). This
33 automatic perfection also extends to a transfer of a healthcare insurance receivable to
34 a healthcare provider. Those transfers normally will be made by natural persons who
35 receive healthcare services; the Drafting Committee saw little value in requiring filing
36 for perfection in that context. Automatic perfection also applies to security interests
37 created by sales of payment intangibles and promissory notes. Section 9-308 provides
38 that a perfected security interest in collateral supported by a “support obligation” (such
39 as an account supported by a guaranty) also is a perfected security interest in the
40 support obligation, and that a perfected security interest in an obligation secured by a

1 security interest or lien on property (e.g., a real estate mortgage) also is a perfected
2 security interest in the security interest or lien.

3 **e. Priority.**

4 The rules governing priority of security interests and agricultural liens are
5 found in Part 3, Subpart 3, of the draft (Sections 9-315 through 9-336). The draft
6 includes several new priority rules.

7 *Purchase-money security interests: Definition; inventory.* Section 9-104 of
8 the draft substantially rewrites the definition of purchase-money security interest
9 (PMSI). The substantive changes, however, apply only to non-consumer-goods
10 transactions. (Consumer transactions and consumer-goods transactions are discussed
11 below in part 5.i.) The definition makes clear that a security interest in collateral may
12 be (to some extent) both a PMSI as well as a non-PMSI, in accord with the “dual
13 status rule applied by some courts under current law (thereby rejecting the
14 “transformation rule). The definition provides an even broader definition of a PMSI
15 in inventory, yielding a result that accords with private agreements entered into in
16 response to the uncertainty of current law. It also treats consignments as purchase-
17 money security interests in inventory. Section 9-322 of the draft revises the PMSI
18 priority rules, but for the most part without material change in substance. However,
19 an Official Comment will make clear that a secured party that holds a possessory
20 purchase-money security interest in inventory that has not been delivered to the debtor
21 need not give notice to the holder of a conflicting security interest in order to achieve
22 PMSI priority. Section 9-322 also clarifies the priority rules for competing PMSIs in
23 the same collateral.

24 *Purchase-money security interests in livestock; agricultural liens.* Section 9-
25 322 of the draft follows the Agricultural Financing Task Force’s recommendation to
26 provide a special PMSI priority, similar to the inventory PMSI priority rule, for
27 livestock. Section 9-319 (which contains the baseline first-to-file-or-perfect priority
28 rule) also follows the Task Force’s recommendations on special non-Article 9 priority
29 rules for agricultural liens, which can override the baseline first-in-time rule.

30 *Software purchase-money security interests.* Section 9-322 contains a new
31 priority rule for a software purchase-money security interest. (The draft incorporates
32 the definition of “software” from Section 2B-102 of the current draft of Article 2B.)
33 A software PMSI is defined in Section 9-104 to include a PMSI in software that is
34 used in goods that are also subject to a PMSI. (Note also that the definition of “chattel
35 paper” has been expanded to include records that evidence a monetary obligation and
36 a security interest in or lease of specific goods and software used in the goods.)

1 *Investment property.* The priority rules for investment property are
2 substantially similar to the priority rules found in current Section 9-115, which were
3 added to current law in conjunction with the 1994 revisions to UCC Article 8. See
4 Section 9-324. Under Section 9-324, if a secured party has control over investment
5 property (Sections 8-106, 9-108), its security interest is senior to a security interest
6 perfected in another manner (e.g., by filing). Also under Section 9-324, security
7 interests perfected by control generally rank according to the time that the control
8 arrangement is entered into (this is a change from current Section 9-115 and from
9 Discussion Draft No. 2, under each of which they would rank equally), but as between
10 a securities intermediary's security interest in a security entitlement that it maintains
11 for the debtor and a security interest held by another secured party, the securities
12 intermediary's security interest is senior.

13 *Deposit accounts.* The draft's priority rules applicable to deposit accounts are
14 found in Section 9-325. They are patterned on and are similar to those for investment
15 property in current Section 9-115 and Section 9-324 of the draft. Under Section 9-325,
16 if a secured party has control over a deposit account, its security interest is senior to
17 a security interest perfected in another manner (i.e., as cash proceeds). Also under
18 Section 9-325, security interests perfected by control rank according to the time that
19 the control arrangement is entered into (this is a change from Discussion Draft No. 2,
20 under which they would rank equally), but as between a depositary bank's security
21 interest and one held by another secured party, the depositary bank's security interest
22 is senior. A corresponding rule in Section 9-337 makes a depositary bank's right of
23 setoff generally senior to a security interest held by another secured party.

24 *Letter-of-credit rights.* The draft's priority rules for security interests in letter-
25 of-credit rights are found in Section 9-326. They are somewhat analogous to those for
26 deposit accounts. A security interest perfected by control has priority over one
27 perfected in another manner (i.e., as a support obligation for the collateral in which a
28 security interest is perfected). Security interests in letter-of-credit rights perfected by
29 control rank according to the time that the control arrangement is entered into (this is
30 a change from Discussion Draft No. 2, under which they would rank equally), but one
31 held by a transferee beneficiary has priority over other security interests.

32 *Chattel paper and instruments.* Section 9-327 of the draft is the successor to
33 current Section 9-308. After extensive discussions and comment during the last year,
34 the Drafting Committee has settled on revisions to Section 9-327 that appear to reflect
35 a satisfactory balance to all concerned, although the result is a somewhat complicated
36 formulation. As under current Section 9-308, differing priority rules apply to
37 purchasers of chattel paper who give new value and take possession of the collateral
38 depending on whether a conflicting security interest in the collateral is claimed merely
39 as proceeds. The principal difference relates to the role of knowledge and the effect
40 of an indication of a previous assignment on the collateral. In addition, to qualify for

1 priority, purchasers of chattel paper, but not of instruments, must purchase in the
2 ordinary course of their business. Section 9-327 also affords priority to purchasers of
3 instruments who take possession in good faith and without knowledge that the
4 purchase violates the rights of the competing secured party.

5 *Proceeds.* Section 9-319 contains new priority rules that clarify when a special
6 priority of a security interest in collateral continues or does not continue with respect
7 to proceeds of the collateral.

8 *Miscellaneous priority provisions.* The draft also includes (i) clarifications of
9 selected good-faith-purchase and similar issues (Sections 9-315, 9-317, [9-318]); (ii)
10 new priority rules to deal with the “double debtor” problem arising when a debtor
11 creates a security interest in collateral acquired by the debtor subject to a security
12 interest created by another person (Section 9-323); (iii) new priority rules to deal with
13 the problems created when a change in corporate structure or the like results in a new
14 entity that has become bound by the original debtor’s after-acquired property
15 agreement (Section 9-323A); (iv) a provision enabling most transferees of money to
16 take free of a security interest (Section 9-329); (v) substantially rewritten and refined
17 priority rules dealing with accessions and commingled goods (Sections 9-332, 9-333);
18 (vi) revised priority rules for security interests in goods covered by a certificate of title
19 (Section 9-334); and (vii) provisions designed to ensure that security interests in
20 deposit accounts will not extend to most transferees of funds on deposit or payees from
21 deposit accounts and will not otherwise “clog” the payments system (Sections 9-338,
22 9-339).

23 *Model provisions relating to production-money security interests.* Appendix
24 II to the draft contains a model definition and priority rule for “production-money
25 security interests” held by secured parties that give new value used in the production
26 of crops. No consensus emerged on this issue within the Task Force, the Drafting
27 Committee, or the agricultural financing community. For this reason, the Drafting
28 Committee has included the production-money provisions in an Appendix. Under this
29 approach, the UCC sponsors would make no recommendation one way or the other.
30 In contrast to Section 9-321 of Discussion Draft No. 2, which presented the
31 production-money priority rule as proposed uniform statutory text, Appendix II
32 presents the rule as a “model.”

33 **f. Proceeds.**

34 Section 9-313 of the draft expands the definition of “proceeds” of collateral to
35 include additional rights and property that arise out of collateral, including
36 distributions on account of collateral and claims arising out of the loss or
37 nonconformity of, defects in, or damage to collateral. The term also includes
38 collections on account of “support obligations,” such as guarantees.

1 **g. Filing.**

2 Part 5 (formerly Part 4) of Article 9 has been substantially rewritten to simplify
3 the statutory text and to deal with numerous problems of interpretation and
4 implementation that have arisen over the years. Many of the revisions during the last
5 year are stylistic or structural and are not mentioned here.

6 *Medium-neutrality.* The draft continues to be “medium-neutral ; that is, it
7 makes clear that parties may file and otherwise communicate with a filing office by
8 means of records communicated and stored in media other than on paper.

9 *Identity of person who files a record; authorization.* Part 5 of the draft is
10 largely indifferent as to the person who effects a filing. Instead, it addresses whose
11 authorization is necessary for a person to file a record with a filing office. The filing
12 scheme does not contemplate that the identity of a “filer” will be a part of the
13 searchable records. This is a change from the approach reflected in Discussion Draft
14 No. 2. However, it is consistent with, and a necessary aspect of, eliminating signatures
15 or other evidence of authorization from the system (except to the extent that filing
16 offices may choose to employ authentication procedures in connection with electronic
17 communications). As long as the appropriate person authorizes the filing, or, in the
18 case of a termination statement, the debtor is entitled to the termination, it is largely
19 insignificant whether the secured party or another person files any given record.

20 Section 9-508 of the draft collects in one place most of the rules that determine
21 when a record may be filed. In general, the debtor’s authorization is required for the
22 filing of an initial financing statement or an amendment that adds collateral. With one
23 further exception, a secured party of record’s authorization is required for the filing of
24 other amendments. The exception arises if a secured party has failed to provide a
25 termination statement that is required because there is no outstanding secured
26 obligation or commitment to give value. In that situation, a debtor is authorized to file
27 a termination statement indicating that it has been filed by the debtor.

28 *Financing statement formal requisites.* The formal requisites for a financing
29 statement are set out in Section 9-502 of the draft. A financing statement must provide
30 the name of the debtor and the secured party and an indication of the collateral that it
31 covers. Sections 9-503 and 9-506 address the sufficiency of a name provided on a
32 financing statement and clarify when a debtor’s name is correct and when an incorrect
33 name is insufficient. Section 9-504 addresses the indication of collateral covered.
34 Under Section 9-504, a super-generic description (e.g., “all assets” or “all personal
35 property”) in a financing statement is a sufficient indication of the collateral. (Note,
36 however, that a super-generic description is inadequate for purposes of a security
37 agreement. See Sections 9-111, 9-203.) To facilitate electronic filing, the draft does
38 not require that the debtor’s signature or other authorization appear on a financing

1 statement. Instead, it prohibits the filing of unauthorized financing statements and
2 imposes liability upon those who violate the prohibition. See Sections 9-508, 9-624.

3 *Filing office operations.* The draft, as did Discussion Draft No. 2, contains
4 several provisions governing filing operations. First, it prohibits the filing office from
5 rejecting an initial financing statement or other record for a reason other than one of
6 the few set forth in the draft. See Sections 9-521, 9-515. Second, the filing office is
7 obliged to link all subsequent records (e.g., assignments, continuation statements, etc.)
8 to the initial financing statement to which they relate. See Section 9-520. Third, under
9 the draft, the filing office may delete a financing statement and related records from
10 the files no earlier than one year after lapse (lapse normally is five years after the filing
11 date), and then only if a continuation statement has not been filed. See Sections 9-516,
12 9-520, 9-522. Thus, a financing statement and related records would be discovered by
13 a search of the files even after the filing of a termination statement. This approach
14 helps eliminate filing office discretion and also eases problems associated with
15 multiple secured parties and multiple partial assignments. Fourth, the draft mandates
16 performance standards for filing offices. See Section 9-520, 9-521, 9-523. Fifth, it
17 provides for the promulgation of administrative rules to deal with details best left out
18 of the statute and a duty of the filing office to submit periodic reports. See Section 9-
19 528, 9-529.

20 *Correction of Records: Missing secured parties and fraudulent filings.* In
21 some areas of the country, serious problems have arisen from fraudulent financing
22 statements that are filed against public officials and other prominent persons. In part
23 to address and deter fraudulent filings of all kinds, Section 9-520 of Discussion Draft
24 No. 2 included an alternative formulation that would have required that the filing
25 office communicate to each debtor and secured party of record on a financing
26 statement the information contained in the financing statement and in each related
27 record. That requirement has been removed from Section 9-520 in this draft. The
28 Drafting Committee as well as many filing officers are of the view that the enormous
29 costs of these communications would not worthwhile, on balance. Instead, the
30 Drafting Committee believes that the fraud problem is addressed by providing the
31 opportunity for a debtor to file a termination statement when a secured party
32 wrongfully refuse to provide a terminations statement, as discussed above. This
33 opportunity also addresses the problem of secured parties that simply disappear
34 through mergers or liquidations. In addition, Section 9-519 of the draft affords a
35 statutory method by which a debtor who believes that a filed record is inaccurate or
36 was wrongfully filed may indicate that fact in the files by filing a correction statement,
37 albeit without affecting the efficacy, if any, of the challenged record.

38 *Extended period of effectiveness for certain financing statements.* Section 9-
39 516 contains an exception to the usual rule that financing statements are effective for
40 five years unless a continuation statement is filed to continue the effectiveness for

1 another five years. Under that section, an initial financing statement filed in
2 connection with a “public-finance transaction” or a “manufactured-home transaction
3 (terms defined in Section 9-102) is effective for 30 years.

4 *National form of financing statement and related forms.* The draft provides for
5 uniform, national written forms of financing statements and related written records that
6 a filing office may not refuse to accept. See Section 9-521.

7 **h. Default and Enforcement.**

8 Part 6 (formerly Part 5) of Article 9 extensively revises current law. Certain
9 consumer-protection provisions are discussed below in section 5.i.

10 *Debtor, secondary obligor; waiver.* Section 9-602 clarifies the identity of
11 persons who have rights and persons to whom a secured party owes specified duties
12 under Part 6. Under that section, the rights and duties are enjoyed by and run to the
13 “debtor,” defined in Section 9-102 to mean any person with a non-lien property interest
14 in collateral, and to any “secondary obligor.” The latter is a new term defined in
15 Section 9-102 to include one who is secondarily obligated on the secured obligation,
16 e.g., a guarantor. However, under Section 9-626, the secured party is relieved from
17 any duty or liability to any person unless the secured party knows that the person is a
18 debtor or a secondary obligor. Under Discussion Draft No. 2, a non-debtor obligor (in
19 a non-consumer transaction) could effectively waive its rights and the secured party’s
20 duties to the extent and in the manner provided by other law, e.g., the law of
21 suretyship. This draft changes that rule. It generally prohibits waiver by a secondary
22 obligor. See Section 9-602. However, Section 9-623 permits a secondary obligor (and
23 a debtor) to waive the right to notification of disposition of collateral and, in a non-
24 consumer transaction, the right to redeem collateral, if the secondary obligor agrees to
25 do so after default.

26 *Rights of collection and enforcement of collateral.* Section 9-607 explains in
27 greater detail the rights of a secured party that seeks to collect or enforce collateral,
28 including accounts, chattel paper, and payment intangibles. It also sets forth the
29 enforcement rights of a depository bank holding a security interest in a deposit account
30 maintained with the depository bank. Section 9-607 relates solely to the rights of a
31 secured party to vis-a-vis a debtor with respect to collections and enforcement. It does
32 not affect the rights or duties of third parties, such as account debtors on collateral,
33 which are addressed elsewhere (e.g., Section 9-404B). Section 9-608 clarifies the
34 manner in which proceeds of collection or enforcement are to be applied.

35 *Disposition of collateral: Warranties of title.* Section 9-610 imposes on a
36 secured party that disposes of collateral the warranties of title, quiet possession, and

1 the like that are otherwise applicable under other law, and it provides rules for the
2 exclusion or modification of those warranties.

3 *Disposition of collateral: Notification, application of proceeds, surplus and*
4 *deficiency, and other effects.* Section 9-611 requires a secured party to give
5 notification of a disposition of collateral to other secured parties and lien holders who
6 have filed financing statements against the debtor which cover the collateral. (That
7 duty was eliminated by the 1972 revisions to Article 9.) However, that section relieves
8 the secured party from that duty when the secured party undertakes a search of the
9 records and a report of the search is unreasonably delayed. Section 9-613, which
10 applies to non-consumer transactions, specifies the contents of a sufficient notification
11 of disposition and provides that a notification sent 10 days or more before the earliest
12 time for disposition is sent within a reasonable time. Section 9-614 addresses the
13 application of proceeds of disposition, the entitlement of a debtor to any surplus, and
14 the liability of an obligor for any deficiency. Section 9-615 clarifies the effects of a
15 disposition by a secured party, including the rights of transferees of the collateral.

16 *Rights and duties of secondary obligor.* Section 9-616 provides that a
17 secondary obligor obtains the rights and assumes the duties of a secured party if the
18 secondary obligor receives an assignment of a secured obligation, agrees to assume
19 the secured party's rights and duties upon a transfer to it of collateral, or becomes
20 subrogated to the rights of the secured party with respect to the collateral. The
21 assumption, transfer, or subrogation is not a disposition of collateral under Section 9-
22 616, but it relieves the secured party of further duties. In contrast, Section 9-616 of
23 Discussion Draft No. 2 provided that a secured party would *not* be relieved of its
24 duties. Current Section 9-504(5) does not address whether a secured party is relieved
25 of its duties in this situation.

26 *Transfer of record or legal title.* Section 9-617 contains a new provision
27 making clear that a transfer of record or legal title to a secured party is not of itself a
28 disposition under Part 6. This rule applies regardless of the circumstances under which
29 the transfer of title occurs.

30 *Strict foreclosure.* Section 9-618 permits a secured party to accept collateral
31 in partial satisfaction, as well as full satisfaction, of the obligations secured. This right
32 of strict foreclosure extends to intangible as well as tangible property. Section 9-320
33 clarifies the effects of an acceptance of collateral on the rights of junior claimants. It
34 rejects the approach taken by some courts—deeming a secured party to have
35 constructively retained collateral in satisfaction of the secured obligations—in the case
36 of a secured party's unreasonable delay in the disposition of collateral. Instead,
37 unreasonable delay is relevant when determining whether a disposition under Section
38 9-610 is commercially reasonable. (Special consumer-protection rules affecting these
39 provisions are described in section 5.i. below.)

1 *Effect of noncompliance: “Rebuttable presumption” test.* Section 9-625
2 adopts the “rebuttable presumption” test for the failure of a secured party to proceed
3 in accordance with certain provisions of Part 6. (As noted below in section 5.i., in this
4 draft the rebuttable presumption rule applies only to transactions other than consumer
5 transactions.) Under this approach, the deficiency claim of a noncomplying secured
6 party is calculated by crediting the obligor with the greater of the actual net proceeds
7 of a disposition and the amount of net proceeds that would have been realized if the
8 disposition had been conducted in accordance with Part 6, e.g., in a commercially
9 reasonable manner. The draft rejects the “absolute bar” test that some courts have
10 imposed; that approach bars a noncomplying secured party from recovering any
11 deficiency, regardless of the loss (if any) the debtor suffered as a consequence of the
12 noncompliance.

13 *“Low-price” dispositions: Calculation of deficiency and surplus.* Section 9-
14 614(h) addresses the problem of procedurally regular dispositions that fetch a low
15 price. Subsection (h) provides a special method for calculating a deficiency if the
16 proceeds of a disposition of collateral to a secured party, a person related to the
17 secured party, or a secondary obligor are “significantly below the range of proceeds
18 that a complying disposition to a person other than the secured party, a person related
19 to the secured party, or a secondary obligor would have brought. (“Person related to
20 is defined in Section 9-614(a).) In these situations there is reason to suspect that there
21 may be inadequate incentives to obtain a better price. Consequently, instead of
22 calculating a deficiency (or surplus) based on the actual net proceeds, the deficiency
23 (or surplus) would be calculated based on the proceeds that would have been received
24 in a disposition to an unrelated person. The Drafting Committee envisions that the
25 Official Comments would not attempt explain the test for low price sales beyond
26 references to the statutory formulation. Application would be left to the courts.

27 **i. Consumer Transactions.**

28 The draft includes several provisions applicable only to “consumer
29 transactions” or “consumer-goods transactions. Each term is defined in Section 9-
30 102.

31 *Background.* In 1995, NCCUSL appointed a subcommittee of the Drafting
32 Committee to consider whether and to what extent Article 9 draft should contain
33 consumer-protection provisions. The subcommittee made several recommendations
34 that the Drafting Committee considered during its meetings in 1996 and 1997. Many
35 of the provisions that the Drafting Committee adopted, and which the ALI membership
36 discussed at its 1997 annual meeting, remained highly controversial. The draft that
37 emerged proved unsatisfactory to many representatives of both consumers and
38 consumer creditors.

1 *Proposed compromise solution.* In 1997, the Chair of the Drafting Committee
2 initiated a renewed effort to reach a consensus solution that would not be actively
3 opposed by consumer or consumer-creditor interests. After many rounds of
4 discussions and much “shuttle diplomacy, a tentative solution was reached during the
5 February, 1998, meeting of the Drafting Committee. During that meeting, the Drafting
6 Committee approved in principle, and asked the Reporters to incorporate in the next
7 draft, a list of proposed revisions relating to consumer transactions. Most of the
8 proposals, but not all, related to Part 6, Default. The Chair of the Drafting Committee
9 presented the proposals as a compromise, explaining that if the package of proposals
10 were accepted by the Drafting Committee and its sponsors, representatives of
11 consumer creditors involved in the process would actively support, and advocates of
12 consumer interests involved in the process would not oppose, enactment of revised
13 Article 9. The Chair explained further that the alternative could be widespread
14 opposition, with pitched battles in the various legislatures during the enactment
15 process. This controversy could delay or inhibit enactment of the revisions.

16 *Deleted provisions.* Under the proposal, several consumer-protection
17 provisions in the January, 1998, draft, which had been approved by the Drafting
18 Committee, would be deleted:

19 (i) Section 9-104(d) and (e) (allocation of payments for determining
20 purchase-money status in consumer-goods transactions);

21 (ii) Section 9-613(b)(3) (notice of disposition containing minor errors not
22 seriously misleading is sufficient);

23 (iii) Section 9-622 (reinstatement rights of consumer debtor or secondary
24 obligor);

25 (iv) Section 9-624(d) and (e) (reduction of secured party’s liability for
26 statutory damages by amount of loss of deficiency or actual damages awarded to
27 consumer);

28 (v) Section 9-625, Alternative A (absolute bar of deficiency alternative for
29 secured party noncompliance in consumer transactions);

30 (vi) Section 9-627(d) (good-faith error defense to statutory damages);

31 (viii) Section 9-627(e) (limitation on recoveries in class actions); and

32 (vii) Section 9-628 (reciprocal attorney’s fees in consumer transactions).

1 *Revised provisions.* The proposal also called for revision of several other
2 provisions.

3 (i) In addition to deleting Alternative A of Section 9-625 (absolute bar
4 rule), the rebuttable presumption rule in Section 9-624 would be made applicable only
5 to transactions other than consumer transactions. The draft would remain silent as to
6 the effect of a secured party's noncompliance in consumer transactions, leaving that
7 issue to the courts. (During its March, 1998, meeting the Drafting Committee decided
8 that the draft should contain a statutory statement that no implications for consumer
9 transactions should be drawn from the statutory rebuttable presumption rule for non-
10 consumer transactions. See Section 9-625(b) of this draft.)

11 (ii) Sections 9-104(f) and (g) (approving "dual status" rule for purchase-
12 money security interests (i.e., rejecting "transformation" rule) and setting burden of
13 proof) would be applicable only to non-consumer-goods transactions. (During its
14 March, 1998, meeting the Drafting Committee decided that the draft should contain
15 a statutory statement that no implications for consumer-goods transactions should be
16 drawn from the statutory treatment of non-consumer-goods transactions. See Section
17 9-104(i) of this draft.)

18 (iii) Either the definition of "buyer in ordinary course of business" would
19 not be revised to provide that BIOCOB status depends on a possessory right as against
20 the seller, or certain proposed provisions in revised Article 2 would accompany revised
21 Article 9 to provide protection for a prepaying buyer. (During its March, 1998,
22 meeting the Drafting Committee adopted the latter approach, reflected in this draft.
23 See Appendix I.)

24 (iv) The comment to Section 9-111 would contain no examples of
25 sufficient collateral descriptions in consumer transactions (e.g., the previous approval
26 of "all jewelry" in the Reporters' Comments would be deleted).

27 (v) Sections 9-403 and 9-404 would be expanded to make effective the
28 FTC's anti-holder-in-due-course rule (when applicable) even in the absence of the
29 required legend.

30 (vi) Section 9-614A (post-disposition notice) would be revised to provide
31 for a somewhat more refined statement of how a deficiency or surplus was calculated.

32 (vii) The comments would be modified to delete any explicit statement that
33 "price" is not a term of a disposition which is required to be commercially reasonable,
34 and an explanatory comment would be added to the effect that a low price mandates
35 enhanced judicial scrutiny of the terms of a disposition.

1 (viii) Section 9-618 would be revised to prohibit partial strict foreclosure
2 for consumer goods.

3 *Drafting Committee resolution.* During its March, 1998, meeting, the Drafting
4 Committee considered the Reporters' efforts, incorporated in the January, 1998, draft,
5 to implement the proposed solution. The Drafting Committee gave its general
6 approval to the proposed solution. It also considered a number of specific issues that
7 had been raised by the consumer and consumer creditor representatives. The Drafting
8 Committee resolved all remaining material issues. This draft reflects that resolution.
9 However, we should note three caveats. First, inasmuch as less than two weeks were
10 available for us to revise the draft following the March, 1998, meeting, this draft has
11 not been reviewed by anyone other than the Reporters. Second, several elements of
12 the proposed solution for the consumer-related issues implicate the language of the
13 Official Comments that will accompany the final revised text of Article 9. While
14 substantial progress has been made in formulating these comments, they have not yet
15 been finalized. Finally, the proposed solution of the consumer-related issues has been
16 recognized by all concerned as a compromise. The statutory text that has emerged is
17 less than ideal in substance and approach. It represents a balance struck in the hope
18 that it will enhance the opportunities for prompt and uniform enactment of revised
19 Article 9.

20 *Additional consumer-related provisions.*

21 *Description of consumer goods and certain investment property.* Section
22 9-111 provides that in a consumer transaction a description of consumer goods, a
23 security entitlement, securities account, or commodity account by Article 9-defined
24 "type alone (e.g., "all consumer goods or "all securities accounts) is not a sufficient
25 collateral description in a security agreement.

26 *Notification of disposition of collateral.* Section 9-613A contains a safe-
27 harbor form of notification, in "plain English, for consumer transactions.

28 *Notification of calculation of deficiency.* Section 9-614A requires a secured
29 party to provide a debtor with a notification of how it calculated a deficiency at the
30 time it first undertakes to collect a deficiency.

31 **j. Good Faith.**

32 Section 9-102 contains a new definition of "good faith that includes not only
33 "honesty in fact but also "the observance of reasonable commercial standards of fair
34 dealing. The definition is similar to the ones adopted in connection with other,
35 recently completed revisions of the UCC.

1 **k. Transition Provisions.**

2 Part 7 of the draft (Sections 9-701 through 9-708) contains transition
3 provisions. A subcommittee of the Drafting Committee presented a report on
4 transition issues to the Drafting Committee at its February, 1998, meeting. At the
5 March, 1998, meeting, the Reporters presented draft provisions based on the report and
6 the Drafting Committee's discussion. Part 7 of this draft reflects the Drafting
7 Committee's deliberations and the Reporters' further refinements. Part 7 contains
8 Reporters' Comments.

9 **l. Conforming and Related Amendments to Other UCC Articles.**

10 Appendix I to the draft contains several proposed revisions to the provisions
11 and Official Comments of other UCC articles . For the most part the revisions are
12 explained in the Reporters' Comments to the proposed revisions.

13 *Article 1.* Revised Section 1-201 contains revisions to the definitions of "buyer
14 in ordinary course of business, "purchaser, "security interest, and "send.

15 *Article 2.* Sections 2-210, 2-326, 2-502, and 2-716 have been revised to
16 address the intersection between Article 2 and Article 9.

17 *Article 5.* New Section 5-118 is patterned on current Section 4-210. It
18 provides for a security interest in documents presented under a letter of credit in favor
19 of the issuer and a nominated person on the letter of credit.

20 *Article 8.* Revisions to Section 8-110, dealing with a "securities intermediary's
21 jurisdiction, conform it to the treatment of a "commodity intermediary's jurisdiction
22 in Section 9-305. We contemplate that there will be some additional refinements to
23 certain provisions of Article 8 and its Official Comments which have material effects
24 on security interests in investment property.

25 **6. Miscellaneous Style and Citation Conventions.**

26 The draft reflects extensive revisions to reflect NCCUSL's currently applicable
27 style requirements. A few issues remain open and under discussion with NCCUSL's
28 Committee on Style. That Committee will meet to discuss remaining Article 9 style
29 issues on April 17, 1998.

1 **REVISION OF UNIFORM COMMERCIAL CODE**
2 **ARTICLE 9 – SECURED TRANSACTIONS**

3 **PART 1**

4 **GENERAL PROVISIONS**

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

6 **SECTION 9-101. SHORT TITLE.** This article may be cited as Uniform
7 Commercial Code–Secured Transactions.

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

9 (a) In this article, ~~unless the context otherwise requires~~:

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

14 (2) “Accounting” means a record:

15 (A) authenticated by a secured party;

16 (B) indicating the aggregate unpaid secured obligations as of a date not
17 more than ~~30~~ 35 days earlier or later
18 than the date of the record; and

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

20 (3) “Agricultural lien” means an interest, other than a security interest, in
21 farm products:

- 1 (A) which secures payment or performance of an obligation for:
- 2 (i) goods or services furnished in connection with a debtor's
- 3 farming operation; or
- 4 (ii) rent on real property leased by a debtor in connection with its
- 5 farming operation;
- 6 (B) which is created by statute in favor of a person that:
- 7 (i) in the ordinary course of its business furnished goods or services
- 8 to a debtor in connection with a debtor's farming operation; or
- 9 (ii) leased real property to a debtor in connection with the debtor's
- 10 farming operation; and
- 11 (C) the effectiveness of which does not depend on the person's
- 12 possession of the personal property.
- 13 (4) "As-extracted collateral" means:
- 14 (A) oil, gas, or other minerals that are subject to a security interest that:
- 15 (i) is created by a debtor having an interest in the minerals before
- 16 extraction; and
- 17 (ii) attaches to the minerals as extracted; or
- 18 (B) accounts arising out of the sale at the wellhead or minehead of {oil,
- 19 gas, or other} minerals in which the debtor had an interest before extraction.
- 20 (5) "Authenticate" means to:
- 21 (A) sign; or

1 (B) execute or adopt a symbol, or encrypt a record in whole or in part,
2 with present intent to:

3 (i) identify the authenticating party; and

4 (ii) either:

5 (I) adopt or accept a record or term; or

6 (II) establish the authenticity of a record or term that contains
7 the authentication or to which a record containing the authentication refers.

8 (6) “Bank means an organization that is engaged in the business of
9 banking. The term includes a savings bank, savings and loan association, credit union,
10 and trust company.

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

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

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

1 (A) proceeds to which a security interest attaches under Section 9-313;
2 (B) proceeds as to which an agricultural lien becomes effective; and
3 (C) accounts, chattel paper, ~~and~~ payment intangibles, and promissory
4 notes that have been sold.

5 (10) “Commercial tort claim means a claim arising in tort [~~which is~~
6 ~~generally assignable under applicable law~~] if:

7 (A) the claimant is an organization; or

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

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

10 (ii) does not include damages arising out of personal injury to or the
11 death of an individual.

12 (11) “Communicate means to:

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

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

16 (C) in the case of transmission of a record to or by a filing office,
17 transmit a record by any means prescribed by ~~the rules~~ rule.

18 (12) “Consignee means a merchant to which goods are delivered in a
19 consignment.

20 (13) “Consignment means a transaction, regardless of its form, in which
21 a person delivers goods to a merchant for the purpose of sale and:

22 (A) the merchant:

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

3 (ii) is not an auctioneer; and

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

6 (B) with respect to each delivery, the aggregate value of the goods is
7 ~~[\$1,000]~~ \$1000 or more at the time of delivery;

8 (C) the goods are not consumer goods immediately before delivery; and

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

11 (14) “Consignor means a person that delivers goods to a consignee in a
12 consignment.

13 (15) “Consumer debtor means a debtor in a consumer transaction.

14 (16) “Consumer-goods transaction means a transaction ~~in which~~ to the
15 extent that:

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

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

19 (17) “Consumer obligor means an obligor who is an individual and who
20 incurred the obligation as part of a transaction entered into primarily for personal,
21 family, or household purposes.

1 (18) “Consumer transaction means a transaction ~~in which~~ to the extent
2 that:

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

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

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

8 (19) “Debtor means:

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

11 (B) a seller of accounts, chattel paper, ~~or~~ payment intangibles, or
12 promissory notes; or

13 (C) a consignee.

14 (20) “Deposit account means a demand, time, savings, passbook, or
15 similar account maintained with a bank. The term does not include investment
16 property or an account evidenced by an instrument.

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

19 (22) “Electronic chattel paper means chattel paper evidenced by a record
20 or records consisting of information stored in an electronic medium and retrievable in
21 perceivable form.

1 (23) “Encumbrance means a right, other than an ownership interest, in
2 real property. The term includes a mortgage and other lien on real property.

3 (24) “Farming operation means raising, cultivating, propagating,
4 fattening, grazing, or any other farming, livestock, or aquacultural operation.

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

8 (26) “Financing statement means an initial financing statement and any
9 record on file relating to the initial financing statement.

10 (27) “Fixture filing means the filing of a financing statement covering
11 goods that are or are to become fixtures and satisfying the requirements of Section
12 9-502(a) and (b). The term includes the filing of a financing statement covering goods
13 of a transmitting utility which are or are to become fixtures.

14 (28) “Fixtures means goods that have become so related to particular real
15 property that an interest in them arises under real property law.

16 (29) “Good faith means honesty in fact and the observance of reasonable
17 commercial standards of fair dealing.

18 (30) “Goods :

19 (A) means all things that are movable when a security interest attaches;

20 (B) ~~The term~~ includes:

21 (i) fixtures;

1 (ii) standing timber that is to be cut and removed under a
2 conveyance or contract for sale;

3 (iii) the unborn young of animals; and

4 (iv) crops grown, growing, or to be grown, even if the crops are
5 produced on trees, vines, or bushes; and

6 (C) ~~The term~~ does not include accounts, chattel paper, deposit accounts,
7 documents, general intangibles, instruments, investment property, letter-of-credit
8 rights, money, or oil, gas, or other minerals before extraction.

9 (31) “Governmental unit means a subdivision, agency, department,
10 county, parish, municipality, or other unit of the government of the United States, a
11 State, or a foreign country. The term includes an organization with a separate
12 corporate existence only if the organization is eligible to issue debt obligations on
13 which interest is exempt from income taxation under the laws of the United States.

14 (32) “Instrument :

15 (A) means:

16 (i) a negotiable instrument; or

17 (ii) any other writing that:

18 (I) evidences a right to the payment of ~~money~~ a monetary
19 obligation;

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

21 (III) is of a type that in ordinary course of business is transferred
22 by delivery with any necessary indorsement or assignment; and

1 (B) does not include:

2 (i) investment property; or

3 (ii) a writing that evidences a right to payment arising out of the use

4 of a credit or charge card or information contained on or for use with the card.

5 ~~(32) “Intangible chattel paper means chattel paper evidenced by a record~~

6 ~~or records consisting of information that is not inscribed on a tangible medium.~~

7 (33) “Jurisdiction of organization, with respect to a registered

8 organization, means the jurisdiction under whose law the organization is organized.

9 (34) “Letter-of-credit right means a right to payment and performance

10 under a letter of credit. The term does not include the right of a beneficiary to demand

11 payment or performance under a letter of credit.

12 (35) “Lien creditor means a creditor that has acquired a lien on the

13 property involved by attachment, levy, or the like. The term includes:

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

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

16 and

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

18 (36) “Manufactured home means a structure, transportable in one or more

19 sections, which in the traveling mode, is eight body feet or more in width or forty body

20 feet or more in length, or, when erected on site, is three hundred twenty or more square

21 feet, and which is built on a permanent chassis and designed to be used as a dwelling

22 with or without a permanent foundation when connected to the required utilities, and

1 includes the plumbing, heating, air-conditioning, and electrical systems contained
2 therein; except that such term shall include any structure which meets all the
3 requirements of this paragraph except the size requirements and with respect to which
4 the manufacturer voluntarily files a certification required by the United States
5 Secretary of Housing and Urban Development and complies with the standards
6 established under Title 42, United States Code.

7 (37) “Manufactured-home transaction means a secured transaction:

8 (A) that creates a purchase-money security interest in a manufactured
9 home; or

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

11 (38) “Mortgage means a consensual interest in real property, including
12 fixtures, which is created by a mortgage, trust deed, or similar transaction.

13 (39) “New debtor means a person that becomes bound as debtor under
14 Section 9-203(c) by a security agreement previously entered into by another person.

15 (40) “New value :

16 (A) means:

17 (i) money;

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

19 (iii) release by a transferee of an interest in property previously
20 transferred to the transferee; and

21 (B) does not include an obligation substituted for another obligation.

22 (41) “Obligor :

1 (A) means a person that, with respect to an obligation secured by a
2 security interest in or an agricultural lien on the collateral:

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

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

6 (iii) is otherwise accountable in whole or in part for payment or
7 other performance of the obligation; and

8 (B) does not include an issuer or a nominated person under a letter of
9 credit.

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

12 (43) “Promissory note means an instrument that:

13 (A) evidences a promise to pay a monetary obligation;

14 (B) does not evidence an order to pay; and

15 (C) does not contain an acknowledgment by a bank that the bank has
16 received a sum of money or funds.

17 (44) “Public-finance transaction means a secured transaction in
18 connection with which:

19 (A) bonds, debentures, certificates of participation or similar debt
20 securities are issued;

21 (B) all or a portion of the securities issued have an initial stated maturity
22 of at least 20 years; and

1 (C) the debtor, the obligor, the secured party, the account debtor or
2 other person obligated on collateral, the assignor or assignee of a secured obligation,
3 or the assignor or assignee of a security interest is a State or a governmental unit of a
4 State.

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

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

12 (47) “Registered organization means an organization organized under the
13 law of a State or the United States and as to which the State or the United States must
14 maintain a public record showing the organization to have been organized.

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

16 (49) “Secondary obligor means an obligor to the extent that a portion of
17 the obligor’s obligation is secondary.

18 (50) “Secured party means:

19 (A) a person in whose favor a security interest is created or provided for
20 under a security agreement, whether or not any obligation to be secured is outstanding;

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

22 (C) a consignor;

1 (D) a person to which accounts, chattel paper, ~~or~~ payment intangibles,
2 or promissory notes have been sold; or

3 (E) if a security interest [for agricultural lien] is created or provided for
4 in favor of a trustee, indenture trustee, agent, collateral agent, or other representative,
5 that representative.

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

8 (52) “State means a State of the United States, the District of Columbia,
9 Puerto Rico, the United States Virgin Islands, or any territory or insular possession
10 subject to the jurisdiction of the United States.

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

15 (54) “Tangible chattel paper means chattel paper evidenced by a record
16 or records consisting of information that is inscribed on a tangible medium.

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

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

20 (B) transmitting electric or electronic communications;

21 (C) transmitting goods by pipeline or sewer; or

1 (D) transmitting or producing and transmitting electricity, steam, gas,
2 or water.

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

5 “Account Section 9-103.

6 “Attach Section 9-203.

7 “Becomes Bound Section 9-203.

8 “Cash proceeds Section 9-313.

9 “Commodity account Section 9-107.

10 “Commodity contract Section 9-107.

11 “Commodity customer Section 9-107.

12 “Commodity intermediary Section 9-107.

13 “Construction mortgage Section 9-331.

14 “Consumer goods Section 9-106.

15 “Control (deposit account) Section 9-109.

16 “Control (electronic chattel paper) Section 9-110A.

17 “Control (investment property) Section 9-108.

18 “Control (letter-of-credit right) Section 9-110.

19 “Crops Section 9-106.

20 “Equipment Section 9-106.

21 “Farm products Section 9-106.

22 “General intangibles Section 9-103.

1	“Healthcare insurance receivable	Section 9-103.
2	“Inventory	Section 9-106.
3	“Investment property	Section 9-107.
4	“Livestock	Section 9-106.
5	“Noncash proceeds	Section 9-313.
6	“Payment intangible	Section 9-103.
7	“Proceeds	Section 9-313.
8	“Production-money crops”	Section 9-104A.
9	“Production-money obligation”	Section 9-104A.
10	“Production-money security interest”	Section 9-104A.
11	“Production of crops”	Section 9-104A.
12	“Purchase-money security interest	Section 9-104.
13	“Purchase-money collateral	Section 9-104.
14	“Purchase-money obligation	Section 9-104.
15	“Request for an accounting	Section 9-209.
16	“Request regarding a list of collateral	Section 9-209.
17	“Request regarding a statement of	
18	account	Section 9-209.
19	“Secured party of record	Section 9-509A.
20	“Transfer statement	Section 9-617.
21	(c) The following definitions in other articles apply to this article:	
22	“Applicant	Section 5-102.

1	“Beneficiary	Section 5-102.
2	“Broker	Section 8-102.
3	“Certificated security	Section 8-102.
4	“Check	Section 3-104.
5	“Clearing corporation	Section 8-102.
6	“Contract for sale	Section 2-106.
7	“Customer	Section 4-104.
8	“Delivery	Section 8-301.
9	“Entitlement holder	Section 8-102.
10	“Financial asset	Section 8-102.
11	“Holder in due course	Section 3-302.
12	“Issuer	Section 5-102.
13	“Lease	Section 2A-103.
14	“Lease agreement	Section 2A-103.
15	“Lease contract	Section 2A-103.
16	“Leasehold interest	Section 2A-103.
17	“Lessee	Section 2A-103.
18	“Lessee in ordinary course of business	Section 2A-103.
19	“Lessor	Section 2A-103.
20	“Lessor’s residual interest	Section 2A-103.
21	“Letter of credit	Section 5-102.
22	<u>“Merchant</u>	<u>Section 2-104.</u>

1	“Negotiable instrument	Section 3-104.
2	“Nominated person	Section 5-102.
3	“Note	Section 3-104.
4	“Proceeds of a letter of credit	Section 5-114.
5	“Prove	Section 3-103.
6	“Sale	Section 2-106.
7	“Securities intermediary	Section 8-102.
8	“Security	Section 8-102.
9	“Security certificate	Section 8-102.
10	“Security entitlement	Section 8-102.
11	<u>“Software</u>	<u>Section 2B-102.</u>
12	“Uncertificated security	Section 8-102.

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

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

17 **SECTION 9-103. DEFINITIONS: “ACCOUNT”; “GENERAL**
18 **INTANGIBLES”; “HEALTHCARE INSURANCE RECEIVABLE”;**
19 **“PAYMENT INTANGIBLE.”**

20 (a) “Account :

21 (1) means a right to payment of a monetary obligation, whether or not
22 earned by performance:

- 1 (A) for property that has been or is to be sold, leased, licensed,
2 assigned, or otherwise disposed of;
- 3 (B) for services rendered or to be rendered;
- 4 (C) for a policy of insurance issued or to be issued;
- 5 (D) for a suretyship obligation incurred or to be incurred;
- 6 (E) for energy provided or to be provided;
- 7 (F) arising out of the use of a credit or charge card or information
8 contained on or for use with the card;
- 9 (G) for the use or hire of a vessel under a charter or other contract; or
- 10 (H) for winnings in a lottery or a similar game operated or sponsored
11 by a State ~~[, a group of States,]~~ or a governmental unit of a State;
- 12 (2) includes a healthcare insurance receivable; and
- 13 (3) does not include:
- 14 (A) a letter-of-credit right;
- 15 (B) a right to payment evidenced by an instrument or chattel paper; or
- 16 (C) a deposit account or other right to payment for money or funds
17 advanced or sold.
- 18 (b) “General intangible” means any personal property other than goods,
19 accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods,
20 instruments, investment property, letter-of-credit rights, ~~letters of credit~~, ~~deposit~~
21 ~~accounts~~, and money. The term includes a payment intangible.

1 (c) “Healthcare insurance receivable means an interest in or claim under a
2 policy of insurance which is a right to payment arising of a monetary obligation for out
3 of the furnishing of healthcare goods or services provided ~~which is an interest in or~~
4 ~~claim under a policy of insurance.~~

5 (d) “Payment intangible means a general intangible under which the account
6 debtor's principal obligation is ~~to pay money~~ a monetary obligation.

7 **SECTION 9-104. ~~PURCHASE-MONEY SECURITY INTEREST;~~**
8 **DEFINITIONS: “PURCHASE-MONEY COLLATERAL;” “PURCHASE-**
9 **MONEY OBLIGATION;” PURCHASE-MONEY SECURITY INTEREST;**
10 **APPLICATION OF PAYMENTS; BURDEN OF ESTABLISHING PURCHASE-**
11 **MONEY SECURITY INTEREST.**

12 (a) “Purchase-money collateral means goods or software that secures a
13 purchase-money obligation incurred with respect to that collateral.

14 (b) “Purchase-money obligation means an obligation of an obligor incurred
15 as all or part the price of the collateral or for value given to enable the debtor to acquire
16 rights in or the use of the collateral if the value is in fact so used.

17 (c) A security interest in goods ~~[, including fixtures,]~~ is a purchase-money
18 security interest:

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

1 (2) if the security interest is in inventory that is or was purchase-money
2 collateral, also to the extent that the security interest secures a purchase-money
3 obligation incurred with respect to other inventory in which the secured party holds or
4 held a purchase-money security interest; and

5 (3) also to the extent that the security interest secures a purchase-money
6 obligation incurred with respect to software in which the secured party holds or held
7 a purchase-money security interest.

8 (d) A security interest in software is a purchase-money security interest to the
9 extent that the security interest also secures a purchase-money obligation incurred with
10 respect to goods in which the secured party holds or held a purchase-money security
11 interest if:

12 (1) the debtor acquired its interest in the software in an integrated
13 transaction in which it acquired an interest in the goods; and

14 (2) the debtor acquired its interest in the software for the principal purpose
15 of using the software in the goods.

16 (e) The interest of a consignor in goods that are the subject of a consignment
17 is a purchase-money security interest in inventory.

18 (f) ~~Except as otherwise provided in subsection (f),~~ In a transaction other than
19 a consumer-goods transaction, if the extent to which a security interest is a purchase-
20 money security interest depends on the application of a payment to a particular
21 obligation, the payment must be applied:

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

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

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

8 (A) to obligations that are not secured; and

9 (B) if more than one obligation is secured, to obligations secured by
10 purchase-money security interests in the order in which those obligations were
11 incurred.

12 (g) ~~Except as otherwise provided in subsection (f),~~ In a transaction other than
13 a consumer-goods transaction, a purchase-money security interest does not lose its
14 status as such even if:

15 (1) the purchase-money collateral also secures an obligation that is not a
16 purchase-money obligation;

17 (2) collateral that is not purchase-money collateral also secures the
18 purchase-money obligation; or

19 (3) the purchase-money obligation has been renewed, refinanced,
20 consolidated, or restructured.

21 (h) ~~Except as otherwise provided in subsection (f),~~ In a transaction other than
22 a consumer-goods transaction, a secured party claiming a purchase-money security

1 interest has the burden of establishing ~~[whether and]~~ the extent to which the security
2 interest is a purchase-money security interest. ~~: [if either of the following is placed in~~
3 ~~issue:~~

4 ~~(1) the status of the security interest as a purchase-money security interest;~~
5 ~~or~~

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

7 ~~(f) Subsections (c), (d), and (e) do not apply to a consumer-goods transaction.~~

8 (i) The limitation of the rules in subsections (f), (g), and (h) to transactions
9 other than consumer-goods transactions is intended to leave to the court the
10 determination of the proper rules in consumer-goods transactions. The court may not
11 draw from that limitation an inference as to the nature of the proper rule in consumer-
12 goods transactions, and the court may continue to apply established approaches.

13 **SECTION 9-105.**

14 [deleted]

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

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

19 (b) “Equipment means goods other than inventory, farm products, or
20 consumer goods.

21 (c) “Farm products :

22 (1) means goods:

1 (A) that are:

2 (i) crops grown, growing, or to be grown, including crops produced

3 on trees, vines, and bushes and aquatic goods produced in aquacultural operations;

4 (ii) livestock, born or unborn, including ~~bees and~~ aquatic goods

5 produced in aquacultural operations;

6 (iii) supplies used or produced in a farming ~~or apiarian~~ operation;

7 or

8 (iv) products of crops or livestock in their unmanufactured states;

9 and

10 (B) with respect to which the debtor is engaged in a farming ~~or apiarian~~

11 operation; and

12 (2) does not include standing timber.

13 (d) “Inventory :

14 (1) means goods that:

15 (A) are leased by a person to another person ~~[as lessor]~~;

16 (B) are held by a person for sale or lease or to be furnished under

17 contracts of service;

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

19 (D) consist of raw materials, work in process, or materials used or

20 consumed in a business; and

21 (2) does not include farm products.

1 **SECTION 9-107. DEFINITIONS: “COMMODITY ACCOUNT”;**
2 **“COMMODITY CONTRACT”; “COMMODITY CUSTOMER”;**
3 **“COMMODITY INTERMEDIARY”; “INVESTMENT PROPERTY.”**

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

6 (b) “Commodity contract means a commodity futures contract, an option on
7 a commodity futures contract, a commodity option, or another contract if the contract
8 or option is:

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

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

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

16 (d) “Commodity intermediary means:

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

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

1 (e) “Investment property means a security, whether certificated or
2 uncertificated, security entitlement, securities account, commodity contract, or
3 commodity account.

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

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

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

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

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

14 (c) A secured party that has control over all security entitlements or
15 commodity contracts carried in a securities account or commodity account has control
16 over the securities account or commodity account.

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

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

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

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

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

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

10 **SECTION 9-110. CONTROL OVER LETTER-OF-CREDIT RIGHT.** A
11 secured party has control over a letter-of-credit right to the extent of any right to
12 payment or performance by or proceeds received from the issuer or any nominated
13 person if the issuer or nominated person has consented to an assignment of proceeds
14 of the letter of credit under Section 5-114(c) or otherwise applicable law or practice.

15 **SECTION 9-110A. CONTROL OVER ~~INTANGIBLE~~ ELECTRONIC**
16 **CHATTEL PAPER.** A purchaser has control over electronic chattel paper if the
17 record or records comprising the chattel paper are created, stored, and transferred in
18 a manner such that:

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

1 (2) the authoritative copy identifies the purchaser as the assignee of the
2 record or records;

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

5 (4) copies or revisions that change the designation of the assignee of the
6 authoritative copy can be made only with the consent of the purchaser;

7 (5) each copy of the authoritative copy and any copy of a copy is readily
8 identifiable as a copy of the authoritative copy; and

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

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

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

14 ~~(2) the following conditions are met:~~

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

18 ~~(B) the copy of the record or records is communicated to the secured~~
19 ~~party; and~~

20 ~~(C) either:~~

1 (i) ~~the copy cannot be duplicated except in a manner that identifies~~
2 ~~the duplicate as a copy other than the copy in which a security interest may be~~
3 ~~perfected by control; or~~

4 (ii) ~~upon communication of the copy to the secured party, the copy~~
5 ~~permanently identifies the secured party as the assignee of the chattel paper.~~

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

8 (1) ~~the copy cannot be duplicated except in a manner that identifies the~~
9 ~~secured party as the assignee; and~~

10 (2) ~~the secured party is the only person that has the ability to modify the~~
11 ~~identification of the assignee on the copy.~~

12 **SECTION 9-111. SUFFICIENCY OF DESCRIPTION.**

13 (a) Except as otherwise provided in subsections (c), (d), and (e), a description
14 of personal or real property is sufficient, whether or not it is specific, if it reasonably
15 identifies what is described.

16 (b) Except as otherwise provided in ~~subsections~~ subsection (d), ~~and (e)~~, a
17 description of collateral reasonably identifies the collateral if it identifies the collateral
18 by:

19 (1) specific listing;

20 (2) category;

1 (3) except as otherwise provided in subsection (e), a type of collateral
2 defined in [the Uniform Commercial Code];

3 (4) quantity;

4 (5) computational or allocational formula or procedure; or

5 (6) except as otherwise provided in subsection (c), any other method, if the
6 identity of the collateral is objectively determinable.

7 (c) A description of collateral as “all the debtor’s assets” or “all the debtor’s
8 personal property” or which uses words of similar import does not reasonably identify
9 the collateral.

10 (d) Except as otherwise provided in subsection (e), a description of a security
11 entitlement, securities account, or commodity account is sufficient if:

12 (1) it describes the collateral by those terms or as investment property; or

13 (2) it describes the underlying financial asset or commodity contract.

14 (e) A description only by type of collateral defined in the [Uniform
15 Commercial Code] ~~alone~~ is an insufficient description of:

16 (1) a commercial tort claim; or

17 (2) in a consumer transaction, consumer goods, a security entitlement,
18 securities account, or commodity account.

19 [SUBPART 2. APPLICABILITY OF ARTICLE]

1 **SECTION 9-112. SCOPE.**

2 (a) Except as otherwise provided in subsections (c) and (d) and Section 9-116,
3 this article applies to:

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

6 (2) an agricultural lien;

7 (3) a sale of an account, chattel paper, ~~healthcare insurance receivable, or~~
8 payment intangible, or promissory note; and

9 (4) a consignment.

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

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

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

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

18 (3) a statute of another State, a foreign country, or a governmental unit of
19 another State or a foreign country, other than a statute generally applicable to security
20 interests, ~~[expressly]~~ governs creation, perfection, priority, or enforcement of a security
21 interest created by the State, country, or governmental unit.

22 (d) This article does not apply to:

- 1 (1) a landlord's lien~~], other than an agricultural lien~~;
- 2 (2) a lien given by statute or other rule of law for services or materials,
- 3 except:
- 4 (A) that Section 9-330 applies with respect to priority of the lien; and
- 5 (B) an agricultural lien;
- 6 (3) a transfer of a claim for wages, salary, or other compensation of an
- 7 employee;
- 8 (4) a sale of accounts, chattel paper, ~~or~~ payment intangibles, or promissory
- 9 notes as part of a sale of the business out of which they arose;
- 10 (5) an assignment of accounts, chattel paper, ~~or~~ payment intangibles, or
- 11 promissory notes which is for the purpose of collection only;
- 12 (6) an assignment of a right to payment under a contract to an assignee that
- 13 is also obliged to perform under the contract;
- 14 (7) an assignment of a single account, ~~or~~ payment intangible, or promissory
- 15 note to an assignee in whole or partial satisfaction of a preexisting indebtedness;
- 16 (8) a transfer of an interest in or claim under a policy of insurance, except:
- 17 (A) ~~[an assignment]~~ ~~[a transfer]~~ by or to a healthcare provider of a
- 18 healthcare insurance receivable and ~~[a]~~ ~~[any]~~ subsequent ~~[assignment]~~ ~~[transfer]~~ of the
- 19 right to payment; and
- 20 (B) that Sections 9-313 and 9-319 apply with respect to proceeds and
- 21 priorities in proceeds;

1 (9) a right represented by a judgment, other than a judgment taken on a
2 right to payment that was collateral;
3 (10) a right of recoupment or set-off, except that:
4 (A) Section 9-337 applies with respect to the effectiveness of rights of
5 recoupment or set-off against deposit accounts; and
6 (B) Section 9-404 ~~(a) [and (b)] [applies] [apply]~~ with respect to
7 defenses or claims of an account debtor;
8 (11) the creation or transfer of an interest in or lien on real property,
9 including a lease or rents thereunder, except to the extent that provision is made for:
10 (A) liens on real property in Sections 9-203 and 9-308,
11 (B) fixtures in Section 9-331;
12 (C) fixture filings in Sections 9-501, 9-502, 9-512, 9-516, and 9-520;
13 and
14 (D) security agreements covering personal and real property in Section
15 9-604;
16 (12) a transfer of a claim arising in tort, except:
17 (A) a transfer of a commercial tort claim; ~~[and]~~
18 (B) that Sections 9-313 and 9-319 apply with respect to proceeds and
19 priorities in proceeds; or ~~[; or] [and]~~
20 ~~(C) a transfer of a liquidated and undisputed claim [that is generally~~
21 ~~assignable under applicable law]; or]~~

1 (13) a transfer of an interest in a deposit account in a consumer transaction,
2 except that Sections 9-313 and 9-319 apply with respect to proceeds and priorities in
3 proceeds.

4 **SECTION 9-113.**

5 [deleted]

6 **SECTION 9-114.**

7 [deleted]

8 **SECTION 9-115. APPLICABILITY OF OTHER STATUTES.**

9 (a) A transaction subject to this article [is] [may also be] subject to [*insert*
10 *reference to any local statute regulating the rates, charges, agreements, and practices*
11 *for loans and credit sales and to consumer protection statutes, or the like*].

12 (b) In case of conflict between this article and a statute described in subsection
13 (a), the statute controls. Failure to comply with an applicable statute has only the
14 effect the statute specifies.

15 **SECTION 9-116. SECURITY INTERESTS ARISING ~~SOLELY~~ UNDER**
16 **ARTICLE 2 OR 2A.** A security interest arising ~~solely~~ under Section 2-401, 2-505,
17 2-711(3), or 2A-508(5) is subject to this article. However, as long as the debtor does
18 not obtain possession of the goods:

19 (1) the security interest is enforceable even if the requirements of Section
20 9-203(b)(3) have not been met;

21 (2) filing is not required to perfect the security interest; and

(3) the rights of the secured party on default by the debtor are governed by Article 2 or 2A, as applicable; and

(4) the security interest has priority over a conflicting security interest created by the debtor.

PART 2

**VALIDITY OF SECURITY AGREEMENT;
ATTACHMENT OF SECURITY INTEREST;
RIGHTS OF PARTIES TO SECURITY AGREEMENT**

[SUBPART 1. VALIDITY AND ATTACHMENT]

SECTION 9-201. GENERAL EFFECTIVENESS OF SECURITY AGREEMENT.

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

(b) Nothing in this article:

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

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

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

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

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

7 **SECTION 9-203. ATTACHMENT AND ENFORCEABILITY OF**
8 **SECURITY INTEREST; PROCEEDS; SUPPORT OBLIGATIONS; FORMAL**
9 **REQUISITES.**

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

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

19 (1) value has been given;

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

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

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

7 (B) the collateral is in the possession of the secured party under Section
8 9-311 pursuant to the debtor's security agreement;

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

12 (D) the collateral is a deposit account, electronic chattel paper,
13 investment property, ~~a deposit account~~, or a letter-of-credit right, and the secured party
14 has control pursuant to the debtor's security agreement.

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

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

19 (2) the person:

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

1 (B) acquires or succeeds to all or substantially all of the assets of the
2 other person.

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

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

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

10 (e) The attachment of a security interest in collateral gives the secured party
11 the rights to proceeds provided by Section 9-313 and is also attachment of a security
12 interest in ~~all a support obligation obligations with respect to~~ for the collateral.

13 (f) The attachment of a security interest in a securities account is also
14 attachment of a security interest in ~~all~~ the security entitlements carried in the
15 securities account;

16 (g) The attachment of a security interest in a commodity account is also
17 attachment of a security interest in ~~all~~ the commodity contracts carried in the
18 commodity account.

19 (h) The attachment of a security interest in a right to payment or performance
20 secured by a security interest or other lien on personal property or real property is also
21 attachment of a security interest in the security interest or other lien.

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

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

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

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

10 (2) a commercial tort claim.

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

14 **SECTION 9-205. USE OR DISPOSITION OF COLLATERAL WITHOUT**
15 **ACCOUNTING PERMISSIBLE.**

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

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

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

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

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

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

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

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

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

10 (a) A security interest in favor of a securities intermediary attaches to a
11 person's security entitlement if:

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

15 (2) the securities intermediary credits the financial asset to the buyer's
16 securities account before the buyer pays the securities intermediary.

17 (b) The security interest described in subsection (a) secures the person's
18 obligation to pay for the financial asset.

19 (c) A security interest in favor of a person that delivers a certificated security
20 or other financial asset represented by a writing attaches to the security or other
21 financial asset if:

- 1 (1) the security or other financial asset is:
- 2 (A) in the ordinary course of business transferred by delivery with any
- 3 necessary indorsement or assignment; and
- 4 (B) delivered under an agreement between persons in the business of
- 5 dealing with such securities or financial assets; and
- 6 (2) the agreement calls for delivery against payment.
- 7 (d) The security interest described in subsection (c) secures the person's
- 8 obligation to make payment to the seller.

9 [SUBPART 2. RIGHTS AND DUTIES]

10 **SECTION 9-207. RIGHTS AND DUTIES OF SECURED PARTY HAVING**

11 **POSSESSION OF OR CONTROL OVER COLLATERAL.**

12 (a) A secured party shall use reasonable care in the custody and preservation

13 of collateral in the secured party's possession if the secured party:

14 (1) is not a buyer of accounts, chattel paper, or payment intangibles or a

15 consignor; or

16 (2) is a buyer of accounts, chattel paper, or payment intangibles which is

17 entitled by agreement:

18 (A) to charge back uncollected collateral; or

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

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

7 (c) If a secured party has possession of collateral:

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

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

13 (3) the secured party shall keep the collateral identifiable, but fungible
14 collateral may be commingled; and

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

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

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

18 or

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

21 (d) If a secured party has possession of or control over collateral, the secured
22 party:

1 (1) may hold as additional security any [~~increase or profits~~] [proceeds],
2 except money or funds, received from the collateral;

3 (2) shall apply money or funds received under paragraph (1) to reduce the
4 secured obligation, unless remitted to the debtor; and

5 (3) may create a security interest in the collateral.

6 (e) If the secured party is a buyer of accounts, chattel paper, or payment
7 intangibles or a consignor:

8 (1) subsections (c) and (d)(1) and (2) do not apply; and

9 (2) the secured party may create a security interest or otherwise transfer an
10 interest in the collateral regardless of who has possession of it.

11 **SECTION 9-208. ADDITIONAL DUTIES OF SECURED PARTY HAVING**
12 **CONTROL OVER COLLATERAL.**

13 (a) This section applies if:

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

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

17 (b) Within 10 days after receiving an authenticated demand by the debtor:

18 (1) a secured party that has control over investment property under Section
19 8-106(d)(2) or 9-108(b) shall send the securities intermediary or commodity
20 intermediary with which the security entitlement or commodity contract is maintained
21 an authenticated record that releases the securities intermediary or commodity

1 intermediary from any further obligation to comply with entitlement orders or
2 directions originated by the secured party;

3 (2) a secured party that has control over a deposit account under Section
4 9-109(a)(2) shall send the bank with which the deposit account is maintained an
5 authenticated statement that releases the bank from any further obligation to comply
6 with instructions originated by the secured party;

7 {(3) a secured party that has control over a deposit account under Section
8 9-109(a)(3) shall:

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

10 (B) transfer the balance on deposit into a deposit account in the debtor's
11 name;‡ and

12 (4) a secured party that has control over a letter-of-credit right under
13 Section 9-110 shall send to each person that has an unfulfilled obligation to pay or
14 deliver proceeds of the letter of credit to the secured party an authenticated release
15 from any further obligation to pay or deliver proceeds of the letter of credit to the
16 secured party.

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

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

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

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

3 (b) Within 10 days after the secured party receives an authenticated demand
4 by the debtor, the secured party shall send to an account debtor that has received
5 notification of an assignment to the secured party as assignee under Section 9-404B(a)
6 an authenticated record that releases the account debtor from any further obligation to
7 the secured party.

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

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

12 (a) In this section:

13 (1) “Request means a record of a type described in paragraphs (2), (3), or
14 (4).

15 (2) “Request for an accounting means a record authenticated by a debtor
16 requesting that the recipient provide an accounting of the unpaid obligations secured
17 by collateral and reasonably identifying the transaction or relationship that is the
18 subject of the request.

19 (3) “Request regarding a list of collateral means a record authenticated
20 by a debtor requesting that the recipient approve or correct a list of what the debtor

1 believes to be the collateral securing an obligation and reasonably identifying the
2 transaction or relationship that is the subject of the request.

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

8 (b) Subject to subsections (c), (d), and (e), a secured party shall comply with
9 a request within two weeks after receipt by authenticating and sending to the debtor
10 a correction or approval or an accounting, as applicable. This subsection does not
11 apply to a secured party that is a buyer of accounts, chattel paper, or payment
12 intangibles.

13 (c) A secured party that claims a security interest in all of a particular type of
14 collateral owned by the debtor may comply with a request regarding a list of collateral
15 by sending to the debtor an authenticated record containing a statement to that effect
16 within two weeks after receipt.

17 (d) A person that receives a request regarding a list of collateral, claims no
18 interest in the collateral when it receives the request, and claimed an interest in the
19 collateral at an earlier time shall comply with the request within two weeks after
20 receipt by sending to the debtor an authenticated ~~[record]~~ ~~[statement]~~:

21 (1) disclaiming any interest in the collateral; and

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

3 (e) A person that receives a request for an accounting or a request regarding
4 a statement of account, claims no interest in the obligations when it receives the
5 request, and claimed an interest in the obligations at an earlier time shall comply with
6 the request within two weeks after receipt by sending to the debtor an authenticated
7 ~~[record]~~ ~~[statement]~~:

8 (1) disclaiming any interest in the obligations; and

9 (2) if known to the recipient, containing the name and mailing address of
10 any assignee of or successor to the recipient's interest in the obligations.

11 (f) A debtor is entitled without charge to one response to a request under this
12 section during any six-month period. The secured party may require payment of a
13 charge not exceeding ~~[\$]~~ \$25 for each additional response.

14 **PART 3**

15 **PERFECTION AND PRIORITY OF SECURITY INTERESTS**

16 **[SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY]**

17 **SECTION 9-301. LAW GOVERNING PERFECTION AND PRIORITY OF**
18 **SECURITY INTERESTS.** Except as otherwise provided in Sections 9-303 through
19 9-305, the following rules determine the law governing perfection, the effect of
20 perfection or nonperfection, and the priority of a security interest in collateral:

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

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

7 (3) Except as otherwise provided in paragraphs (4), (5), and (6), while goods,
8 chattel paper, instruments, money, or negotiable documents are located in a
9 jurisdiction, the local law of that jurisdiction governs the effect of perfection or
10 nonperfection and the priority of a nonpossessory security interest.

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

13 (5) The local law of the jurisdiction in which timber to be cut is located
14 governs perfection of a security interest in the timber.

15 (6) The local law of the jurisdiction in which the wellhead or minehead is
16 located governs perfection, the effect of perfection or nonperfection, and the priority
17 of a security interest in as-extracted collateral.

18 **SECTION 9-302. LAW GOVERNING FILING, PERFECTION, AND**
19 **PRIORITY OF AGRICULTURAL LIENS.** While collateral is located in a
20 jurisdiction, the local law of that jurisdiction governs perfection, the effect of
21 perfection or nonperfection, and the priority of an agricultural lien on the collateral.

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

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

6 (b) The local law of the jurisdiction under whose certificate of title the goods
7 are covered governs perfection, the effect of perfection or nonperfection, and the
8 priority of a security interest in goods covered by a certificate of title from the time the
9 goods become covered by the certificate until the earlier of the time the certificate
10 becomes ineffective under the law of that jurisdiction or the time the goods become
11 covered subsequently by a certificate of title from another jurisdiction. After that time,
12 the goods are not covered by the first certificate of title.

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

16 **SECTION 9-304. LAW GOVERNING PERFECTION AND PRIORITY OF**
17 **SECURITY INTERESTS IN DEPOSIT ACCOUNTS.**

18 (a) The local law of a bank's jurisdiction governs perfection, the effect of
19 perfection or nonperfection, and the priority of a security interest in a deposit account
20 maintained with that bank.

21 (b) The following rules determine a bank's jurisdiction for purposes of this
22 section:

1 (1) If an agreement between the bank and the debtor expressly provides a
2 particular jurisdiction as the bank's jurisdiction for purposes of this part, this article,
3 or [the Uniform Commercial Code], that jurisdiction is the bank's jurisdiction.

4 (2) If paragraph (1) does not apply and an agreement between the bank and
5 its customer expressly provides that it is governed by the law of a particular
6 jurisdiction, that jurisdiction is the bank's jurisdiction.

7 (3) If neither paragraph (1) nor paragraph (2) applies and an agreement
8 between the bank and its customer expressly provides that the deposit account is
9 maintained at an office in a particular jurisdiction, that jurisdiction is the bank's
10 jurisdiction.

11 (4) If none of paragraph (1), (2), or (3) applies, the bank's jurisdiction is
12 the jurisdiction in which is located the office identified in an account statement as the
13 office serving the customer's account.

14 (4) If none of the preceding paragraphs applies, the bank's jurisdiction is
15 the jurisdiction in which is located the chief executive office of the bank.

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

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

1 (b) The local law of an issuer's jurisdiction or nominated person's jurisdiction
2 is the local law of the jurisdiction governing its liability with respect to the letter-of-
3 credit right as provided in Section 5-116.

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

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

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

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

12 (2) The local law of the issuer's jurisdiction as specified in Section
13 8-110(d) governs perfection, the effect of perfection or nonperfection, and the priority
14 of a security interest in an uncertificated security.

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

18 (4) The local law of the commodity intermediary's jurisdiction governs
19 perfection, the effect of perfection or nonperfection, and the priority of a security
20 interest in a commodity contract or commodity account.

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

3 (A) If an agreement between the commodity intermediary and
4 commodity customer expressly provides the commodity intermediary's jurisdiction for
5 purposes of this part, this article, or [the Uniform Commercial Code], that jurisdiction
6 is the commodity intermediary's jurisdiction.

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

11 (C) If neither subparagraph (A) nor subparagraph (B) applies and an
12 agreement between the commodity intermediary and commodity customer expressly
13 provides that the commodity account is maintained at an office in a particular
14 jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

15 (D) If none of subparagraph (A), (B), or (C) applies, the commodity
16 intermediary's jurisdiction is the jurisdiction in which is located the office identified
17 in an account statement as the office serving the commodity customer's account.

18 (E) If none of the preceding subparagraphs applies, the commodity
19 intermediary's jurisdiction is the jurisdiction in which is located the chief executive
20 office of the commodity intermediary.

21 (b) The local law of the jurisdiction in which the debtor is located governs:

22 (1) perfection of a security interest in investment property by filing;

1 (2) automatic perfection of a security interest in investment property
2 granted by a broker or securities intermediary; and

3 (3) automatic perfection of a security interest in a commodity contract or
4 commodity account granted by a commodity intermediary.

5 **SECTION 9-306.**

6 [deleted]

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

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

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

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

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

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

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

1 collateral. If subsection (b) does not apply, the debtor is located in {the District of
2 Columbia}.

3 (d) A registered organization that is organized under the law of a State is
4 located in ~~its jurisdiction of organization~~ that State.

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

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

10 (2) in the State that the registered organization designates, if the law of the
11 United States authorizes the registered organization to designate its State of location;
12 or

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

15 (f) A registered organization continues to be located in the jurisdiction
16 specified by subsection (d) {for (e)} notwithstanding:

17 (1) the suspension, revocation, forfeiture, or lapse of the registered
18 organization's ~~registration~~ status as such in its jurisdiction of organization; or

19 (2) the dissolution of the registered organization.

20 (g) The United States is located in the District of Columbia.

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

4 (d) Perfection of a security interest in collateral ~~chattel paper, document,~~
5 ~~instrument, [insurance policy,] general intangible, or security~~ also perfects a security
6 interest in a support obligation for the collateral.

7 (e) Perfection of a security interest in a securities account also perfects a
8 security interest in ~~all~~ the security entitlements carried in the securities account;

9 (f) Perfection of a security interest in a commodity account also perfects a
10 security interest in ~~all~~ the commodity contracts carried in the commodity account.

11 (g) Perfection of a security interest in a right to payment or performance also
12 perfects a security interest in a lien on personal or real property securing the right,
13 notwithstanding other law to the contrary.

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

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

18 (1) a purchase-money security interest in consumer goods except as otherwise
19 provided in Section 9-309A(d) with respect to consumer goods that are subject to a
20 statute or treaty described in Section 9-309A(a);

1 (2) an assignment of accounts or payment intangibles which does not by itself
2 or in conjunction with other assignments to the same assignee transfer a significant
3 part of the assignor's outstanding accounts or payment intangibles;

4 (3) a sale of a payment intangible;

5 (4) a sale of a promissory note;

6 (5) a security interest created by the assignment to a healthcare provider
7 transfer of a healthcare insurance receivable to the provider of the healthcare goods or
8 services; and

9 (6) a security interest arising ~~solely~~ under Section 2-401, 2-505, 2-711(3), or
10 2A-508(5), until the debtor obtains possession of the collateral; and

11 (7) a security interest of a collecting bank arising under Section 4-210;

12 (8) a security interest of an issuer or nominated person arising under Section
13 5-118.

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

16 (10) a security interest in investment property created by a broker or securities
17 intermediary;

18 (11) a security interest in a commodity contract or a commodity account created
19 by a commodity intermediary;

20 (12) an assignment for the benefit of all the creditors of the transferor and
21 subsequent transfers by the assignee thereunder; and

1 (13) a security interest created by an assignment of a beneficial interest in a
2 decedent's estate.

3 **SECTION 9-309. WHEN FILING REQUIRED TO PERFECT SECURITY**
4 **INTEREST OR AGRICULTURAL LIEN; SECURITY INTERESTS AND**
5 **AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT**
6 **APPLY.**

7 (a) Except as otherwise provided in subsections (b) and (c), a financing
8 statement must be filed to perfect all security interests and agricultural liens.

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

11 (1) in a support obligation under Section 9-308(d);

12 (2) that is perfected when it attaches (Section 9-308A);

13 (3) in property subject to a statute, regulation, or treaty described in Section
14 9-309A(a);

15 (4) in instruments, certificated securities, or documents perfected without
16 filing or possession under Section 9-310(e) or (f);

17 (5) in collateral in the secured party's possession under Section 9-311;

18 (6) in a certificated security which is perfected by delivery of the security
19 certificate to the secured party under Section 9-311;

20 (7) in investment property, a deposit account, or a letter-of-credit right that
21 is perfected without filing under Section 9-312;

22 (8) in proceeds under Section 9-313(f); or

1 (9) that is perfected under Section 9-314.

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

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

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

10 (a) Except as otherwise provided in subsection (e), the filing of a financing
11 statement is not necessary or effective to perfect a security interest in property subject
12 to:

13 (1) a statute, regulation, or treaty of the United States whose requirements
14 for a security interest's obtaining priority over the rights of a lien creditor with respect
15 to the property preempt Section 9-309(a); {or}

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

20 (3) a certificate-of-title statute of another jurisdiction which provides for
21 a security interest to be indicated on the certificate as a condition or result of the

1 security interest's obtaining priority over the rights of a lien creditor with respect to the
2 property.}

3 (b) Compliance with the requirements prescribed by a statute, regulation, or
4 treaty described in subsection (a) for obtaining priority over the rights of a lien creditor
5 is equivalent to the filing of a financing statement under this article.

6 (c) Except as otherwise provided in subsection (e) and Sections 9-311 and
7 9-314 ~~(c)~~, (d) ; and (e) } for goods covered by a certificate of title, a security interest
8 in property subject to a statute, regulation, or treaty described in subsection (a) may be
9 perfected only by compliance with those requirements, and a security interest so
10 perfected remains perfected notwithstanding a change in the use or transfer of
11 possession of the collateral.

12 (d) Except as otherwise provided in subsection (e) and Section 9-314 ~~(c)~~, (d)
13 ; and (e), } duration and renewal of perfection of a security interest perfected by
14 compliance with the requirements prescribed by a statute, regulation, or treaty
15 described in subsection (a) are governed by the statute, regulation, or treaty. In other
16 respects the security interest is subject to this article.

17 (e) During any period in which collateral is inventory held for sale or lease by
18 a person or leased by that person as lessor and that person is in the business of selling
19 or leasing goods of that kind, subsection (a)(2) does and (3) do this section does
20 not apply to a security interest in that collateral created by that person as debtor.

1 **SECTION 9-310. PERFECTION OF SECURITY INTERESTS IN**
2 **INSTRUMENTS, CHATTEL PAPER, INVESTMENT PROPERTY,**
3 **DOCUMENTS, MONEY, DEPOSIT ACCOUNTS, LETTER-OF-CREDIT**
4 **RIGHTS, AND GOODS COVERED BY DOCUMENTS; PERFECTION BY**
5 **PERMISSIVE FILING; TEMPORARY PERFECTION WITHOUT FILING OR**
6 **TRANSFER OF POSSESSION.**

7 (a) A security interest in instruments, chattel paper, investment property, or
8 negotiable documents may be perfected by filing.

9 (b) Except as otherwise provided in Section 9-313(e) for ~~cash~~ proceeds:

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

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

14 (3) a security interest in a letter-of-credit right may be perfected only by
15 control under Section 9-312, except as otherwise provided in Section 9-308(d).

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

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

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

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

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

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

6 (3) filing as to the goods.

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

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

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

17 (A) ultimate sale or exchange; or

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

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

3 (A) ultimate sale or exchange; or

4 (B) presentation, collection, enforcement, renewal, or registration of
5 transfer.

6 (g) After the 20-day period specified in subsection (e) ~~for~~ ~~and~~ (f) expires,
7 perfection depends upon compliance with this article.

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

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

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

18 (c) With respect to collateral other than certificated securities and goods
19 covered by a document, a secured party acquires possession of collateral in the
20 possession of a person other than the debtor, the secured party, or a lessee of the
21 collateral from the debtor in the ordinary course of the debtor's business, when:

1 (1) the person in possession authenticates a record acknowledging that it
2 holds possession of the collateral for the secured party's benefit; or

3 (2) the person takes possession of the collateral after having authenticated
4 a record acknowledging that it will hold possession of collateral for the secured party's
5 benefit.

6 (d) A secured party that has possession of collateral does not relinquish
7 possession by delivering the collateral to a person other than the debtor or a lessee of
8 the collateral from the debtor in the ordinary course of the debtor's business if the
9 person was instructed before the delivery or is instructed contemporaneously with the
10 delivery:

11 (1) to hold possession of the collateral for the secured party's benefit; or

12 (2) to redeliver the collateral to the secured party.

13 (e) A security interest is perfected by possession when the secured party takes
14 possession ~~[, without a relation back,]~~ and remains perfected by possession only while
15 the secured party retains possession. ~~unless otherwise provided in this article.~~

16 (f) A security interest in a certificated security is perfected by delivery when
17 ~~the secured party takes delivery of the security certificate~~ delivery of the certificated
18 security occurs under Section 8-301 ~~[, without a relation back,]~~ and remains perfected
19 by delivery until the debtor obtains possession of the security certificate.

20 (g) A person in possession of collateral is not required to acknowledge that it
21 holds possession for a secured party's benefit.

1 (h) If a person acknowledges that it holds possession for the secured party's
2 benefit:

3 (1) the acknowledgment is effective under subsection (c) ~~and or~~ Section
4 8-301(a)] even if the acknowledgment violates the rights of a debtor; and

5 (2) unless the person otherwise agrees or other law otherwise provides, the
6 person does not owe any duty to the secured party and is not required to confirm the
7 acknowledgment to another person.

8 (i) A secured party does not relinquish possession under subsection (d) even
9 if the delivery violates the rights of a debtor. A person to whom collateral is delivered
10 under subsection (d) does not owe any duty to the secured party and is not required to
11 confirm the delivery to another person unless the person otherwise agrees or other law
12 otherwise provides.

13 **SECTION 9-312. PERFECTION BY CONTROL.**

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

17 (b) A security interest in a deposit account, ~~a letter-of-credit right, or intangible~~
18 electronic chattel paper, or a letter-of-credit right is perfected by control ~~from the time~~
19 when the secured party obtains control and remains perfected by control continues only
20 while the secured party retains control is retained, ~~unless otherwise provided in this~~
21 ~~article~~].

1 (c) A security interest in investment property is perfected by control from the
2 time the secured party obtains control and remains perfected by control until:

3 (1) the secured party does not have control; and

4 (2) one of the following occurs:

5 (A) if the collateral is a certificated security, the debtor has or acquires
6 possession of the security certificate;

7 (B) if the collateral is an uncertificated security, the issuer has registered
8 or registers the debtor as the registered owner; or

9 (C) if the collateral is a security entitlement, the debtor is or becomes
10 the entitlement holder.

11 **SECTION 9-313. "PROCEEDS"; SECURED PARTY'S RIGHTS ON**
12 **DISPOSITION OF COLLATERAL AND IN PROCEEDS.**

13 (a) "Proceeds" means the following property:

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

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

17 (3) rights arising out of collateral;

18 (4) to the extent of the value of collateral, claims arising out of the loss, ~~or~~
19 nonconformity, infringement, or interference with the use of, defects in, or damage to
20 the collateral; and

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

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

6 (c) Except as otherwise provided in this article and in Section 2-403(2), a
7 security interest or agricultural lien:

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

11 (2) attaches to any identifiable proceeds.

12 (d) Proceeds that are commingled with other property are identifiable
13 proceeds:

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

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

19 (e) A security interest in or agricultural lien on proceeds is a perfected security
20 interest or agricultural lien if the security interest in or agricultural lien on the original
21 collateral was perfected. The security interest in or agricultural lien becomes

1 unperfected on the 21st day after the security interest attaches to the proceeds or the
2 agricultural lien becomes effective as to the proceeds unless:

3 (1) the following conditions are satisfied:

4 (A) a filed financing statement covers the original collateral;

5 (B) the proceeds are collateral in which a security interest may be
6 perfected by filing in the office in which the financing statement has been filed; and

7 (C) if the proceeds are not acquired with cash proceeds; ~~or funds from~~
8 ~~a deposit account, the description of collateral in the financing statement indicates the~~
9 ~~type of property constituting the proceeds;~~

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

11 (3) the security interest in or agricultural lien on the proceeds is perfected
12 within 20 days after the security interest attaches to the proceeds or the agricultural lien
13 becomes effective as to the proceeds.

14 (f) Except as otherwise provided in subsection (e), a security interest in or
15 agricultural lien on proceeds may be perfected only by the methods or under the
16 circumstances permitted in this article for original collateral of the same type.

17 (g) If a filed financing statement covers the original collateral, a security
18 interest in or agricultural lien on proceeds which remains perfected under subsection
19 (e)(1) becomes unperfected at the later of:

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

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

3 **SECTION 9-314. {CONTINUED} PERFECTION OF SECURITY**
4 **INTEREST OR AGRICULTURAL LIEN FOLLOWING CHANGE IN**
5 **APPLICABLE LAW.**

6 (a) A security interest perfected pursuant to the law designated in Section
7 9-301(1) or ~~Section~~ 9-305(b) or an agricultural lien perfected pursuant to the law
8 designated in Section 9-302 remains perfected until the earliest of:

9 (1) the time perfection would have ceased under the law of the first
10 jurisdiction.

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

13 (3) the expiration of four months after a transfer of collateral to a debtor
14 located in another jurisdiction; or

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

17 (b) If a security interest or agricultural lien described in subsection (a) becomes
18 perfected under the law of the other jurisdiction before the earliest time or event
19 described in that subsection, it remains perfected thereafter. If the security interest
20 does not become perfected under the law of the other jurisdiction before the earliest
21 event, it becomes unperfected and is deemed never to have been perfected as against
22 a previous or subsequent purchaser of the collateral for value.

1 (c) A possessory security interest in collateral, other than goods covered by a
2 certificate of title and as-extracted collateral consisting of goods, remains continuously
3 perfected if:

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

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

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

9 (d) A security interest in goods covered by a certificate of title which is
10 perfected by any method under the law of another jurisdiction when the goods become
11 covered by a certificate of title from this jurisdiction remains perfected until the
12 security interest would have become unperfected under the law of the other jurisdiction
13 had the goods not become so covered.

14 (e) A security interest described in subsection (d) becomes unperfected as
15 against a purchaser of the goods for value and is deemed never to have been perfected
16 as against a previous or subsequent purchaser of the collateral for value if the
17 applicable requirements for perfection under Section 9-309A(d) or 9-311 are not
18 satisfied before the earlier of:

19 (1) the time the security interest would have become unperfected under the
20 law of the other jurisdiction had the goods not become so covered; or

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

1 (f) A security interest in deposit accounts[, letter-of-credit rights,] [for
2 investment property] perfected under the law of the bank's jurisdiction[, the issuer's
3 jurisdiction, a nominated person's jurisdiction,] [, the securities intermediary's
4 jurisdiction, or the commodity intermediary's jurisdiction, as applicable] remains
5 perfected until the earlier of:

6 (1) the time perfection would have ceased under the law of the first
7 jurisdiction; or

8 (2) the expiration of four months after a change of the [bank's] [applicable]
9 jurisdiction.

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

16 ~~[(h) A security interest in letter-of-credit rights perfected by control under the~~
17 ~~law of the issuer's or nominated person's jurisdiction remains perfected until the~~
18 ~~earlier of:~~

19 ~~(1) the time perfection would have ceased under the law of the first~~
20 ~~jurisdiction; or~~

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

1 ~~(i) If a security interest described in subsection (h) becomes perfected under~~
2 ~~the law of the other jurisdiction before the earlier of the time or the end of the period~~
3 ~~described in that subsection, it remains perfected thereafter. If the security interest~~
4 ~~does not become perfected under the law of the other jurisdiction before the earlier of~~
5 ~~that time or the end of that period, it becomes unperfected and is deemed never to have~~
6 ~~been perfected as against a previous or subsequent purchaser of the collateral for~~
7 ~~value.]~~

8 ~~[(j) A security interest in investment property perfected under the law of the~~
9 ~~securities intermediary's jurisdiction or the commodity intermediary's jurisdiction, as~~
10 ~~applicable, remains perfected until the earlier of:~~

11 ~~(1) the expiration of four months after a change of the intermediary's~~
12 ~~jurisdiction; or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (c) For purposes of determining the rights of a creditor of a consignee, other
18 law determines the rights and title of a consignee while goods are in the consignee's
19 possession if, under this part, a perfected security interest held by the consignor would
20 be senior to the rights of the creditor.

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

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

6 (b) Except as otherwise provided in subsection (e), a buyer of consumer goods
7 takes free of a security interest, even if perfected, if the buyer buys:

8 (1) without knowledge of the security interest;

9 (2) for value;

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

11 (4) before a person files a financing statement covering the goods.

12 (c) To the extent that it affects the priority of a security interest over a buyer
13 of consumer goods under subsection (b), the period of effectiveness of a filing made
14 in the jurisdiction in which the debtor is located is governed by Section 9-314(a) and
15 (b).

16 (d) ~~[Except as otherwise provided in subsection (e) a]~~ ~~[A]~~ buyer in ordinary
17 course of business buying oil, gas, or other minerals at the wellhead or minehead or
18 after extraction takes free of an interest arising out of an encumbrance.

19 (e) ~~This section does~~ Subsections (a) and (b) do not affect a security interest
20 in goods in the possession of the secured party under Section 9-311.

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

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

6 [To be moved from Article 2B]

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

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

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

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

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

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

9 (1) cash proceeds of the collateral; and

10 (2) other proceeds of the collateral if the proceeds are chattel paper,
11 negotiable documents, instruments, investment property, or letter-of-credit rights.

12 (d) Subject to subsection (e), if a security interest in chattel paper, deposit
13 accounts, negotiable documents, instruments, investment property, or letter-of-credit
14 rights is perfected by a method other than filing, conflicting security interests in and
15 agricultural liens on proceeds of the collateral rank according to priority in time of
16 filing.

17 (e) Subsection (d) applies only if the proceeds of the collateral are not cash
18 proceeds, chattel paper, negotiable documents, instruments, investment property, or
19 letter-of-credit rights.

20 (f) If a statute under which an agricultural lien in collateral is created provides
21 that the agricultural lien has priority over a conflicting security interest or agricultural

1 lien in the same collateral, the statute governs priority if the agricultural lien is
2 perfected.

3 **SECTION 9-319A.**

4 [deleted]

5 **SECTION 9-320. FUTURE ADVANCES.**

6 (a) Except as otherwise provided in subsection (c), for purposes of determining
7 the priority of a security interest under Section 9-319(a), perfection of the security
8 interest dates from the time an advance is made to the extent that the security interest
9 secures an advance that:

10 (1) is not made pursuant to commitment; and

11 (2) is made while the security interest is temporarily perfected under
12 Section 9-310(d) or (e) [for is perfected when it attaches under Section 9-308A] and by
13 no other method.

14 (b) Except as otherwise provided in subsection (c), a security interest is
15 subordinate to the rights of a person that becomes a lien creditor while the security
16 interest is perfected only to the extent that it secures advances made more than 45 days
17 after the person becomes a lien creditor unless the advance is made:

18 (1) without knowledge of the lien; or

19 (2) pursuant to a commitment entered into without knowledge of the lien.

20 (c) Subsections (a) and (b) do not apply to a security interest held by a secured
21 party that is a buyer of accounts, chattel paper, or payment intangibles or a consignor.

1 (d) Except as otherwise provided in subsections (e) and (g), a buyer of goods
2 other than a buyer in ordinary course of business takes free of a security interest to the
3 extent that it secures advances made after the earlier of:

4 (1) the time the secured party acquires knowledge of the buyer's purchase;
5 or

6 (2) 45 days after the purchase.

7 (e) Subsection (d) does not apply if the advance is made pursuant to a
8 commitment entered into without knowledge of the buyer's purchase and before the
9 expiration of the 45-day period.

10 (f) Except as otherwise provided in subsection (g), a lessee of goods other than
11 a lessee of goods in ordinary course of business takes the leasehold interest free of a
12 security interest to the extent that it secures advances made after the earlier of:

13 (1) the time the secured party acquires knowledge of the lease; or

14 (2) 45 days after the lease contract becomes enforceable.

15 (g) Subsections (d) and (f) do not apply if the advance is made pursuant to a
16 commitment entered into without knowledge of the lease and before the expiration of
17 the 45-day period.

18 **SECTION 9-321.**

19 [deleted]

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

3 (a) Subject to subsection (b), and except as otherwise provided in subsection
4 (g), a perfected purchase-money security interest in inventory has priority over a
5 conflicting security interest in the same inventory, has priority over a conflicting
6 security interest in chattel paper or an instrument constituting proceeds of the inventory
7 and in proceeds of the chattel paper or instrument as provided in Section 9-327, and,
8 except as otherwise provided in Section 9-325, also has priority in identifiable cash
9 proceeds of the inventory to the extent the identifiable cash proceeds are received on
10 or before the delivery of the inventory to a buyer, if:

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

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

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

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

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

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

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

6 (c) Subject to subsection (e) and except as otherwise provided in subsection
7 (g), a perfected purchase-money security interest in livestock that are farm products
8 has priority over a conflicting security interest in the same livestock and, except as
9 otherwise provided in Section 9-325, also has priority in its identifiable proceeds and
10 identifiable products in their unmanufactured states if:

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

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

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

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

20 (d) Subsections (d)(2) through (4) apply only if the holder of the conflicting
21 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
2 date of the filing; or

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

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

12 (f) If more than one security interest qualifies for priority in the same collateral
13 under subsection (a), (d), or (f):

14 (1) a security interest securing an obligation incurred ~~[by an obligor]~~ as all
15 or part of the price of the collateral has priority over a security interest securing an
16 obligation incurred ~~[by an obligor]~~ for value given to enable the debtor to acquire
17 rights in or the use of collateral; and

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

20 (g) A purchase-money security interest in software has priority over a
21 conflicting security interest in the same collateral and, except as otherwise provided
22 in Section 9-325, also has priority in its proceeds to the extent that the purchase-money

1 security interest in the goods in which the software was acquired for use has priority
2 in the goods and proceeds of the goods under this section.

3 **SECTION 9-323. PRIORITY OF SECURITY INTERESTS IN**
4 **TRANSFERRED COLLATERAL.** ~~[(a)] [Subject to subsection (b), a]~~ ~~[A]~~ security
5 interest created by a debtor is subordinate to a security interest in the same collateral
6 created by another person, notwithstanding anything to the contrary in this part, if:

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

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

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

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

15 **SECTION 9-323A. PRIORITY OF SECURITY INTERESTS CREATED BY**
16 **NEW DEBTOR.**

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

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

4 **SECTION 9-324. PRIORITY OF SECURITY INTERESTS IN**
5 **INVESTMENT PROPERTY.** The following rules govern priority among conflicting
6 security interests in the same investment property:

7 (1) A security interest of a secured party that has control over investment
8 property has priority over a security interest of a secured party that does not have
9 control over the investment property.

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

13 (3) Except as otherwise provided in paragraphs (4) and (5), conflicting security
14 interests of secured parties each of which has control rank according to priority in time
15 of obtaining control.

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

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

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

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

5 **SECTION 9-325. PRIORITY OF SECURITY INTERESTS IN DEPOSIT**
6 **ACCOUNTS.** The following rules govern priority among conflicting security
7 interests in the same deposit account:

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

11 (2) Except as otherwise provided in paragraphs (3) and (4), security interests
12 perfected by control rank [according to priority in time of obtaining control] ~~[equally]~~.

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

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

19 **SECTION 9-326. PRIORITY OF SECURITY INTERESTS IN LETTER-**
20 **OF-CREDIT RIGHTS.** The following rules govern priority among conflicting
21 security interests in the same letter-of-credit right:

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

1 (A) a security interest held by a secured party that has control over the
2 letter-of-credit right has priority to the extent of its control over a conflicting security
3 interest held by a secured party that does not have control; and

4 (B) security interests perfected by control rank [according to priority in time
5 of obtaining control] [equally].

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

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

10 (a) A purchaser of chattel paper ~~[or an instrument]~~ has priority over a security
11 interest in the chattel paper ~~[or instrument]~~ which is claimed merely as proceeds of
12 inventory subject to a security interest and, except as otherwise provided in Section
13 9-325, in proceeds of the chattel paper ~~or instrument~~ if:

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

17 (2) the chattel paper ~~[or instrument]~~ does not indicate that it has been
18 assigned to ~~[an identified assignee other than the purchaser]~~ ~~[the person holding the~~
19 ~~conflicting security interest]~~.

20 (b) A purchaser of chattel paper ~~or an instrument~~ has priority over a security
21 interest in the chattel paper ~~or instrument~~ which is claimed other than merely as
22 proceeds of inventory subject to a security interest and, except as otherwise provided

1 in Section 9-325, in proceeds of the chattel paper ~~or instrument~~ if the purchaser gives
2 new value and ~~-(1)~~ takes possession or obtains control of the chattel paper in good
3 faith, in the ordinary course of the purchaser's business, and without knowledge that
4 the purchase violates the rights of the secured party; ~~or~~

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

7 (c) Except as otherwise provided in Section 9-328(a), a purchaser for value of
8 an instrument has priority over a security interest in the instrument perfected by a
9 means other than possession if the purchaser takes possession of the instrument in
10 good faith and without knowledge that the purchase violates the rights of the secured
11 party.

12 (d) For purposes of subsections (b) and (c), if chattel paper or an instrument
13 indicates that it has been assigned to [an identified assignee other than the purchaser]
14 [the person holding the conflicting security interest], a purchaser of the chattel paper
15 or instrument has knowledge that the purchase violates the rights of the secured party.

16 ~~[(d) Except as otherwise provided in Section 9-328(c), a [possessory security~~
17 ~~interest in] [purchaser for value that takes possession of] an instrument has priority~~
18 ~~over a [nonpossessory security interest in the instrument perfected by means other than~~
19 ~~filing] [security interest in the instrument perfected by filing].]~~

20 (e) For purposes of this section, the holder of a purchase-money security
21 interest in inventory gives new value for chattel paper ~~or an instrument~~ constituting
22 proceeds of the inventory.

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

5 (a) Nothing in this article limits the rights of a holder in due course of a
6 negotiable instrument, a holder to whom a negotiable document of title has been duly
7 negotiated, or a protected purchaser of a security. These holders or purchasers take
8 priority over an earlier security interest, even if perfected, to the extent provided in
9 Articles 3, 7, and 8.

10 (b) Nothing in this article limits the rights of or imposes liability on a person
11 to the extent that the person is protected against the assertion of an adverse claim under
12 Article 8.

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

15 **SECTION 9-329. TRANSFER OF MONEY; TRANSFER OF FUNDS FROM**
16 **DEPOSIT ACCOUNT.**

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

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

1 **SECTION 9-330. PRIORITY OF CERTAIN LIENS ARISING BY**
2 **OPERATION OF LAW.**

3 (a) In this section, “possessory lien” means an interest, other than a security
4 interest or an agricultural lien, that:

5 (1) secures payment or performance of an obligation for services or
6 materials furnished with respect to goods by a person in the ordinary course of the
7 person’s business;

8 (2) is created by statute or rule of law in favor of the person; and

9 (3) the effectiveness of which depends on the person’s possession of the
10 goods.

11 (b) A possessory lien on goods has priority over a security interest in the goods
12 unless the lien is created by a statute that expressly provides otherwise.

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

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

17 (b) A security interest under this article may be created in goods that are
18 fixtures or may continue in goods that become fixtures. A security interest does not
19 exist under this article in ordinary building materials incorporated into an improvement
20 on land.

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

1 (d) In cases not governed by subsections (e) through (i), a security interest in
2 fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the
3 related real property which is not the debtor.

4 (e) Except as otherwise provided in subsection (i), a perfected security interest
5 in fixtures has priority over a conflicting interest of an encumbrancer or owner of the
6 real property if the debtor has an interest of record in the real property or is in
7 possession of the real property and:

8 (1) the security interest is a purchase-money security interest; ~~and~~

9 (2) ~~the~~ interest of the encumbrancer or owner arises before the goods
10 become fixtures; and

11 (3) ~~the~~ security interest is perfected by a fixture filing before the goods
12 become fixtures or within 20 days thereafter.

13 (f) A perfected security interest in fixtures has priority over a conflicting
14 interest of an encumbrancer or owner of the real property if:

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

17 (A) is perfected by a fixture filing before the interest of the
18 encumbrancer or owner is of record; and

19 (B) the security interest has priority over any conflicting interest of a
20 predecessor in title of the encumbrancer or owner;

21 (2) before the goods become fixtures, the security interest is perfected by
22 any method permitted by this article and the fixtures are readily removable:

1 (A) factory or office machines;

2 (B) equipment that is not primarily used or leased for use in the

3 operation of the real property; or

4 (C) replacements of domestic appliances that are consumer goods;

5 (3) the conflicting interest is a lien on the real property obtained by legal

6 or equitable proceedings after the security interest was perfected by any method

7 permitted by this article; or

8 (4) the security interest is:

9 (A) created in a manufactured home in a manufactured-home

10 transaction; and

11 (B) perfected [pursuant to a statute described in Section 9-309A(a)(2).

12 ~~or (3)] [~~before the manufactured home becomes a fixture or within 20 days thereafter~~].~~

13 (g) A security interest in fixtures, whether or not perfected, has priority over

14 a conflicting interest of an encumbrancer or owner of the real property if:

15 (1) the encumbrancer or owner has, in an authenticated record, consented

16 to the security interest or disclaimed an interest in the goods as fixtures; or

17 (2) the debtor has a right to remove the goods as against the encumbrancer

18 or owner.

19 (h) The priority of the security interest under subsection (g) continues for a

20 reasonable time if the debtor's right to remove the goods as against the encumbrancer

21 or owner terminates.

(i) Except as otherwise provided in subsections (f) and (g), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

SECTION 9-332. ACCESSIONS.

(a) “Accession means goods that are physically united with other goods in a manner such that the identity of the original goods is not lost.

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

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

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

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

(f) On default, subject to Part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(g) A secured party that removes an accession from other goods under subsection (f) shall promptly reimburse any encumbrancer or owner of the whole or

1 of the other goods, other than the debtor, for the cost of repair of any physical injury
2 to the whole or the other goods. The secured party need not reimburse the
3 encumbrancer or owner for any diminution in value of the whole or the other goods
4 caused by the absence of the accession removed or by any necessity for replacing it.
5 A person entitled to reimbursement may refuse permission to remove until the secured
6 party gives adequate assurance for the performance of the obligation to reimburse.

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

8 (a) In this section, “commingled goods” means goods that are physically united
9 with other goods in such a manner that their identity is lost in a product or mass.

10 (b) A security interest does not exist in commingled goods as such; however,
11 a security interest may attach to a product or mass that results when goods become
12 commingled goods.

13 (c) If collateral becomes commingled goods, a security interest attaches to the
14 product or mass.

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

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

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

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

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

7 **SECTION 9-334. PRIORITY OF SECURITY INTERESTS IN GOODS**
8 **COVERED BY CERTIFICATE OF TITLE.** If, while a security interest in goods
9 is perfected by any method under the law of another jurisdiction, this State issues a
10 certificate of title that does not show that the goods are subject to the security interest
11 or contain a statement that they may be subject to security interests not shown on the
12 certificate:

13 (1) a buyer of the goods, other than a person that is in the business of selling
14 goods of that kind, takes free of the security interest if the buyer gives value and
15 receives delivery of the goods after issuance of the certificate and without knowledge
16 of the security interest; and

17 (2) the security interest is subordinate to a conflicting security interest in the
18 goods that attaches, and is perfected under Section 9-309A(d), after issuance of the
19 certificate and without the conflicting secured party's knowledge of the security
20 interest.

1 **SECTION 9-337. EFFECTIVENESS OF RIGHT OF RECOUPMENT OR**
2 **SET-OFF AGAINST DEPOSIT ACCOUNT.**

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

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

10 (c) The exercise by a bank of a set-off against a deposit account is ineffective
11 against a secured party that holds a security interest in the deposit account which is
12 perfected by control under Section 9-109(a)(3), if the set-off is based on a claim against
13 the debtor.

14 **SECTION 9-338. BANK'S RIGHT TO DISPOSE OF FUNDS IN DEPOSIT**
15 **ACCOUNT.** Except as otherwise provided in Section 9-337(c), and unless the bank
16 otherwise agrees in an authenticated record, a bank's rights and duties with respect to
17 a deposit account maintained with the bank are not terminated, suspended, or modified
18 by:

- 19 (1) the creation or perfection of a security interest in the deposit account;
20 (2) the bank's knowledge of the security interest; or
21 (3) the bank's receipt of instructions from the secured party.

SECTION 9-339. BANK’S RIGHT TO REFUSE TO ENTER INTO OR DISCLOSE EXISTENCE OF CONTROL AGREEMENT. This article does not require a bank to enter into an agreement of the type described in Section 9-109(a)(2) even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

PART 4

RIGHTS OF THIRD PARTIES

SECTION 9-401. ALIENABILITY OF DEBTOR'S RIGHTS.

(a) A debtor's rights in collateral may be voluntarily or involuntarily transferred notwithstanding any ~~agreement~~ provision in the security agreement with the secured party prohibiting a transfer or making a transfer a default.

§(b) Except as otherwise provided in subsection (a) and in Sections 9-404B, 9-405, 9-406, and 9-406A, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by applicable law other than this article.†

SECTION 9-402. SECURED PARTY NOT OBLIGATED ON CONTRACT OF DEBTOR. The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not impose upon a secured party liability in contract or tort for the debtor's acts or omissions.

1 **SECTION 9-403. AGREEMENT NOT TO ASSERT DEFENSES AGAINST**
2 **ASSIGNEE.**

3 (a) In this section, “value” has the meaning provided in Section 3-303(a).

4 (b) Except as otherwise provided in this section, an agreement between an
5 account debtor and an assignor not to assert against an assignee any claim or defense
6 that the account debtor may have against the assignor is enforceable by an assignee that
7 takes an assignment:

8 (1) for value;

9 (2) in good faith;

10 (3) without notice of a claim of a property or possessory right to the
11 property assigned; and

12 (4) without notice of a defense or claim in recoupment of the type that may
13 be asserted against a person entitled to enforce a negotiable instrument under Section
14 3-305(a).

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

18 ~~**Alternative A**~~

19 ~~(d) In a consumer transaction, an agreement described in subsection (b) is~~
20 ~~unenforceable if:~~

21 ~~(1) a writing evidences the account debtor’s obligation; and~~

~~(2) other law requires that the writing contain a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee[, even if the writing does not contain] [, whether or not the writing contains] such a statement.~~

~~Alternative B~~

~~(d) In a consumer transaction, if a writing evidences the account debtor's obligation, other law requires that the writing contain a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the writing does not contain such a statement, the writing [must be interpreted] [has the same effect] as if the writing contained such a statement.~~

~~Alternative C~~

(d) In a consumer transaction, if a ~~writing~~ record evidences the account debtor's obligation, other law requires that the ~~writing~~ record contain a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the ~~writing~~ record does not contain such a statement:

(1) the record has the same effect as if the record contained such a
statement; and

(2) the account debtor may assert against an assignee ~~only~~ those claims and defenses that would have been available if the ~~writing~~ record contained such a statement.

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End of Alternatives

(e) This section is subject to other law that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) Except as otherwise provided in subsection (d), this section does not displace other law that gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

SECTION 9-404. RIGHTS ACQUIRED BY ASSIGNEE; CLAIMS AND DEFENSES AGAINST ASSIGNEE; ~~MODIFICATION OF CONTRACT; DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; TERM PROHIBITING ASSIGNMENT INEFFECTIVE.~~

(a) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) ~~and (k)~~, through (e), the rights of an assignee are subject to:

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

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

1 (b) Subject to subsection (c) and except as otherwise provided in subsection
2 (d), the claim of an account debtor against an assignor may be asserted against an
3 assignee under subsection (a) only to reduce the amount the account debtor owes.

4 (c) This section is subject to other law that establishes a different rule for an
5 account debtor who is an individual and who incurred the obligation primarily for
6 personal, family, or household purposes.

7 (d) In a consumer transaction, if a ~~writing~~ record evidences the account
8 debtor's obligation, other law requires that the ~~writing~~ record contain a statement to the
9 effect that the account debtor's recovery against an assignee with respect to claims and
10 defenses against the assignor shall not exceed amounts paid by the account debtor
11 under the ~~writing~~ record, and the ~~writing~~ record does not contain such a statement, the
12 extent to which a claim of an account debtor against the assignor may be asserted
13 against an assignee is determined as if the ~~writing~~ record contained such a statement.

14 (e) This section does not apply to ~~an assignment~~ a transfer of a healthcare
15 insurance receivable.

16 **SECTION 9-404A. MODIFICATION OF ASSIGNED CONTRACT.**

17 (a) A modification of or substitution for an assigned contract is effective
18 against an assignee if made in good faith and in accordance with reasonable
19 commercial standards. The assignee acquires corresponding rights under the modified
20 or substituted contract. The assignment may provide that the modification or
21 substitution is a breach of contract by the assignor. This subsection is subject to
22 subsections (b) ~~and (c)~~ through (d).

1 (b) Subsection (a) applies to the extent that:

2 (1) the right to payment or a part thereof under an assigned contract has not
3 been fully earned by performance; or

4 (2) the right to payment or a part thereof has been fully earned by
5 performance and the account debtor has not received notification of the assignment
6 under ~~subsection (c)~~ Section 9-404B(a).

7 (c) This section is subject to other law that establishes a different rule for an
8 account debtor who is an individual and who incurred the obligation primarily for
9 personal, family, or household purposes.

10 (d) This section does not apply to ~~an assignment~~ a transfer of a healthcare
11 insurance receivable.

12 **SECTION 9-404B. DISCHARGE OF ACCOUNT DEBTOR;**
13 **NOTIFICATION OF ASSIGNMENT; IDENTIFICATION AND PROOF OF**
14 **ASSIGNMENT; TERM PROHIBITING ASSIGNMENT INEFFECTIVE.**

15 (a) Subject to subsections ~~(f), (g), (h), and (k)~~, (b) through (h), an account
16 debtor on an account, chattel paper, ~~[instrument other than a negotiable instrument,]~~
17 or payment intangible may discharge its obligation by paying the assignor until, but not
18 after, the account debtor receives a notification, authenticated by the assignor or the
19 assignee, that the amount due or to become due has been assigned and that payment is
20 to be made to the assignee. After receipt of the notification, the account debtor may
21 discharge its obligation by paying the assignee and may not discharge the obligation
22 by paying the assignor.

1 (b) Subject to subsection (g), notification is ineffective under subsection (a):

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

3 (2) to the extent that an agreement between an account debtor and a seller

4 of a payment intangible limits the account debtor's duty to pay a person other than the

5 seller and the limitation is effective under other law; or

6 (3) at the option of an account debtor, if the notification notifies the account

7 debtor to make less than the full amount of any installment or other periodic payment

8 to the assignee, regardless of whether:

9 (A) only a portion of the account, chattel paper, or general intangible has

10 been assigned to that assignee;

11 (B) a portion has been assigned to another assignee; or

12 (C) the account debtor knows that the assignment to that assignee is

13 limited.

14 (c) Subject to subsection (g), if requested by the account debtor, an assignee

15 shall seasonably furnish reasonable proof that the assignment has been made. Unless

16 the assignee complies, the account debtor may discharge its obligation by paying the

17 assignor even if the account debtor has received ~~[an effective]~~ [a] notification under

18 subsection (a).

19 (d) Except as otherwise provided in subsection (e) and Sections 2A-303 and

20 9-405, and subject to subsection (g), a term in an agreement between an account debtor

21 and an assignor or in a promissory note is ineffective if:

1 (1) the term prohibits, restricts, or requires the consent of the account
2 ~~debtor's~~ debtor or person obligated on the promissory note ~~consent~~ to the assignment
3 or transfer of or the creation, attachment, or perfection of a security interest in an
4 account, chattel paper, or payment intangible; or

5 (2) the creation, attachment, or perfection of the security interest would
6 cause a default, breach, right of recoupment, claim, defense, termination, right of
7 termination, or remedy under the account, chattel paper, or payment intangible.

8 (e) Subsection (d) does not apply to the sale of a payment intangible or
9 promissory note.

10 (f) ~~{Subject to subsection (g), an}~~ ~~[An]~~ account debtor may not waive or vary
11 its option under subsection (b)(3).

12 (g) This section is subject to other law that establishes a different rule for an
13 account debtor who is an individual and who incurred the obligation primarily for
14 personal, family, or household purposes.

15 (h) This section does not apply to ~~an assignment~~ a transfer of a healthcare
16 insurance receivable.

17 **SECTION 9-405. RESTRICTIONS ON CREATION OR ENFORCEMENT**
18 **OF SECURITY INTEREST IN LEASEHOLD INTEREST OR IN LESSOR'S**
19 **RESIDUAL INTEREST.**

20 (a) Except as otherwise provided in subsection (b), a provision in a lease
21 agreement is ineffective if it:

1 (1) prohibits the creation or enforcement of a security interest in an interest
2 of a party under the lease contract or in the lessor's residual interest in the goods; or

3 (2) makes such a transfer an event of default.

4 (b) A lease provision described in subsection (b) is enforceable to the extent
5 that there is:

6 (1) a transfer by the lessee of the lessee's right of possession or use of the
7 goods in violation of the provision; or

8 (2) a delegation of a material performance of either party to the lease
9 contract in violation of the provision.

10 (c) Neither the granting nor the enforcement of a security interest in the lessor's
11 interest under the lease contract or the lessor's residual interest in the goods is a transfer
12 that materially impairs the prospect of obtaining return performance by, materially
13 changes the duty of, or materially increases the burden or risk imposed on, the lessee
14 within Section 2A-303(5). This subsection does not apply to the extent that there is a
15 delegation of a material performance of the lessor.

16 **SECTION 9-406. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY**
17 **NOTES, HEALTHCARE INSURANCE RECEIVABLES, AND CERTAIN**
18 **GENERAL INTANGIBLES INEFFECTIVE.**

19 (a) Except as otherwise provided in subsection (b), a term in a promissory note
20 or in [an agreement between an account debtor and a debtor which relates to a
21 healthcare insurance receivable or a general intangible, including a contract, permit,

1 license, or franchise, ~~between an account debtor and a debtor~~, and which prohibits,
2 restricts, or requires the ~~account debtor's~~ consent of the person obligated on the
3 promissory note or the account debtor to the assignment or transfer of or creation,
4 attachment, or perfection of a security interest in the general intangible, is ineffective
5 to the extent that:

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

8 (2) the creation, attachment, or perfection of the security interest would
9 cause a default, breach, right of recoupment, claim, defense, termination, right of
10 termination, or remedy under the promissory note, healthcare insurance receivable, or
11 general intangible.

12 (b) Subsection (a) applies to a security interest in a payment intangible or
13 promissory note only if the security interest arises out of a sale of the payment
14 intangible or promissory note.

15 (c) A provision in a statute or governmental rule or regulation which prohibits,
16 restricts, or requires the consent of a government or governmental body or official to
17 the assignment or transfer of or creation of a security interest in a promissory note or
18 a healthcare insurance receivable or general intangible, including a contract, permit,
19 license, or franchise, between an account debtor and a debtor is ineffective to the extent
20 that:

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

1 (2) the creation, attachment, or perfection of the security interest would
2 cause a default, breach, claim, defense, termination, right of termination, or remedy
3 under the promissory note, healthcare insurance receivable, or general intangible.

4 (d) To the extent that a term in a promissory note or in an agreement between
5 an account debtor and a debtor which relates to a healthcare insurance receivable or a
6 general intangible, or provision in a statute, rule, or regulation, is ineffective under
7 subsection (a) or (c) but is effective under other law, the creation, attachment, or
8 perfection of a security interest in the promissory note, healthcare insurance receivable,
9 or general intangible:

10 (1) is not enforceable against the account debtor;

11 (2) imposes no duties or obligations on the account debtor; and

12 (3) does not require the account debtor to recognize the security interest, pay
13 or render performance to the secured party, or accept payment or performance from the
14 secured party.

15 (e) This section prevails over any inconsistent provisions of the following
16 statutes, rules, and regulations:

17 *[List here any statutes, rules, and regulations containing provisions*
18 *inconsistent with this section.]*

19 *Legislative Note: States that amend statutes, rules, and regulations to remove*
20 *provisions inconsistent with this section need not enact subsection (e).*

1 **SECTION 9-406A. RESTRICTIONS ON ASSIGNMENT OF LETTER-OF-**
2 **CREDIT RIGHTS INEFFECTIVE.**

3 (a) A term in a letter of credit or a rule of law, custom, or practice applicable
4 to the letter of credit which prohibits, restricts, or requires the consent of an applicant,
5 issuer, or nominated person to a beneficiary's assignment of or creation of a security
6 interest in a letter-of-credit right is ineffective to the extent that:

7 (1) the term or rule of law, custom, or practice would impair the creation,
8 attachment, or perfection of a security interest in the letter-of-credit right; or

9 (2) the creation, attachment, or perfection of the security interest would
10 cause a default, breach, claim, defense, termination, right of termination, or remedy
11 under the letter-of-credit right.

12 (b) To the extent that a term in a letter of credit is ineffective under subsection
13 (a) but is effective under Article 5, other law, or a custom or practice applicable to the
14 letter of credit, to the transfer of a right to draw or otherwise demand performance
15 under the letter of credit, or to the assignment of a right to proceeds of the letter of
16 credit, the creation, attachment, or perfection of a security interest in the letter-of-credit
17 right:

18 (1) is not enforceable against the applicant, issuer, nominated person, or
19 transferee beneficiary;

20 (2) imposes no duties or obligations on the applicant, issuer, nominated
21 person, or transferee beneficiary; and

(3) does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

PART 5

FILING

[SUBPART 1. FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT]

SECTION 9-501. FILING OFFICE.

(a) Except as otherwise provided in subsection (b), if the law of this State governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) the office designated for the filing or recording of a mortgage on the real property, if:

(A) the collateral is timber to be cut or as-extracted collateral; or

(B) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; and

(2) the office of [] [or any office duly authorized by []], in all other cases, including if the goods are or are to become fixtures and the financing statement is not filed as a fixture filing.

(2) the office of [] or any office duly authorized by [] in all other cases;

including if the goods are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) The office in which to file a financing statement to perfect a security interest ~~on~~ 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.

Legislative Note: The State should designate the filing office where the brackets appear. The filing office may be that of a governmental official (e.g., the Secretary of State) or a private party that maintains the State's filing system.

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

(a) Subject to subsection (b), a financing statement is sufficient only if it:

(1) provides the name of the debtor;

(2) provides the name of the secured party or a representative of the secured party; and

(3) indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in Section 9-501(b), to be sufficient, a financing statement that covers timber to be cut or as-extracted collateral or which is filed as a fixture filing and the collateral is goods that are or are to become fixtures also must:

(1) indicate that it covers this type of collateral;

(2) indicate that it is to be filed [for record] in the real property records;

1 (3) provide a description of the real property [sufficient to give constructive
2 notice of the mortgage under the law of this State if the description were contained in
3 a mortgage of the real property]; and

4 (4) if the debtor does not have an interest of record in the real property,
5 provide the name of a record owner.

6 *Legislative Note: Language in brackets is optional. Where the State has any special*
7 *recording system for real property other than the usual grantor-grantee index (as, for*
8 *instance, a tract system or a title registration or Torrens system) local adaptations of*
9 *subsection (b) and Section 9-520(b) through (d) may be necessary. See, e.g., Mass.*
10 *Gen. Laws Chapter 106, Section 9-410.*

11 (c) A real property mortgage is effective from the date of recording as a
12 financing statement filed as a fixture filing or as a financing statement covering {timber
13 to be cut or} as-extracted collateral only if:

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

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

18 (3) the mortgage complies with the requirements for a financing statement
19 in this section other than an indication that it is to be filed in the real property records;
20 and

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

22 (d) A financing statement may be filed before a security agreement is made or
23 a security interest otherwise attaches.

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

2 (a) A financing statement sufficiently provides the name of the debtor:

3 (1) if the debtor is a registered organization, only if the financing statement
4 provides the name of the debtor as shown on the public records of the debtor's ~~State~~
5 jurisdiction of organization;

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

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

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

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

16 (4) in other cases:

17 (A) if the debtor has a name, only if it provides the individual or
18 {organization} {organizational} name of the debtor; and

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

1 (b) A financing statement that sufficiently provides the name of the debtor in
2 accordance with subsection (a) is not rendered ineffective by the ~~[presence or]~~ absence
3 of:

4 (1) a trade or other name of the debtor; or

5 (2) unless required under subsection (a)(4)(B), names of partners, members,
6 associates, or other persons comprising the debtor.

7 (c) A financing statement that provides only the debtor's trade name does not
8 sufficiently provide the name of the debtor.

9 (d) A financing statement may provide the name of more than one debtor and
10 the name of more than one secured party.

11 (e) ~~The failure~~ Failure to indicate the representative capacity of a secured party
12 or representative of a secured party does not affect the sufficiency of a financing
13 statement.

14 **SECTION 9-504. INDICATION OF COLLATERAL.** A financing statement
15 sufficiently indicates the collateral that it covers if the financing statement provides:

16 (1) a description of the collateral pursuant to Section 9-111;

17 ~~(2) an indication of the type of collateral;~~ or

18 (2) an indication that the financing statement covers all assets or all personal
19 property.

1 **SECTION 9-505. FILING AND COMPLIANCE WITH OTHER STATUTES**
2 **AND TREATIES FOR CONSIGNMENTS, LEASES, BAILMENTS, AND**
3 **OTHER TRANSACTIONS.**

4 (a) A consignor, lessor, or bailor of goods or a buyer of a payment intangible
5 or promissory note may file a financing statement, or may comply with a statute or
6 treaty described in Section 9-309A(a), using the terms “consignor, “consignee,
7 “lessor, “lessee, “bailor, “bailee, “owner, “registered owner , “buyer, “seller,
8 or words of similar import, instead of the terms “secured party and “debtor.

9 (b) This part applies to the filing of such a financing statement and, as
10 appropriate, to compliance that is equivalent to filing a financing statement under
11 Section 9-309A(c), but the filing or compliance is not of itself a factor in determining
12 whether the collateral secures an obligation. If it is determined for another reason that
13 the collateral secures an obligation, a security interest held by the consignor, lessor,
14 bailor, owner, or buyer which attaches to the collateral is perfected by the filing or
15 compliance.

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

17 (a) A financing statement substantially complying with the requirements of this
18 part is effective even if it contains minor errors or omissions, unless the errors or
19 omissions make the financing statement seriously misleading.

1 (b) Except as otherwise provided in subsection (c), a financing statement that
2 fails sufficiently to provide ~~sufficiently~~ the name of the debtor in accordance with
3 Section 9-503(a) is seriously misleading.

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

9 (d) For purposes of Section 9-510(b), the "debtor's correct name" in subsection
10 (c) means the correct name of the new debtor.

11 **SECTION 9-507. EFFECT OF CERTAIN ~~CHANGES~~ EVENTS ON**
12 **EFFECTIVENESS OF FINANCING STATEMENT.**

13 (a) A filed financing statement remains effective with respect to collateral that
14 is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security
15 interest ~~{for agricultural lien}~~ continues under Section 9-313(c), even if the secured
16 party knows of or consents to the disposition.

17 (b) Except as otherwise provided in subsection (c) and Section 9-510, a
18 financing statement is not rendered ineffective if, after the financing statement is filed,
19 the information contained in the financing statement becomes seriously misleading
20 under the standard set forth in Section 9-506.

1 (c) If a debtor so changes its name that a filed financing statement becomes
2 seriously misleading under the standard set forth in Section 9-506:

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

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

9 **SECTION 9-508. ~~WHEN~~ PERSONS ENTITLED TO FILE A RECORD**
10 **~~MAY BE FILED.~~**

11 (a) A person is entitled to file an initial financing statement, amendment that
12 adds collateral covered by a financing statement, or amendment that adds a debtor to
13 a financing statement only if:

14 (1) the debtor authorizes the filing in an authenticated record; or

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

18 (b) By authenticating a security agreement, a debtor authorizes the filing of an
19 initial financing statement, and an amendment, covering~~g~~:

20 (1)~~}~~ the collateral described in the security agreement; ~~{~~and

21 (2) ~~proceeds of the~~ property that becomes collateral under Section 9-
22 313(c)(2), whether or not the security agreement expressly covers proceeds~~}~~.

1 (c) A person is entitled to file an amendment other than an amendment that
2 adds collateral covered by a financing statement or an amendment that adds a debtor
3 to a financing statement only if:

4 (1) the secured party of record authorizes the filing; ~~in an authenticated~~
5 ~~record~~; or

6 (2) the amendment is a termination statement for a financing statement as
7 to which the secured party of record has failed to file or send a termination statement
8 as required by Section 9-511(b) or (d).

9 (d) If there is more than one secured party of record for a financing statement,
10 each secured party of record may authorize the filing of an amendment under
11 subsection (c).

12 **SECTION 9-508A. EFFECTIVENESS OF FILED RECORD.**

13 (a) Subject to subsection (c), a filed record is effective only to the extent that
14 it was filed by a person is entitled to file it under Section 9-508.

15 (b) A record authorized by one secured party of record does not affect ~~the~~
16 ~~rights under~~ the financing statement of with respect to another secured party of record.

17 (c) If a person is entitled to file a termination statement only under Section 9-
18 508(c)(2), the filed termination statement is effective only if the debtor authorizes the
19 filing and the termination statement indicates that the debtor authorized it to be filed.
20 ~~filing is made by or on behalf of the debtor.~~

(d) A continuation statement that is filed outside the six-month period described in Section 9-516(d) is ineffective.

SECTION 9-509. AMENDMENT OF FINANCING STATEMENT.

(a) Subject to Section 9-508, a person may add or delete collateral covered by a financing statement or, subject to subsection (e), otherwise amend the information contained in a financing statement by filing an amendment that identifies ~~the initial financing statement~~ by its file number, the initial financing statement to which the amendment relates.

(b) Except as otherwise provided in Section 9-516, the filing of an amendment does not extend the period of effectiveness of ~~a~~ the financing statement.

(c) A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) An amendment is ineffective to the extent it:

(1) purports to delete all secured parties of record and fails to provide the name of a new secured party of record; or

(2) purports to delete ~~the names of~~ all debtors and fails to provide the name of a debtor not previously covered by the financing statement.

1 **{SECTION 9-509A. SECURED PARTY OF RECORD.**

2 (a) A secured party of record with respect to a financing statement is a person
3 whose name is provided as the name of the secured party or a representative of the
4 secured party in an initial financing statement that has been filed.

5 (b) If an effective amendment of a financing statement which provides the
6 name of a person as a secured party or a representative of a secured party is filed, the
7 person named in the amendment is a secured party of record.}

8 (c) A person ~~[whose name is provided]~~ remains a secured party of record until
9 the filing of an effective amendment of the financing statement which ~~indicates~~ deletes
10 that the person is ~~not a secured party or a representative of a secured party.~~

11 **SECTION 9-510. EFFECTIVENESS OF FINANCING STATEMENT IF**
12 **NEW DEBTOR BECOMES BOUND BY SECURITY AGREEMENT.**

13 (a) Except as otherwise provided in subsections (b) and (c), a filed financing
14 statement naming an original debtor is effective to perfect a security interest in
15 collateral in which a new debtor has or acquires rights to the extent that the financing
16 statement would have been effective had the original debtor acquired rights in the
17 collateral.

18 (b) If the difference between the name of the original debtor and that of the
19 new debtor causes a filed financing statement that is effective under subsection (a) to
20 be seriously misleading under the standard set forth in Section 9-506; ~~(c) and (d):~~

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

4 (2) the financing statement is not effective to perfect a security interest in
5 collateral acquired by the new debtor more than four months after the new debtor
6 becomes bound under Section 9-203(c) unless an initial financing statement providing
7 the name of the new debtor is filed before the expiration of that time.

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

10 **SECTION 9-511. TERMINATION STATEMENT.**

11 (a) A termination statement for a financing statement is an amendment of the
12 financing statement which:

13 (1) ~~complies with the requirements of Section 9-509(a);~~ identifies, by its
14 file number, the initial financing statement to which it relates; and

15 (2) indicates either that it is a termination statement or that ~~an~~ the identified
16 financing statement is no longer effective.

17 (b) The secured party shall cause the secured party of record for a financing
18 statement to file in the filing office a termination statement for the financing statement
19 if the financing statement covers consumer goods and:

20 (1) there is no outstanding secured obligation and no commitment to
21 make an advance, incur an obligation, or otherwise give value; or

1 (2) the debtor did not authorize the filing of the initial financing
2 statement.

3 (c) To comply with subsection (b), the secured party shall cause the secured
4 party of record to file the termination statement:

5 (1) within one month after there is no outstanding secured obligation and
6 no commitment to make an advance, incur an obligation, or otherwise give value; or

7 (2) if earlier, [~~within 10~~ 20 days] after the debtor sends to the secured party
8 an authenticated demand.

9 (d) In cases not governed by subsection (b), within ~~10~~ 20 days after the debtor
10 sends to the secured party an authenticated demand, the secured party shall cause the
11 secured party of record for a financing statement to send to the debtor a termination
12 statement for the financing statement or file the termination statement with filing office
13 if:

14 (1) there is no outstanding secured obligation and no commitment to make
15 an advance, incur an obligation, or otherwise give value;

16 (2) the debtor did not authorize the filing of the initial financing statement;
17 or

18 (3) the financing statement covers accounts, chattel paper, or payment
19 intangibles that have been sold but as to which the account debtor or other person
20 obligated has discharged its obligation.

1 (e) Except as otherwise provided in Section 9-508A, upon the filing of a
2 termination statement with the filing office, the financing statement to which the
3 termination statement relates becomes ineffective.

4 **SECTION 9-512. ASSIGNMENT OF POWERS OF SECURED PARTY OF**
5 **RECORD.**

6 (a) Except as otherwise provided in subsection (d), an initial financing
7 statement may reflect an assignment of all of the secured party's power to authorize an
8 amendment to the financing statement by providing the name and mailing address of
9 the assignee as the name and address of the secured party. Upon the filing of the initial
10 financing statement, the assignee named in an initial financing statement filed under
11 this subsection is the secured party of record for the financing statement.

12 (b) Except as otherwise provided in subsection (d), a secured party of record
13 may assign of record all or part of its power to authorize an amendment to a financing
14 statement by filing in the filing office an amendment of the financing statement ~~that~~
15 which:

16 (1) ~~complies with the requirements of Section 9-509(a);~~ identifies, by its
17 file number, the initial financing statement to which it relates;

18 (2) provides the name ~~and mailing address~~ of the ~~secured party of record~~
19 assignor; and

20 (3) provides the name and mailing address of the assignee.

1 (c) Upon the filing of an amendment ~~[under]~~~~[pursuant to]~~ subsection (b), the
2 assignee named in an amendment filed under ~~this~~ that subsection becomes a secured
3 party of record for the financing statement.

4 (d) An assignment of record of a security interest in a fixture covered by a real
5 property mortgage that is effective as a fixture filing under Section 9-502(d) may be
6 made only by an assignment of record of the mortgage in the manner provided by other
7 law of this State

8 **SECTION 9-513.**

9 [deleted]

10 **SECTION 9-514.**

11 [deleted]

12 **SECTION 9-515. WHAT CONSTITUTES FILING; EFFECTIVENESS OF**
13 **FILING.**

14 (a) Except as otherwise provided in subsection (b), communication of a record
15 to a filing office and tender of the filing fee or acceptance of the record by the filing
16 office constitutes filing.

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

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

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

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

2 (A) in the case of an initial financing statement, the record does not
3 provide a name for the debtor;

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

5 (i) does not identify the initial financing statement as required by
6 Section 9-509 or 9-519, as applicable; or

7 (ii) identifies an initial financing statement whose effectiveness has
8 lapsed under Section 9-516; or

9 (C) in the case of an initial financing statement that provides the name
10 of a debtor identified as an individual or an amendment that provides a name of a
11 debtor identified as an individual which was not previously provided in the financing
12 statement to which the record relates, the record does not identify the debtor's last
13 name; and

14 (4) in the case of an initial financing statement and an amendment that adds
15 a secured party of record, the record does not provide a name and mailing address for
16 the secured party of record;

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

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

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

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

- 3 (i) ~~the~~ a type of organization for the debtor;
- 4 (ii) a ~~State~~ jurisdiction of organization for the debtor; or
- 5 (iii) an organizational identification number for the debtor or
6 indicate that the debtor has none;

7 (6) in the case of an assignment reflected in an initial financing statement
8 under Section 9-512(a) or an amendment filed under Section 9-512(b), the record does
9 not provide a name and mailing address for the assignee; or

10 ~~(7) in the case of an amendment that provides a name of a debtor which was~~
11 ~~not previously provided in the financing statement to which the record relates, the~~
12 ~~record does not provide a mailing address for the debtor; or~~

13 (7) in the case of a continuation statement, the record is not filed within the
14 six-month period specified in Section 9-516(d).

15 (c) For purposes of subsection (b):

16 (1) a record does not provide information if the filing office is unable to
17 read or decipher the information; and

18 (2) a record that does not indicate that it is an amendment or identify ~~the~~ an
19 initial financing statement to which it relates, as required by Section 9-509, 9-511, 9-
20 512, 9-516, or 9-519, is an initial financing statement.

21 (d) A record that is presented to the filing office with tender of the filing fee,
22 but which the filing office refuses to accept for a reason other than one set forth in

1 subsection (b), is effective as a filed record except as against a purchaser of the
2 collateral which gives value in reasonable reliance upon the absence of the record from
3 the files.

1 **SECTION 9-516. DURATION AND EFFECTIVENESS OF FINANCING**
2 **STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT.**

3 (a) A continuation statement for a financing statement is an amendment of the
4 financing statement ~~that~~ which:

5 (1) ~~complies with the requirements of Section 9-509(a);~~ identifies, by its
6 file number, the initial financing statement to which it relates; and

7 (2) indicates that it is a continuation statement for, or that it is filed to
8 continue the effectiveness of, the identified financing statement.

9 (b) Except as otherwise provided in subsections (c), (f), (g) and (h), a filed
10 financing statement is effective for a period of five years after the date of filing.

11 (c) Except as otherwise provided in subsections (g) and (h), an initial financing
12 statement filed in connection with a public-finance transaction or manufactured-home
13 transaction is effective for a period of 30 years after the date of filing if it indicates that
14 it is filed in connection with a public-finance transaction or manufactured-home
15 transaction.

16 (d) The effectiveness of a filed financing statement lapses on the expiration of
17 the period of its effectiveness unless before the lapse a continuation statement is filed
18 pursuant to subsection (e). ~~[, notwithstanding the commencement of insolvency~~
19 ~~proceedings by or against the debtor].~~ Upon lapse, a financing statement becomes
20 ineffective and any security interest or agricultural lien that was perfected by the
21 financing statement becomes unperfected, unless the security interest ~~for agricultural~~
22 ~~lien]~~ is perfected without filing. If the security interest or agricultural lien becomes

1 unperfected upon lapse, it is deemed never to have been perfected as against a previous
2 or subsequent purchaser of the collateral for value.

3 (e) A continuation statement may be filed only within six months before the
4 expiration of the five-year period specified in subsection (b).

5 (f) Except as otherwise provided in ~~subsection (g) and~~ Section 9-508A, upon
6 timely filing of a continuation statement, the effectiveness of the initial financing
7 statement continues for a period of five years commencing on the day on which the
8 financing statement would have become ineffective in the absence of the filing. Upon
9 the expiration of the five-year period, the financing statement lapses in the same
10 manner as provided in subsection (d), unless, before the lapse, another continuation
11 statement is filed pursuant to subsection (e). Succeeding continuation statements may
12 be filed in the same manner to continue the effectiveness of the initial financing
13 statement.

14 ~~(g) Filing of a continuation statement does not extend the effectiveness of a~~
15 ~~financing statement described in subsection (c).~~

16 (g) If a debtor is a transmitting utility and a filed financing statement so
17 indicates, the financing statement is effective until a termination statement is filed.

18 (h) A real property mortgage that is effective as a fixture filing under Section
19 9-502(d) remains effective as a fixture filing until the mortgage is released or satisfied
20 of record or its effectiveness otherwise terminates as to the real property.

21 **SECTION 9-517.**

22 [deleted]

1 **SECTION 9-518. EFFECT OF INDEXING ERRORS.** The failure of the filing
2 office to index a record correctly does not affect the effectiveness of the record.

3 **SECTION 9-519. CLAIM CONCERNING INACCURATE OR**
4 **WRONGFULLY FILED RECORD.**

5 (a) A person may file in the filing office a correction statement with respect
6 to a record indexed there under the person's name if the person believes that the record
7 is inaccurate or was wrongfully filed.

8 (b) A correction statement must:

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

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

12 (3) either:

13 (A) provide the basis for the person's belief that the record or was
14 wrongfully filed; or

15 (B) provide the basis for the person's belief that the record is inaccurate
16 and indicate the manner in which the person believes the record should be amended to
17 cure any inaccuracy.

18 (c) The filing of a correction statement does not affect the effectiveness of ~~the~~
19 an initial financing statement or other record ~~[relating to it] [to which it relates]~~.

1 [SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE]

2 **SECTION 9-520. NUMBERING, MAINTAINING, AND INDEXING**
3 **RECORDS; COMMUNICATING INFORMATION CONTAINED IN**
4 **RECORDS.**

5 (a) For each record filed in a filing office, the filing office shall:

6 (1) assign a unique number to the filed record;

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

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

10 (4) index the filed record in accordance with subsections (c), (d), and (e).

11 (b) In this part, “file number” means the number assigned to an initial financing
12 statement pursuant to subsection (a). A file number assigned after January 1, 2002,
13 must contain a number designed to enable the filing office to verify that the file number
14 is a file number assigned by the filing office.

15 (c) Except as otherwise provided in subsections (d) and (e), the filing office:

16 (1) shall index an initial financing statement according to the name of the
17 debtor and shall index all filed records relating to the initial financing statement in a
18 manner that associates with one another an initial financing statement and all filed
19 records relating to the initial financing statement; and

1 (2) shall index a record that provides a name of a debtor which was not
2 previously provided in the financing statement to which the record relates also
3 according to the name that was not previously provided.

4 (d) If a financing statement is filed as a fixture filing or covers timber to be cut
5 or as-extracted collateral, [it must be filed for record and] the filing office shall index
6 it:

7 (1) under the names of the debtor and of each owner of record shown on the
8 financing statement as if they were the mortgagors under a mortgage of the real
9 property described; and

10 (2) to the extent that the law of this State provides for indexing of
11 mortgages under the name of the mortgagee, under the name of the secured party as if
12 the secured party were the mortgagee thereunder, or, if indexing is by description, as
13 if the financing statement were a mortgage of the real property described.

14 (e) If a financing statement is filed as a fixture filing or covers timber to be cut
15 or as-extracted collateral, the filing office shall index an assignment filed under Section
16 9-512(a) or an amendment filed under Section 9-512(b):

17 (1) under the name of the assignor as grantor; and

18 (2) to the extent that the law of this State provides for indexing the
19 assignment of a real property mortgage under the name of the assignee, under the name
20 of the assignee.

21 (f) The filing office shall maintain a storage and retrieval capability that:

1 (1) provides for retrieval of a record by the name of the debtor and by the
2 file number assigned to initial financing statement to which the record relates; and

3 (2) associates with one another an initial financing statement and each filed
4 record relating to the initial financing statement.

5 (g) The filing office may not remove a debtor's name from the index ~~until one~~
6 year after the effectiveness of a financing statement naming the debtor lapses under
7 Section 9-516 with respect all secured parties of record~~].~~

8 (h) The filing office shall perform the acts required by subsections (a) through
9 (e) at the time and in the manner prescribed by rule, but not later than two business
10 days after the filing office receives the record in question.

11 *Legislative Note: In States in which writings will not appear in the real property*
12 *records and indices unless actually recorded the bracketed language in subsection (c)*
13 *should be used.*

14 **SECTION 9-520A. ~~FILE NUMBER.~~**

15 ~~[deleted.]~~

16 ~~[(a)] In this part, "file number" means the number assigned to an initial~~
17 ~~financing statement pursuant to Section 9-520(a)(1).~~

18 ~~[(b)] A file number assigned after July 1, 2002, must contain at least three~~
19 ~~separate segments in the following order:~~

20 ~~(1) the year of filing, expressed by all four digits or the last two digits of the~~
21 ~~year;~~

22 ~~(2) a number determined by the rules; and~~

1 ~~(3) a verification number based on the numbers assigned pursuant to~~
2 ~~paragraphs (1) and (2).]~~

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

4 (a) A filing office shall refuse to accept a record for filing for a reason set forth
5 in Section 9-515(b) and may refuse to accept a record for filing only for a reason set
6 forth in Section 9-515(b).

7 (b) If a filing office refuses to accept a record for filing, it shall communicate
8 the fact of and reason for its refusal to the person that presented the record. The
9 communication must be made at the time and in the manner prescribed by rule but in
10 no event more than two business days after the filing office receives the record.

11 (c) A filing office that accepts written records may not refuse to accept a
12 written initial financing statement in the following form except for a reason set forth
13 in Section 9-515(b):

1

[INSERT FINANCING STATEMENT FORM]

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

1 (e) Except as otherwise provided in Section 9-335, a filed financing statement
2 complying with Section 9-502(a) and (b) is effective even if the filing office is required
3 or permitted to refuse to accept the financing statement for filing under subsection (a).

4 (f) If a record communicated to a filing office provides information that relates
5 to more than one debtor, the provisions of this part apply as to each debtor separately.

6 **SECTION 9-522. MAINTENANCE AND DESTRUCTION OF RECORDS**
7 **~~LAPSED FINANCING STATEMENTS.~~**

8 (a) Until at least one year after a financing statement lapses under Section 9-
9 516 with respect to all secured parties of record, the filing office shall maintain a record
10 of the information contained in the financing statement. The record must be retrievable
11 by using the name of the debtor and by using the file number assigned to the initial
12 financing statement to which the record relates.

13 (b) Except to the extent that a statute governing disposition of public records
14 provides otherwise, if a financing statement lapses under Section 9-516 with respect
15 to all secured parties of record, the filing office immediately may destroy any written
16 record evidencing the a financing statement. (b) If However, if the filing office
17 destroys a written record evidencing a financing statement, it shall maintain another
18 record of the financing statement which is retrievable by using the name of the debtor
19 or by using the file number assigned to the initial financing statement to which the
20 destroyed record relates complies with subsection (a).

1 **SECTION 9-523. INFORMATION FROM FILING OFFICE; SALE OR**
2 **LICENSE OF RECORDS.**

3 (a) If a person that files a written record requests an acknowledgment of the
4 filing, the filing office shall send to the person an image of the record showing the
5 number assigned to the record pursuant to Section 520(a)(1) and the date and time of
6 the filing of the record. However, if the person furnishes a copy of the record to the
7 filing office, the filing office may instead:

8 (1) note upon the copy the number assigned to the record pursuant to
9 Section 9-520(a)(1) and the date and time of the filing of the record; and

10 (2) send the copy to the person.

11 (b) If a person files a record other a written record, the filing office shall
12 communicate to the person an acknowledgment that contains:

13 (1) the information contained in the record;

14 (2) the number assigned to the record pursuant to Section 9-520(a)(1); and

15 (3) the date and time of the filing of the record.

16 ~~(a) If a person filing a written record furnishes a copy to the filing office, the~~
17 ~~filing office upon request shall:~~

18 ~~(1) either:~~

19 ~~(A) note upon the copy:~~

20 ~~(i) the number assigned to the record pursuant to Section 9-~~
21 ~~520(a)(1); and~~

22 ~~(ii) the date and time of the filing of the original; and~~

1 ~~(B) deliver or send the copy to the person, or~~
2 ~~(2) send to the person an image of the record showing the number assigned~~
3 ~~to the record pursuant to Section 9-520(a)(1) and the date and time of the filing of the~~
4 ~~original.~~

5 (c) The filing office shall communicate the following information to any
6 person that requests it:

7 (1) whether there is on file on a date and time specified by the filing office,
8 but not a date earlier than three business days before the filing office receives the
9 request, any financing statement that:

10 (A) designates a particular debtor [or, if the request so states, designates
11 a particular debtor at the address specified in the request]; and

12 (B) has not lapsed under Section 9-516 with respect to all secured
13 parties of record; and

14 (C) if the request so states, has lapsed under Section 9-516 and a record
15 of which is maintained by the filing office under Section 9-522(a);

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

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

18 (d) In complying with its duty under subsection (c), the filing office may
19 communicate information in any medium. However, if requested, the filing office shall
20 communicate information by issuing [its written certificate] [a record that can be
21 admitted into evidence in the courts of this State without extrinsic evidence of its
22 authenticity].

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

5 (f) The filing office shall perform the acts required by subsections (a) ~~and~~ (b),
6 and (c) at the time and in the manner prescribed by rule, but not later than two business
7 days after the filing office receives the request.

8 *Legislative Note: States whose filing office ~~responds~~ does not offer the additional*
9 *service of responding to search requests limited to a particular address should delete*
10 *the bracketed language in subsection (b)(1)(A).*

11 **SECTION 9-524. DELAY BY FILING OFFICE.** Delay by the filing office
12 beyond the time limits prescribed in this part is excused if:

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

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

17 **SECTION 9-525.**

18 [deleted]

19 **SECTION 9-526.**

20 [deleted]

1 **[SECTION 9-527. FEES.**

2 (a) {Except as otherwise provided in subsection (f), the} {The} fee for filing and
3 indexing a {record under this part,~~1~~} ~~{financing statement, amendment, continuation~~
4 ~~statement, or termination statement}~~ other than an initial financing statement of the
5 kind described in Section 9-502(c)~~2~~, is the amount specified in subsection (c), if
6 applicable, plus:

7 (1) \$ __[X]_____ if the record is communicated in writing and consists of
8 one or two pages;

9 (2) \$ __[2X]_____ if the record is communicated in writing and consists
10 of more than two pages; and

11 (3) \$ __[1/2X]___ if the record is communicated by another medium
12 authorized by rule.

13 (b) {Except as otherwise provided in subsection (e), the} {The} fee for filing and
14 indexing an initial financing statement of the kind described in Section 9-502(c) is the
15 amount specified in subsection (c), if applicable, plus:

16 (1) \$ _____ if the financing statement indicates that it is filed in connection
17 with a public-finance transaction;

18 (2) \$ _____ if the financing statement indicates that it is filed in connection
19 with a manufactured-home transaction.

20 (c) {Except as otherwise provided in subsection (e), the} {The} fee for each
21 name more than two required to be indexed, if the record is communicated in writing,
22 is \$ _____.

(d) The fee for responding to a request for information from the filing office, including for [issuing a certificate showing] [communicating] whether there is on file any financing statement naming a particular debtor, is:

(1) \$ ____ if the request is communicated in writing; and

(2) \$ ____ if the request is communicated by another medium authorized by rule.

~~(e) The fee for filing and indexing a written record in a form other than as set forth in Sections 9-521(c) and (d) may not be less than the fee charged for filing a written record of the same kind in the form set forth in those sections.~~

(e) ~~{This section does not require a~~ A fee is not required for the filing of with respect to a mortgage filed that is effective as a financing statement filed as a fixture filing or as a financing statement covering timber to be cut or as-extracted collateral under Section 9-502(c). However, other than the regular recording and satisfaction fees that otherwise would be applicable with respect to the mortgage apply.}

Legislative Note: A State may wish to ~~consolidate~~ place the provisions of this section ~~with~~ together with statutes setting fees for other services.

SECTION 9-528. ADMINISTRATIVE RULES.

(a) The [insert appropriate official or governmental agency] [filing office] shall adopt and publish rules to carry out the provisions of this article. The rules must be[:

(1)] consistent with this article[; and

(2) adopted and published in accordance with the [insert any applicable state administrative procedure act].

(b) To keep the rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the filing office, so far as is consistent with the purposes, policies, and provisions of this article, in adopting, amending, and repealing rules:

(1) shall consult with filing offices in other jurisdictions that enact substantially this part; and

(2) shall consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and

(3) shall take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part.

SECTION 9-529. DUTY TO REPORT.

(a) The [insert appropriate official or governmental agency] [filing office] shall report [annually on or before _____] to the [Governor and Legislature] on the operation of the filing office.

(b) The report must contain a statement of the extent to which:

(1) the filing office has complied with the time limits prescribed in this part and the reasons for any noncompliance;

1 (2) the rules are not in harmony with the rules of filing offices in other
2 jurisdictions that enact substantially this part and the reasons for these variations; and

3 (3) the rules are not in harmony with the most recent version of the Model
4 Rules promulgated by the International Association of Corporate Administrators or any
5 successor organization and the reasons for these variations.

6 **PART 6**
7 **DEFAULT**

8 [SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST]

9 **SECTION 9-601. RIGHTS ~~AND REMEDIES~~ AFTER DEFAULT;**
10 **JUDICIAL ENFORCEMENT; CONSIGNOR OR BUYER OF ACCOUNTS,**
11 **CHATTEL PAPER, OR PAYMENT INTANGIBLES.**

12 (a) After default, a secured party has the rights ~~and remedies~~ provided in this
13 part and, except as otherwise provided in Section 9-602(a), those provided by
14 agreement of the parties. A secured party:

15 (1) may reduce a claim to judgment, foreclose, or otherwise enforce the
16 claim, security interest, or agricultural lien by any available judicial procedure; and

17 (2) if the collateral is documents, may proceed either as to the documents
18 or as to the goods they cover.

19 (b) ~~{A secured party in possession or control of collateral has the rights;~~
20 ~~remedies, and duties provided in Section 9-207.}~~

1 (c) The rights ~~and remedies~~ referred to in subsections (a) and (b) are
2 cumulative and may be exercised simultaneously.

3 (d) Except as otherwise provided in subsection (g) and Section 9-605, after
4 default, a debtor and an obligor have the rights ~~and remedies~~ provided in this part ~~[and]~~
5 ~~[,]~~ by agreement of the parties.

6 (e) If a secured party has reduced its claim to judgment, the lien of any levy
7 that may be made upon the collateral by virtue of an execution based upon the
8 judgment relates back to the earliest of:

9 (1) the date of perfection of the security interest or agricultural lien in the
10 collateral;

11 (2) the date of filing a financing statement covering the collateral; or

12 (3) any date specified in a statute under which the agricultural lien was
13 created.

14 (f) A sale pursuant to an execution is a foreclosure of the security interest or
15 agricultural lien by judicial procedure within the meaning of this section. A secured
16 party may purchase at the sale and thereafter hold the collateral free of any other
17 requirements of this article.

18 (g) Except as otherwise provided in ~~Sections~~ Section 9-607(c), ~~9-608(b), and~~
19 ~~9-614(f)~~, this part imposes no duties upon a secured party that is a consignor or is a
20 buyer of accounts, chattel paper, ~~or~~ payment intangibles, or promissory notes.

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

2 (a) To the extent that they give rights to a debtor or an obligor and impose
3 duties on a secured party, the rules stated in the following sections may not be waived
4 or varied by a debtor, [a] secondary obligor, or [a] consumer obligor in a consumer-
5 goods transaction, except as provided in subsection (b) and Section 9-623:

6 (1) Section 9-207(c)(4)(c), which deals with use and operation of the
7 collateral by the secured party;

8 (2) Section 9-209, which deals with requests for an accounting and requests
9 concerning a list of collateral and statement of account.

10 (3) Section 9-607(c), which deals with collection and enforcement of
11 collateral;

12 (4) Sections 9-608(a) and 9-614(d) insofar as they deal with application or
13 payment of noncash proceeds of collection, enforcement, or disposition;

14 (5) Sections 9-608(a) and 9-614(b) and (e) insofar as they require
15 accounting for or payment of surplus proceeds of collateral;

16 (6) Section 9-609 insofar as it imposes upon a secured party that takes
17 possession of collateral without judicial process the duty to do so without breach of the
18 peace;

19 (7) Sections 9-610(b), 9-611, ~~and~~ 9-613, and 9-613A, which deal with
20 disposition of collateral;

1 (8) Section 9-614(h), which deals with calculation of a deficiency or surplus
2 when a disposition is made to the secured party, a person related to the secured party,
3 or a secondary obligor;

4 (9) Section 9-614A, which deals with explanation of the calculation of a
5 surplus or deficiency;

6 (10) Section 9-618, 9-619, and 9-620, which deal with acceptance of
7 collateral in satisfaction of obligation;

8 (11) Section 9-621, which deals with redemption of collateral;

9 (12) Section 9-623, which deals with permissible waivers; ~~and~~

10 (13) Sections 9-624 and ; 9-625, ~~and 9-627~~, which deal with the secured
11 party's liability for failure to comply with this article.

12 (b) An obligor other than a consumer obligor in a consumer-goods transaction
13 or a secondary obligor may waive or vary the rules referred to in subsection (a) to the
14 extent and in the manner provided by other law.

15 **SECTION 9-603. AGREEMENT ON STANDARDS CONCERNING**
16 **RIGHTS AND DUTIES.**

17 (a) The parties may determine by agreement the standards measuring the
18 fulfillment of the rights of a debtor or obligor and the duties of a secured party if the
19 standards are not manifestly unreasonable.

20 (b) Subsection (a) does not apply to the duty under Section 9-609 to refrain
21 from breaching the peace when taking possession of collateral.

1 **SECTION 9-604. PROCEDURE IF SECURITY AGREEMENT COVERS**
2 **REAL PROPERTY OR FIXTURES.**

3 (a) If a security agreement covers both personal and real property, a secured
4 party may proceed:

5 (1) under this part as to the personal property without prejudicing any rights
6 and remedies with respect to the real property; or

7 (2) as to both the personal property and the real property in accordance with
8 the rights and remedies with respect to the real property, in which case the other
9 provisions of this part do not apply.

10 (b) Subject to subsection (c), if a security agreement covers goods that are or
11 become fixtures, a secured party may proceed:

12 (1) under this part; or

13 (2) in accordance with the rights and remedies with respect to real property,
14 in which case the other provisions of this part do not apply.

15 (c) Subject to the other provisions of this part, if a secured party holding a
16 security interest in fixtures has priority over all owners and encumbrancers of the real
17 property, the secured party may, on default remove the collateral from the real property.

18 (d) ~~Unless otherwise agreed, a~~ [A] secured party that removes collateral shall
19 promptly reimburse any encumbrancer or owner of the real property, other than the
20 debtor, for the cost of repair of any physical injury caused by the removal. The secured
21 party need not reimburse the encumbrancer or owner for any diminution in value of the
22 real property caused by the absence of the goods removed or by any necessity of

1 replacing them. A person entitled to reimbursement may refuse permission to remove
2 until the secured party gives adequate assurance for the performance of the obligation
3 to reimburse.

4 **SECTION 9-605. UNKNOWN DEBTOR OR SECONDARY OBLIGOR.** A
5 secured party does not owe a duty based on its status as secured party to a person, or
6 to a secured party or lienholder that has filed a financing statement against the person,
7 unless the secured party knows:

- 8 (1) that a person is a debtor or a secondary obligor;
9 (2) the identity of the person; and
10 (3) how to communicate with the person.

11 **SECTION 9-606. TIME OF DEFAULT FOR AGRICULTURAL LIEN.** For
12 purposes of this part, a default occurs in connection with an agricultural lien at ~~the~~
13 ~~earlier of: (1) the time provided by agreement of the parties; or (2)]~~ the time at which
14 when the secured party becomes entitled to enforce the lien in accordance with the
15 statute under which it was created.

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

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

4 (1) may notify an account debtor or other person obligated on collateral to
5 make payment or otherwise render performance to or for the benefit of the secured
6 party; ~~[, whether or not a debtor had been making collections on or enforcing the~~
7 ~~collateral];~~

8 (2) may take any proceeds to which the secured party is entitled under
9 Section 9-313;

10 (3) may enforce the obligations of an account debtor or other person
11 obligated on collateral and exercise the rights and remedies of the debtor with respect
12 to the obligation of the account debtor or other person obligated on collateral ~~[to make~~
13 payment or otherwise render performance to the debtor, and with respect to any
14 property that secures the obligations of the account debtor or other person obligated on
15 the collateral];

16 (4) if it holds a security interest in a deposit account perfected by control
17 under Section 9-109(a)(1), may apply the balance of the deposit account to the
18 obligation secured by the deposit account; and

19 (5) if it holds a security interest in a deposit account perfected by control
20 under Section 9-109(a)(2) or (3), may instruct the bank to pay the balance of the
21 deposit account to or for the benefit of the secured party.

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

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

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

7 (A) a default has occurred; and

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

9 (c) A secured party shall proceed in a commercially reasonable manner if the
10 secured party:

11 (1) undertakes to collect from or enforce an obligation of an account debtor
12 or other person obligated on collateral; and

13 (2) is entitled ~~[by agreement]~~ to charge back uncollected collateral or
14 otherwise to full or limited recourse against the debtor or against a secondary obligor.

15 (d) The secured party may deduct from the collections made pursuant to
16 subsection (c) reasonable expenses of collection and enforcement, including reasonable
17 attorney's fees and legal expenses incurred by the secured party.

18 (e) This section does not determine whether an account debtor, bank, or
19 other person obligated on collateral owes a duty to a secured party.

1 **SECTION 9-608. APPLICATION OF PROCEEDS OF COLLECTION OR**
2 **ENFORCEMENT; LIABILITY FOR DEFICIENCY AND RIGHT TO**
3 **SURPLUS.**

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

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

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

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

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

17 (2) If requested by a secured party, a holder of a subordinate security
18 interest or other lien shall furnish reasonable proof of the interest or lien within a
19 reasonable time. Unless the holder complies, the secured party need not comply with
20 the holder's demand under paragraph (1)(C).

21 (3) A secured party need not apply or pay over for application the noncash
22 proceeds of collection and enforcement under this section. A secured party that applies

1 or pays over for application noncash proceeds shall do so in a commercially reasonable
2 manner.

3 (4) A secured party shall account to and pay a debtor for any surplus,
4 ~~despite any agreement to the contrary~~, and the obligor is liable for any deficiency.

5 (b) If the underlying transaction is a sale of accounts, chattel paper, ~~or~~ payment
6 intangibles, or promissory notes, the debtor is not entitled to any surplus, and the
7 obligor is not liable for any deficiency.

8 ~~(c) Recovery of a deficiency under [subsection (a)] [this section] is subject to~~
9 ~~Section 9-625.~~

10 **SECTION 9-609. SECURED PARTY'S RIGHT TO TAKE POSSESSION**
11 **AFTER DEFAULT.**

12 (a) A secured party has the right on default to take possession of the collateral.

13 (b) A secured party may take possession of collateral:

14 (1) ~~[with]~~ ~~[pursuant to]~~ judicial process; or

15 (2) if it takes possession without breach of the peace, without judicial
16 process.

17 (c) If a security agreement so provides, a secured party may require a debtor
18 to assemble the collateral and make it available to the secured party at a place to be
19 designated by the secured party which is reasonably convenient to both parties.

20 (d) Without removal, a secured party:

21 (1) may render equipment unusable; and

22 (2) may dispose of collateral on a debtor's premises under Section 9-610.

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

2 (a) A secured party after default may sell, lease, license, or otherwise dispose
3 of any or all of the collateral in its present condition or following any commercially
4 reasonable preparation or processing.

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

10 (c) A secured party may purchase collateral:

11 (1) at a public sale; or

12 (2) at a private sale only if the collateral is of a kind that is:

13 (A) customarily sold on a recognized market; or

14 (B) the subject of widely distributed standard price quotations.

15 (d) A contract for sale, lease, license, or other disposition includes the
16 warranties relating to title, possession, quiet enjoyment, and the like which by
17 operation of law accompany a voluntary disposition of property of the kind subject to
18 the contract.

19 (e) A secured party may disclaim or modify warranties under subsection (d):

1 (1) in a manner that would be effective to disclaim or modify the warranties
2 in a voluntary disposition of property of the kind subject to the contract of disposition;
3 or

4 (2) by communicating to the purchaser a record evidencing the contract for
5 disposition and containing ~~[an authenticated]~~ ~~[an]~~ explicit disclaimer or modification
6 of the warranties.

7 (f) ~~[A]~~ ~~[An authenticated]~~ record is sufficient to disclaim warranties under
8 subsection (e) if it indicates “There is no warranty relating to title, possession, quiet
9 enjoyment, or the like in this disposition or contains words of similar import.

10 **SECTION 9-611. PERSONS ENTITLED TO NOTIFICATION BEFORE**
11 **DISPOSITION OF COLLATERAL.**

12 (a) In this section, “notification date means the earlier of the date on which:

13 (1) a secured party sends to the debtor and any secondary obligor an
14 authenticated notification of disposition; or

15 (2) the debtor and any secondary obligor waive the right to notification.

16 (b) A secured party that disposes ~~intends to dispose~~ of collateral under Section
17 9-610 shall send to a debtor and any secondary obligor a reasonable authenticated
18 notification of disposition. If the collateral is consumer goods, the secured party need
19 not send another notification. If the collateral is not consumer goods, the secured party
20 shall send an authenticated notification of disposition to:

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

1 (2) any other secured party that, ~~10~~ 10 days before the notification date,
2 held a security interest in or agricultural lien on the collateral perfected by the filing of
3 a financing statement that:

4 (A) identified the collateral;

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

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

8 (3) any other secured party that, ~~10~~ 10 days before the notification date,
9 held a security interest in the collateral perfected by compliance with a statute,
10 regulation, or treaty described in Section 9-309A(a).

11 (c) Subsection (b) does not apply if the collateral is perishable or threatens to
12 decline speedily in value or is of a type customarily sold on a recognized market.

13 (d) A secured party complies with the notification requirement specified in
14 subsection (b)(2) if:

15 (1) not later than ~~20~~ 20 days or earlier than 30 days before the notification
16 date, the secured party requests, in a commercially reasonable manner, information
17 concerning financing statements indexed under the debtor's name in the office indicated
18 in subsection (b)(2); and

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

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

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

4 **SECTION 9-612. TIMELINESS OF NOTIFICATION BEFORE**
5 **DISPOSITION OF COLLATERAL.**

6 (a) Except as otherwise provided in subsection (b), whether ~~Whether a~~
7 ~~notification sent less than 10 days before the earliest time of disposition set forth in the~~
8 ~~notification~~ is sent within a reasonable time is a question of fact.

9 (b) In a transaction other than a consumer transaction, [A] [Unless otherwise
10 ~~agreed,]~~ a notification of disposition sent after default and 10 days or more before the
11 earliest time of disposition set forth in the notification is sent within a reasonable time
12 before the disposition.

13 (c) ~~This section does not apply to a consumer-goods transaction.~~ The
14 limitation of the rule in subsection (b) to transactions other than consumer transactions
15 is intended to leave to the court the determination of the proper rule in consumer
16 transactions. The court may not draw from that limitation an inference as to the nature
17 of the proper rule in consumer transactions, and the court may continue to apply
18 established approaches.

1 **SECTION 9-613. CONTENTS AND FORM OF NOTIFICATION BEFORE**
2 **DISPOSITION OF COLLATERAL: GENERAL.** Except in a consumer-goods
3 transaction, the following rules apply:
4 (1) ~~{The} [Unless otherwise agreed, the]~~ contents of a notification of
5 disposition are sufficient if the notification:
6 (A) describes the debtor and the secured party;
7 (B) describes the collateral that is the subject of the intended
8 disposition;
9 (C) states the method of intended disposition;
10 (D) states that the debtor ~~for secondary obligor~~ is entitled to an
11 accounting of the unpaid indebtedness and states the charge, if any for an accounting;
12 and
13 (E) states the time and place of a public sale or the time after which any
14 other disposition is to be made, ~~whether or not the notification contains additional~~
15 ~~information.~~
16 (2) Whether the contents of a notification that lacks any of the information
17 set forth in paragraph (1) ~~is~~ are nevertheless sufficient is a question of fact.
18 (3) The contents of a ~~A~~ notification containing substantially ~~complying~~
19 ~~with the requirements of~~ the information specified in paragraph (1) ~~is~~ are sufficient
20 even if the notification contains:

1 (A) ~~it contains errors in~~ information not ~~required~~ specified by that
2 paragraph; ~~or , unless the erroneous information is misleading with respect to rights~~
3 ~~and remedies arising under this article~~

4 (B) ~~it contains~~ minor errors that are not seriously misleading. ~~or~~

5 (4) A particular phrasing of the notification is not required.

6 (5) The following form of notification and the form appearing in Section
7 9-613A(a)(3), when completed, each contains sufficient information:

8 **NOTIFICATION OF DISPOSITION OF COLLATERAL**

9 To: [Name of debtor, obligor, or other person to which the
10 notification is sent]

11 From: [Name, address, and telephone number of secured
12 party]

13 Name of Debtor(s): [Include only if debtor(s) are not an addressee]

14 [For a public disposition:]

15 We will sell [or lease or license, *as applicable*] the [describe collateral] [to
16 the highest qualified bidder] in public as follows:

17 Day and Date:

18 Time:

19 Place:

20 [For a private disposition:]

21 We will sell [or lease or license, *as applicable*] the [describe collateral]

22 privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, *as applicable*] [for a charge of \$ _____]. You may request an accounting by calling us at [telephone number]

[End of Form]

**SECTION 9-613A. CONTENTS AND FORM OF NOTIFICATION BEFORE
DISPOSITION OF COLLATERAL: CONSUMER-GOODS TRANSACTION.**

(a) In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must contain the following information:

(A) the information specified in ~~subsection~~ Section 9-613(a)(1);

(B) a description of any liability for a deficiency of the person to which the notification is sent;

(C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 9-621 is available; and

(D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, contains sufficient information:

NOTIFICATION OF OUR PLAN TO SELL PROPERTY

To: [Name of debtor or obligor to whom the notification is sent]

From: [Name, address, and telephone number of secured party]

Name of Debtor(s): [Include only if debtor(s) are not an addressee]

1 we get more money than [you] [name of obligor, if different] owe(s) to us, [you]
2 [name of obligor, if different] will get the extra money.

3 You can stop the sale [and get] [and the debtor will get] the property back. To do
4 this, [you] [name of obligor, if different] must:

5 Pay us the full amount of the debt plus our costs before the sale. Then [you]
6 [name of obligor, if different] will not owe us any more money. To learn the
7 exact amount you must pay, call us at [telephone number].

8 If you want us to explain to you in writing how we have figured the amount that
9 you owe us, you may call us at [telephone number]. [We will charge you
10 \$ _____ for the explanation.]

11 **[End of Form]**

12 (4) A notification ~~{that complies with the requirements of paragraph (1)}~~
13 ~~{in substantially the form of paragraph (3)}~~ is sufficient even if it contains errors in
14 information not ~~{required by}~~ ~~{specified in}~~ that paragraph (1), unless the ~~erroneous~~
15 ~~information error~~ is misleading with respect to rights ~~and remedies~~ arising under this
16 article.

17 (b) The limitation of the rule in subsection (a)(4) to notifications in a particular
18 form and to information not required by subsection (a)(1) is intended to leave to the
19 court the determination of the proper rule for notifications in another form and for
20 errors in information not required by subsection (a)(1). The court may not draw from
21 that limitation an inference as to the nature of the proper rule for notifications in

1 another form or for errors in information not required by paragraph (1), and the court
2 may continue to apply established approaches.

3 **SECTION 9-614. APPLICATION OF PROCEEDS OF DISPOSITION;**
4 **LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS.**

5 (a) In this section:

6 (1) “Person related to, with respect to an individual, means:

7 (A) the spouse of the individual;

8 (B) a brother, brother-in-law, sister, or sister-in-law of the individual;

9 (C) an ancestor or lineal descendant of the individual or the individual’s
10 spouse; and

11 (D) any other relative, by blood or marriage, of the individual or the
12 individual’s spouse who shares the same home with the individual.

13 (2) “Person related to, with respect to an organization, means:

14 (A) a person directly or indirectly controlling, controlled by, or under
15 common control with the organization;

16 (B) an officer or director of, or a person performing similar functions
17 with respect to, the organization;

18 (C) an officer or director of, or a person performing similar functions
19 with respect to, a person described in paragraph (A);

20 (D) the spouse of an individual described in paragraph (A), (B), or (C);
21 or

1 (E) an individual related by blood or marriage to an individual described
2 in paragraph (A), (B), (C), or (D) and who shares the same home with the individual.

3 (b) A secured party shall apply or pay over for application the cash proceeds
4 of disposition in the following order to:

5 (1) the reasonable expenses of retaking, holding, preparing for disposition,
6 processing, and disposing, and, to the extent provided for by agreement and not
7 prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured
8 party;

9 (2) the satisfaction of obligations secured by the security interest or
10 agricultural lien under which the disposition is made;

11 (3) the satisfaction of obligations secured by any subordinate security
12 interest in or other lien on the collateral if:

13 (A) the secured party receives from the holder of the subordinate
14 security interest an authenticated demand for proceeds before distribution of the
15 proceeds is completed; and

16 (B) if a consignor has an interest in the collateral, the subordinate
17 security interest or lien is senior to the interest of the consignor; and

18 (4) a secured party that is a consignor of the collateral if the secured party
19 receives from the consignor an authenticated demand for proceeds before distribution
20 of the proceeds is completed.

21 (c) If requested by a secured party, a holder of a subordinate security interest
22 or other lien shall furnish reasonable proof of the interest or lien within a reasonable

1 time. Unless the holder does so, the secured party need not comply with the holder's
2 demand under subsection (b)(3).

3 (d) A secured party need not apply or pay over for application noncash
4 proceeds of disposition under this section. A secured party that applies or pays over
5 for application noncash proceeds shall do so in a commercially reasonable manner.

6 (e) If the security interest under which a disposition is made secures payment
7 or performance of an obligation, after making the payments and applications required
8 by subsection (b):

9 (1) unless subsection (b)(4) requires the secured party to apply or pay over
10 cash proceeds to a consignor, the secured party shall account to and pay a debtor for
11 any surplus; and

12 (2) the obligor is liable for any deficiency.

13 (f) If the underlying transaction is a sale of accounts, chattel paper, or payment
14 intangibles:

15 (1) the debtor is not entitled to any surplus; and

16 (2) the obligor is not liable for any deficiency.

17 ~~(g) Recovery of any deficiency under subsection (e) is subject to Section 9-625.~~

18 (g) The surplus or deficiency ~~under subsection (e) [or (f)]~~ following a
19 disposition is calculated based on the amount of proceeds that would have been
20 realized in a disposition complying with the requirements of this part to a transferee
21 other than the secured party, a person related to the secured party, or a secondary
22 obligor if:

1 (1) the transferee in the disposition is the secured party, a person related to
2 the secured party, or a secondary obligor; and

3 (2) the amount of proceeds of the disposition is significantly below the
4 range of proceeds that a complying disposition to a person other than the secured party,
5 a person related to the secured party, or a secondary obligor would have brought.

6 (h) A secured party that receives cash proceeds of a disposition in good faith
7 and without knowledge that the receipt violates the rights of the holder of a security
8 interest or other lien that is not subordinate to the security interest or agricultural lien
9 under which the disposition is made:

10 (1) takes the cash proceeds free of the security interest or other lien;

11 (2) is not obligated to apply the proceeds of the disposition to the
12 satisfaction of obligations secured by the security interest or other lien; and

13 (3) is not obligated to account to or pay the holder of the security interest
14 or other lien for any surplus.

15 **SECTION 9-614A. EXPLANATION OF CALCULATION OF SURPLUS OR**
16 **DEFICIENCY.**

17 (a) In this section:

18 (1) “Explanation” means a writing that:

19 (A) states the amount of the surplus or deficiency; and

20 (B) provides an explanation in accordance with subsection (c) of how
21 the secured party calculated the surplus or deficiency;

1 (C) states, if applicable, that ~~[other]~~ [future] debits, credits, charges,
2 rebates, and expenses may affect the amount of the surplus or deficiency; and

3 (D) provides a telephone number or mailing address from which
4 additional information concerning the transaction is available.

5 (2) "Request" means a record:

6 (A) authenticated by a debtor or consumer obligor; and

7 (B) requesting that the recipient provide an explanation.

8 (b) In a consumer-goods transaction in which the debtor is entitled to a surplus
9 or a consumer obligor is liable for a deficiency under Section 9-614(e), the secured
10 party shall send an explanation to the debtor or consumer obligor, as applicable:

11 (1) before or when the secured party accounts to the debtor and pays any
12 surplus or first makes written demand on the consumer obligor for payment of the
13 deficiency; and

14 (2) within two weeks after receipt of a request.

15 (c) To comply with subsection (a)(1)(B), a writing must provide the following
16 information in the following order:

17 (1) the aggregate amount of obligations secured by the security interest
18 under which the disposition was made, calculated as of a specified date;

19 (A) if the secured party takes possession of the collateral after default,
20 not more than [] 35 days before disposition the secured party takes possession; or

1 (B) if the secured party takes possession of the collateral before default
2 or does not take possession of the collateral, not more than 35 days before the
3 disposition;

4 (2) the amount of proceeds of the disposition;

5 (3) the aggregate amount of the obligations after deducting the amount of
6 proceeds;

7 (4) the ~~aggregate~~ aggregate amount, in the aggregate or by category, of expenses,
8 including expenses of retaking, holding, preparing for disposition, processing, and
9 disposing of the collateral, and attorney's fees secured by the collateral which are
10 known to the secured party and not reflected in the amount in paragraph (1);

11 (5) the types and ~~aggregate~~ aggregate amount, in the aggregate or by category, of
12 ~~rebates and other~~ credits, including rebates of interest, to which the obligor is known
13 to be entitled and that which are not reflected in the amount in paragraph (1); and

14 (6) the amount of the surplus or deficiency.

15 (d) A particular phrasing of the explanation is not required. An explanation
16 complying substantially with the requirements of subsection (a) is sufficient even if it
17 contains minor errors ~~[or omissions]~~ that are not seriously misleading.

18 (e) A debtor or consumer obligor is entitled without charge to one response to
19 a request under this section during any six-month period in which the secured party did
20 not send to the debtor or consumer obligor an explanation pursuant to subsection
21 (b)(1). The secured party may require payment of a charge not exceeding ~~\$[]~~ \$25 for
22 each additional response.

1 **SECTION 9-615. RIGHTS OF TRANSFeree OF COLLATERAL.**

2 (a) A secured party's disposition of collateral after default:

3 (1) transfers to a transferee for value all of the debtor's rights in the
4 collateral; and

5 (2) discharges the security interest under which the disposition is made; and

6 (3) discharges any subordinate security interest or other lien [other than
7 liens created under [cite acts or statutes providing for liens, if any, that are not to be
8 discharged]].

9 (b) The transferee takes free of the rights and interests described in subsection
10 (a) even if the secured party fails to comply with the requirements of this article or any
11 judicial proceedings:

12 (1) in a public sale, if the transferee:

13 (A) has no knowledge of any defects in the sale;

14 (B) does not buy in collusion with the secured party, other bidders, or
15 the person conducting the sale; and

16 (C) acts in good faith; and

17 (2) in any other case, if the transferee acts in good faith.

18 (c) If a transferee does not take free of the rights and interests described in
19 subsection (a), the transferee takes the collateral subject to:

20 (1) the debtor's rights in the collateral;

21 (2) the security interest or agricultural lien under which the disposition is
22 made; and

1 (3) any [subordinate] security interest or other lien.

2 ~~(d) Except as otherwise provided in this section or elsewhere in this article, a~~
3 ~~secured party's disposition of collateral does not discharge any security interest or other~~
4 ~~lien.~~

5 **SECTION 9-616. RIGHTS AND DUTIES OF CERTAIN {SECONDARY**
6 **OBLIGORS}~~{PERSONS LIABLE TO SECURED PARTY}~~.**

7 (a) A secondary obligor acquires the rights and becomes obligated to perform
8 the duties of the secured party after the secondary obligor:

9 (1) receives an assignment of a secured obligation from the secured party;

10 (2) receives a transfer of collateral from the secured party and agrees to
11 accept the rights and assume the duties of the secured party; or

12 (3) is subrogated to the rights of a secured party with respect to collateral.

13 (b) An assignment, transfer, or subrogation described in subsection (a):

14 (1) is not a disposition of collateral under Section 9-610; and

15 (2) relieves the secured party of further duties under this article.

16 **SECTION 9-617. TRANSFER OF RECORD OR LEGAL TITLE.**

17 (a) In this section, "transfer statement" means a record authenticated by a
18 secured party stating:

19 (1) that the debtor has defaulted in connection with an obligation secured
20 by specified collateral;

1 (2) that the secured party has exercised its post-default remedies with
2 respect to the collateral;

3 (3) that, by reason of the exercise, a transferee has acquired the rights of the
4 debtor in the collateral; and

5 (4) the name and mailing address of the secured party, the debtor, and the
6 transferee.

7 (b) A transfer statement entitles the transferee to the transfer of record of all
8 rights of the debtor in the collateral specified in the statement in any official filing,
9 recording, registration, or certificate-of-title system covering the collateral. If a transfer
10 statement is presented with the applicable fee and request form to the official or office
11 responsible for maintaining the system, the official or office:

12 (1) shall accept the transfer statement;

13 (2) shall promptly amend its records to reflect the transfer; and

14 (3) if applicable, shall issue a new appropriate certificate of title in the name
15 of transferee.

16 (c) A transfer of the record or legal title to collateral to a secured party under
17 subsection (b) or otherwise is not of itself a disposition of collateral under this article
18 and does not of itself relieve the secured party of its duties under this article.

1 **SECTION 9-618. ACCEPTANCE OF COLLATERAL IN FULL OR**
2 **PARTIAL SATISFACTION OF OBLIGATION; COMPULSORY**
3 **DISPOSITION OF COLLATERAL.**

4 (a) In this section and in Sections 9-619 and 9-620, “proposal” means a
5 ~~[written] statement~~ record authenticated by a secured party and containing the terms
6 on which the secured party is willing to accept collateral in full or partial satisfaction
7 of the obligation it secures.

8 (b) Except as otherwise provided in ~~subsections (f) and~~ subsection (h), a
9 secured party may accept collateral in full or partial satisfaction of the obligation it
10 secures only if:

11 (1) the debtor consents to the acceptance under subsection (d);

12 (2) the secured party does not receive, within the time set forth in subsection
13 (e), a notification of objection to the proposal authenticated by

14 (A) a person to which the secured party was required to send a proposal
15 under Section 9-619; or

16 (B) any other person holding an interest in the collateral subordinate to
17 the security interest that is the subject of the proposal;

18 (3) if the collateral is consumer goods, the collateral is not in the possession
19 of the debtor when the debtor consents to the acceptance; and

20 (4) subsection (f) does not require the secured party ~~is not required~~ to
21 dispose of the collateral. ~~[under] [pursuant to] subsection (f).~~

1 (c) A purported or apparent acceptance of collateral under this section is
2 ineffective unless:

3 (1) the secured party consents to the acceptance in an authenticated record
4 or sends to the debtor a proposal; and
5 (2) the conditions of subsection (b) are met.

6 (d) For purposes of this section:

7 (1) a debtor consents to an acceptance of collateral in partial satisfaction of
8 the obligation it secures only if the debtor agrees to the terms of the acceptance in a
9 record authenticated after default; and

10 (2) a debtor consents to an acceptance of collateral in full satisfaction of the
11 obligation it secures only if the debtor agrees to the terms of the acceptance in a record
12 authenticated after default or the secured party:

13 (A) sends to the debtor after default a proposal that is unconditional or
14 subject only to a condition that collateral not in the possession of the secured party be
15 preserved or maintained;

16 (B) in the proposal, proposes to accept collateral in full satisfaction of
17 the obligation it secures; and

18 (C) does not receive a notification of objection authenticated by the
19 debtor within 20 days after the proposal is sent.

20 (e) To be effective under subsection (b)(2), a notification of objection must be
21 received by the secured party:

1 (1) in the case of a person to which the proposal was sent pursuant to
2 Section 9-619, within 20 days after notification was sent to that person; and

3 (2) in other cases:

4 (A) within 20 days after the last notification was sent pursuant to
5 Section 9-619; or

6 (B) if a notification was not sent, before the debtor consents to the
7 acceptance under subsection (d).

8 (f) A secured party that has taken possession of collateral shall dispose of the
9 collateral pursuant to Section 9-610 within the time specified in subsection (g) if:

10 (1) 60 percent of the cash price has been paid in the case of a purchase-
11 money security interest in consumer goods; or

12 (2) 60 percent of the principal amount of the obligation secured has been
13 paid in the case of ~~another~~ a non-purchase-money security interest in consumer goods.

14 (g) To comply with subsection (f), the secured party shall dispose of the
15 collateral:

16 (1) within 90 days after taking possession; or

17 (2) within any ~~[extended]~~ ~~[longer]~~ period to which the debtor and all
18 secondary obligors have agreed by ~~[signing]~~ ~~[authenticating]~~ a record containing a
19 statement to that effect after default.

20 (h) In a consumer transaction, a secured party may not accept collateral in
21 partial satisfaction of the obligation it secures.

1 **SECTION 9-619. NOTIFICATION OF PROPOSAL TO ACCEPT**
2 **COLLATERAL.**

3 (a) A secured party that desires to accept collateral in full or partial satisfaction
4 of the obligation it secures shall send its proposal to:

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

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

11 (A) identified the collateral;

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

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

15 (3) any other secured party that, [] days before the debtor consented to the
16 acceptance, held a security interest in the collateral perfected by compliance with a
17 statute, regulation, or treaty described in Section 9-309A(a).

18 (b) A secured party that desires to accept collateral in partial satisfaction of the
19 obligation it secures shall send its proposal to any secondary obligor in addition to the
20 persons described in subsection (a).

1 **SECTION 9-620. EFFECT OF ACCEPTANCE OF COLLATERAL.**

2 (a) A secured party's acceptance of collateral in full or partial satisfaction of
3 the obligation it secures:

4 (1) discharges the obligation to the extent consented to by the debtor, ~~but~~
5 ~~recovery of a deficiency is subject to Section 9-625;~~

6 (2) transfers to the secured party all of a debtor's rights in the collateral;

7 (3) discharges the security interest or agricultural lien that is the subject of
8 the debtor's consent and any subordinate security interest or other lien; and

9 (4) terminates any other subordinate interest.

10 (b) A subordinate interest is discharged or terminated under subsection (a)
11 whether or not the secured party is required to send or does send its proposal to the
12 holder of the interest. However, any person to which the secured party was required
13 to send, but did not send, its proposal has the remedy provided by Section 9-624(b).

14 **SECTION 9-621. RIGHT TO REDEEM COLLATERAL.**

15 (a) The debtor, any secondary obligor, or any other secured party or lienholder
16 may redeem the collateral.

17 (b) To redeem collateral, a person must tender:

18 (1) fulfillment of all obligations secured by the collateral; and

19 (2) the reasonable expenses and attorney's fees described in Section 9-
20 614(b)(1).

21 (c) A redemption may occur at any time before a secured party:

- 1 (1) has collected collateral under Section 9-607;
- 2 (2) has disposed of collateral or entered into a contract for its disposition
- 3 under Section 9-610; or
- 4 (3) has accepted collateral in full or partial satisfaction of the obligation it
- 5 secures under Section 9-618.

6 **SECTION 9-622.**

7 [Deleted.]

8 **SECTION 9-623. WAIVER.**

9 (a) A debtor, ~~[a]~~ or secondary obligor, ~~or [a] consumer obligor in a consumer-~~

10 ~~goods transaction~~ may waive the right to notification of disposition of collateral under

11 Section 9-611 only by authenticating an agreement to that effect ~~or the right to redeem~~

12 ~~the collateral under Section 9-621 only by agreement~~ after default.

13 (b) Except in a consumer-goods transaction, a debtor or secondary obligor may

14 waive the right to redeem collateral under Section 9-621 only by authenticating an

15 agreement to that effect after default.

16 [SUBPART 2. NONCOMPLIANCE WITH ARTICLE.]

1 **SECTION 9-624. REMEDIES FOR SECURED PARTY'S FAILURE TO**
2 **COMPLY WITH THIS ARTICLE.**

3 (a) If it is established that a secured party is not proceeding in accordance with
4 this article, a court may order or restrain collection, enforcement, or disposition of
5 collateral on appropriate terms and conditions.

6 (b) Subject to subsection (c), a secured party is liable for damages in the
7 amount of any loss caused by a failure to comply with this article. Loss caused by a
8 failure to comply with a request under Section 9-209 may include loss resulting from
9 the debtor's inability to obtain, or increased costs of, alternative financing.

10 (c) Except as otherwise provided in Section 9-627:

11 (1) a person that, at the time of the failure, was a debtor, was a secondary
12 obligor, or held a security interest in or other lien on the collateral has a right to recover
13 damages for its loss under subsection (b); and

14 (2) if the collateral is consumer goods, a person that was a debtor {for a
15 secondary obligor} at the time a secured party failed to comply with this part has a right
16 to recover for that failure in any event an amount not less than the ~~interest or finance~~
17 ~~charges~~ credit service charge plus 10 percent of the principal amount of the obligation
18 or the time-price differential plus 10 percent of the cash price.

19 (d) A debtor whose deficiency is eliminated under Section 9-625 may recover
20 damages for the loss of any surplus. However, a debtor or {secondary} ~~an~~ obligor
21 whose deficiency is eliminated or reduced under Section 9-625 may not otherwise
22 recover under subsection (b) for noncompliance with ~~{Sections 9-607 through 9-614A,~~

1 ~~9-618, and 9-619~~ [the provisions of this part relating to collection, enforcement,
2 disposition, or acceptance].

3 (e) In addition to any damages recoverable under subsection (b), the debtor,
4 ~~[secondary]~~ consumer obligor, or requester, person named as a debtor in a filed record,
5 as applicable, may recover \$500 in each case from:

6 (1) a secured party that fails to comply with Section 9-208;

7 (2) a secured party that fails to comply with Section 9-208A;

8 (3) a person that, without reasonable excuse, fails to comply with a request
9 under Section 9-209;

10 (4) a person that files a record that the person is not entitled to file under
11 Section 9-508(a);

12 (5) a secured party that fails to cause the secured party of record to file or
13 send a termination statement as required by Section 9-511(b) or (d);

14 (6) a secured party that fails to comply with Section 9-614A(b)(1) and
15 whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

16 (7) a secured party that fails to comply with Section 9-614A(b)(2).

17 (f) A recipient of a request under Section 9-209 which never claimed an
18 interest in the collateral or obligations that are the subject of a request under that
19 section has a reasonable excuse for failure to comply with the request within the
20 meaning of subsection (e).

21 (g) If a secured party fails to comply with a request regarding a list of collateral
22 or a statement of account under Section 9-209, the secured party may claim a security

1 interest only as shown in the statement contained in the request as against a person that
2 is reasonably misled by the failure.

3 **SECTION 9-625. ACTION IN WHICH DEFICIENCY OR SURPLUS IS IN**
4 **ISSUE.** (a) ~~This section applies in~~ In an action arising from a transaction, other than
5 a consumer transaction, in which the amount of a deficiency or surplus is in issue, the
6 following rules apply:

7 ~~(b) If a deficiency or surplus is calculated under Section 9-614(h), the debtor~~
8 ~~has the burden of establishing that the amount of proceeds of the disposition is~~
9 ~~significantly below the range of prices that a complying disposition to an unrelated~~
10 ~~third person would have brought.~~

11 ~~(c) Except in a consumer-goods transaction, the following rules apply:~~

12 (1) A secured party need not prove compliance with ~~[Sections 9-607~~
13 ~~through 9-614A, 9-618, and 9-619]~~ [the provisions of this part relating to collection,
14 enforcement, disposition, or acceptance] unless the debtor or a secondary obligor
15 places the secured party's compliance in issue.

16 (2) If the secured party's compliance is placed in issue, the secured party
17 has the burden of establishing that the collection, enforcement, disposition, or
18 acceptance was conducted in accordance with ~~[Sections 9-607 through 9-614A, 9-618,~~
19 ~~and 9-619, as applicable]~~ [the applicable provisions of this part].

20 (3) Except as otherwise provided in Section 9-627, if a secured party fails
21 to prove that the collection, enforcement, disposition, or acceptance was conducted in
22 accordance with ~~[Sections 9-607 through 9-614A, 9-618, and 9-619]~~ [the provisions

1 of this part relating to collection, enforcement, disposition, or acceptance,} the liability
2 of a debtor or a secondary obligor for a deficiency is limited to an amount by which the
3 sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

4 (A) the proceeds of the collection, enforcement, disposition, or
5 acceptance; or

6 (B) the amount of proceeds that would have been realized had the
7 noncomplying secured party proceeded in accordance with ~~[Sections 9-607 through~~
8 ~~9-614A, 9-618, and 9-619]~~ [the provisions of this part relating to collection,
9 enforcement, disposition, or acceptance].

10 (4) For purposes of paragraph (3)(B), the amount of proceeds that would
11 have been realized is equal to the sum of the secured obligation, expenses, and
12 attorney's fees unless the secured party proves that the amount is less than that sum.

13 (5) If a deficiency or surplus is calculated under Section 9-614(h), the
14 debtor has the burden of establishing that the amount of proceeds of the disposition is
15 significantly below the range of prices that a complying disposition to an unrelated
16 third person would have brought.

17 (b) The limitation of the rules in subsection (a) to transactions other than
18 consumer transactions is intended to leave to the court the determination of the proper
19 rules in consumer transactions. The court may not draw from that limitation an
20 inference as to the nature of the proper rule in consumer transactions, and the court may
21 continue to apply established approaches.

1 **SECTION 9-626. DETERMINATION OF WHETHER CONDUCT WAS**
2 **COMMERCIALLY REASONABLE.**

3 (a) The fact that a greater amount could have been obtained by a collection,
4 enforcement, disposition, or acceptance at a different time or in a different method
5 from that selected by the secured party is not of itself sufficient to preclude the secured
6 party from establishing that the collection, enforcement, disposition, or acceptance was
7 made in a commercially reasonable manner.

8 (b) A disposition of collateral is made in a commercially reasonable manner
9 if the disposition is made:

- 10 (1) in the usual manner on any recognized market therefor;
11 (2) at the price current in any recognized market at the time of the
12 disposition; or
13 (3) otherwise in conformity with reasonable commercial practices among
14 dealers in the type of property that was the subject of the disposition.

15 (c) A collection, enforcement, disposition, or acceptance is commercially
16 reasonable if it has been approved:

- 17 (1) in any judicial proceeding;
18 (2) by any ~~court-appointed~~ bona fide creditors' committee; ~~or~~
19 (3) by any ~~court-appointed~~ representative of creditors; or
20 (4) by any assignee for the benefit of creditors}.

1 (d) Approval under subsection (c) need not be obtained and lack of approval
2 does not mean that the collection, enforcement, disposition, or acceptance is not
3 commercially reasonable.

4 **SECTION 9-627. NONLIABILITY AND LIMITATION ON LIABILITY OF**
5 **SECURED PARTY; LIABILITY OF SECONDARY OBLIGOR.**

6 (a) Unless a secured party knows that a person is a debtor or secondary obligor,
7 knows the identity of the person, and knows how to communicate with the person:

8 (1) the secured party is not liable to the person or to a secured party or
9 lienholder that has filed a financing statement against the person for failure to comply
10 with this article; and

11 (2) the secured party's failure to comply with this article does not affect the
12 liability of the person for a deficiency.

13 (b) A secured party is not liable to any person, and a person's liability for a
14 deficiency is not affected, because of any act or omission, other than the failure to send
15 a notification required by Section 9-611(b)(2), that occurs before the secured party
16 knows that the person is a debtor or a secondary obligor or knows that the person has
17 a security interest or other lien in the collateral.

18 (c) A secured party is not liable to any person, and a person's liability for a
19 deficiency is not affected, because of any act or omission arising out of the secured
20 party's reasonable belief that a transaction is not a consumer-goods transaction or a
21 consumer transaction or that goods are not consumer goods, if the secured party's belief
22 is based on:

(1) its reasonable reliance on a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) A secured party is not liable to any person under Section 9-624(c)(2) for its failure to comply with Section 9-614A.

(e) A secured party is not liable under Section 9-624(c)(2) more than once with respect to any one secured obligation.

PART 7

TRANSITION

Reporters' Prefatory Comment

1. **Background.** A uniform law as complex as Article 9 necessarily gives rise to difficult problems and uncertainties during transition--i.e., while some states have enacted revised Article 9 and some retain former Article 9. As is customary for uniform laws, revised Article 9 is based on the general assumption that all jurisdictions will have enacted substantially identical versions. Section 9-702, which encourages states to adopt a uniform effective date for revised Article 9, is an attempt to reduce the length of the transition period.

Other problems arise from transactions and relationships that were entered into under former Article 9 or under non-UCC law and which remain outstanding on the effective date of revised Article 9. The difficulties arise primarily because revised Article 9 expands the scope of former Article 9 to cover additional types of collateral and transactions and because it provides new methods of perfection for some types of collateral, different priority rules, and different choice-of-law rules governing perfection and priority. This part addresses primarily this second set of problems.

2. **Status.** The statutory text of Part 7 remains somewhat tentative and subject to further drafting refinements. Part 7 was not reviewed by the Drafting Committee until its March, 1998, meeting. However, the Drafting Committee has settled on the

1 general principles reflected by Part 7. The Drafting Committee has not reviewed the
2 Reporters' Comments.

3 **SECTION 9-701. DEFINITION: "THIS ACT".** For purposes of this part, "this
4 Act means [*insert description of legislation enacting revised Article 9*].

5 **SECTION 9-702. EFFECTIVE DATE.** This Act takes effect at 12:01 a.m. on
6 [January 1, 2001].

7 Reporters' Comments

8 We expect this article to be ready for submission to state legislatures by early
9 1999. However, in order to reduce problems during the transition period while this
10 article may be enacted in some states and former Article 9 may remain effective in
11 others, the draft provides for an effective date of January 1, 2001. This approach would
12 permit this article to take effect at the same time in all states that enact revised Article
13 9 during the 1999 and 2000 legislative sessions, The effective date is placed in square
14 brackets, however, in contemplation that some states may enact this article after
15 January 1, 2001.

16 **SECTION 9-703. SAVINGS CLAUSE.**

17 (a) Transactions and liens that were not governed by [former Article 9], which
18 were validly entered into before this Act takes effect, and which would be subject to
19 this Act if they had been entered into after this Act takes effect and the rights, duties,
20 and interests flowing from those transactions remain valid after this Act takes effect.
21 They ~~and~~ may be terminated, completed, consummated, or enforced as required or
22 permitted by this Act.

23 (b) This Act does not affect an action, case, or proceeding commenced before
24 this Act takes effect.

Reporters' Comments

1. **Pre-Effective Date Transactions Valid under non-Article 9 Law.**

Subsection (a) applies only to transactions that were governed by law other than former Article 9, such as agricultural liens and security in interests in commercial tort claims as original collateral. It provides that valid transactions retain their validity under this article and that they may be terminated, completed, consummated, or enforced under this article.

2. **Judicial Proceedings Commenced Before Effective Date.** As is usual in transition provisions, subsection (b) provides that this article does not affect litigation pending on the effective date.

SECTION 9-704. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE.

(a) A security interest that is enforceable and has priority over the rights of a lien creditor when this Act takes effect and which would be a perfected security interest under this Act is a perfected security interest even if no further action is taken.

(b) Except as otherwise provided in Section 9-707, if a security interest is enforceable and has priority over the rights of a lien creditor under [former Article 9] when this Act takes effect but the action by which the security interest became enforceable and obtained such priority would not satisfy the applicable requirements for perfecting the security interest perfection under this Act, the security interest:

(1) is a perfected security interest for a period of one year after this Act takes effect;

(2) remains enforceable thereafter only if the security interest becomes enforceable ~~attaches~~ under Section 9-203 of this Act before the expiration of that period; and

(3) remains a perfected security interest thereafter only if the applicable requirements for perfection security interest becomes a perfected security interest under this Act are satisfied before the expiration of that period.

Reporters' Comments

1. Perfected Security Interests under Former and Revised Article 9. This section deals with security interests that are perfected (i.e., that are enforceable and have priority over the rights of a lien creditor) under former Article 9 or other applicable law. Subsection (a) provides, not surprisingly, that if the security interest would be a perfected security interest under this article (i.e., if this article's requirements for attachment and perfection have been met), no further action need be taken for the security interest to be a perfected security interest.

2. Security Interests Enforceable or Perfected under Former Article 9 and Unenforceable or Unperfected under Revised Article 9. Subsection (b) deals with security interests that are perfected under former Article 9 or other applicable law but do not satisfy the requirements for enforceability (attachment) or perfection under this article. These security interests are perfected security interests for one year. If the security interest satisfies the requirements for attachment and perfection within that period, the security interest remains perfected thereafter. If the security interest satisfies only the requirements for attachment within that period, the security interest becomes unperfected at the end of the one-year period.

Example 1: A pre-effective date security agreement in a consumer transaction covers "all securities accounts. The security interest is properly perfected. The collateral description is adequate under former Article 9 (see former Section 9-115(3)) but is insufficient under revised Article 9 (see Section 9-111(e)(2)). Unless the debtor authenticates a new security agreement describing the collateral other than by "type within the one-year period following the effective date, the security interest becomes unenforceable at the end of that period.

Other examples under current Article 9 or other pre-Act law that would be effective as attachment or enforceability steps but would be ineffective under revised Article 9 include an oral agreement to sell a payment intangible or possession by virtue of a notification to a bailee under current Section 9-305. Neither the oral agreement nor the notification would satisfy the revised Section 9-203 requirements for attachment.

Example 2: A pre-effective date possessory security interest in instruments is perfected by a bailee's receipt of notification under former 9-305. The bailee has not, however, acknowledged that it holds

1 for the secured party's benefit under revised Section 9-311. Unless the
2 bailee authenticates a record acknowledging that it holds for the secured
3 party within the one-year period following the effective date, the
4 security interest becomes unperfected at the end of that period.

5 **3. Interpretation of Pre-Effective Date Security Agreements.** Section 9-
6 102(a) defines "security agreement" as "an agreement that creates or provides for a
7 security interest. Under Section 1-201(3), an "agreement" is a "bargain of the parties
8 in fact. If parties to a pre-effective date security agreement describe the collateral by
9 using a term defined in former Article 9 in one way and defined in this article in
10 another way, in most cases it should be presumed that the bargain of the parties
11 contemplated the meanings of the terms under former Article 9.

12 **Example 3:** A pre-effective date security agreement covers "all
13 accounts of a debtor. An "account, as defined under former Article
14 9, does not include rights to payment for lottery winnings. These rights
15 to payment are "accounts under this article, however. The agreement
16 of the parties presumptively created a security interest in "accounts as
17 defined in former Article 9. A different result might be appropriate, for
18 example, if the security agreement explicitly contemplated future
19 changes in the Article 9 definitions of types of collateral--e.g.,
20 "'Accounts' means 'accounts' as defined in the UCC Article 9 of [State
21 X], as that definition may be amended from time to time.

22 **SECTION 9-705. SECURITY INTEREST UNPERFECTED BEFORE**

23 **EFFECTIVE DATE.** A security interest that is enforceable when this Act takes effect
24 but which is subordinate to the rights of a lien creditor at that time;

25 _____ (1) remains an enforceable security interest for a period of one year after
26 this Act takes effect;

27 _____ (2) remains enforceable thereafter if the security interest becomes
28 enforceable under Section 9-203 of this Act before that time; and

29 _____ (3) becomes a perfected security interest;

1 _____ (A) when this Act takes effect if the applicable requirements for
2 perfection under this Act are satisfied before that time; or

3 (B) ~~(2)~~ when the applicable requirements for ~~attachment and~~ perfection
4 are satisfied if the requirements are satisfied after that time.

5 Reporters' Comments

6 **Unperfected Security Interests under Former Article 9.** This section deals with
7 security interests that are enforceable but unperfected under former Article 9 or other
8 applicable law. These security interests remain enforceable for one year after the
9 effective date and thereafter if the appropriate steps for attachment under this Act are
10 taken before that date. If the security interest satisfies the requirements for perfection
11 under this article, then it becomes a perfected security interest on the effective date.
12 If the security interest does not satisfy the requirements for perfection until sometime
13 thereafter, it becomes a perfected security interest at that later time.

14 **Example:** A security interest has attached under former Article 9 but
15 is unperfected because the filed financing statement covers "all of
16 debtor's personal property" and controlling case law has determined
17 that this identification of collateral in a financing statement is
18 insufficient. Upon the effective date of this act, the financing statement
19 becomes sufficient under revised 9-111(c). On that date the security
20 interest becomes perfected. (This assumes, of course, that the financing
21 statement is filed in the proper filing office under this article.)

22 **SECTION 9-706. EFFECTIVENESS OF ACTION TAKEN BEFORE**
23 **EFFECTIVE DATE OF THIS ACT.**

24 (a) If action ~~Action~~, other than the filing of a financing statement, is taken
25 before this Act takes effect and the action ~~which~~ would have resulted in a security
26 interest achieving priority over the rights of a lien creditor had the security interest
27 become enforceable before this Act takes effect, the action is sufficient to perfect a
28 security interest that attaches ~~before or~~ within one year after this Act takes effect. An
29 attached security interest becomes unperfected one year after this Act takes effect

1 unless the security interest becomes a perfected security interest under this Act before
2 the expiration of that period.

3 (b) The filing of a financing statement before this Act takes effect is sufficient
4 to perfect a security interest that attaches after this Act takes effect to the extent the
5 filing would perfect the security interest under this Act.

6 (c) This Act does not render ineffective an effective financing statement that
7 is filed before this Act takes effect in accordance with the law of the jurisdiction
8 governing perfection as provided in [former Section 9-103]. However, except as
9 otherwise provided in subsection (d):

10 (1) the financing statement becomes ineffective at the earlier of:

11 (A) the time the financing statement would have become ineffective
12 under the law of the jurisdiction in which it is filed; or

13 (B) five years after this Act takes effect; and

14 (2) a continuation statement filed after this Act takes effect does not
15 continue the effectiveness of the financing statement.

16 (d) A continuation statement filed after this Act takes effect and in accordance
17 with the law of the jurisdiction governing perfection as provided in Part 3 is effective
18 to continue the effectiveness of a financing statement filed in that jurisdiction before
19 this Act takes effect.

20 (e) This Act does not render ineffective an effective financing statement that
21 was filed before this Act takes effect and in the office specified in [former Section 9-
22 401]. However, except as otherwise provided in subsection (f):

1 (1) the financing statement becomes ineffective at the earlier of:

2 (A) the time the financing statement would have become ineffective
3 under [former Article 9]; or

4 (B) five years after this Act takes effect; and

5 (2) a continuation statement filed after this Act takes effect does not
6 continue the effectiveness of the financing statement.

(f) A continuation statement filed after this Act takes effect and in the office specified in Section 9-501 is effective to continue the effectiveness of a financing statement filed in that office before this Act takes effect.

10 (g) A financing statement that includes a financing statement filed before this
11 Act takes effect and a continuation statement filed after this Act takes effect is effective
12 only to the extent that it satisfies the requirements of Section 9-502(a).

13 Reporters' Comments

14 1. **General.** This section addresses the situation in which the “perfection step
15 is taken under former Article 9 or other applicable law before the effective date of this
16 article, but the security interest does not attach until after that date.

2. **Perfection Other Than by Filing.** Subsection (a) applies when the “perfection step is a step other than the filing of a financing statement. If the step that would be a valid perfection step under former Article 9 or other law is taken before this article takes effect, and if a security interest attaches within one year after it takes effect, then the security interest becomes a perfected security interest. However, the security interest becomes unperfected one year after the effective date unless the requirements for attachment and perfection under this article are met within that period.

Example 1: D enters into a security agreement covering its inventory in favor of SP. SP and D notify a third party that SP holds a security interest in any of D's inventory that may from time to time come into the third party's possession. After this article takes effect, the debtor acquires new inventory and the third party acquires possession of the new inventory. SP's security interest attaches to the after-acquired

1 collateral. Under subsection (a), SP's security interest is perfected
2 when the third party acquires possession by virtue of the pre-effective-
3 date notification. However, as explained in Comment 2, Example 2, to
4 Section 9-704, the security interest will become unperfected unless the
5 third party acknowledges that it holds for SP before the end of the one-
6 year period following the effective date.

7 **3. Perfection by Filing: Ineffective Filings Made Effective.** Subsection (b)
8 deals with financing statements filed under former Article 9 and which would not have
9 perfected a security interest under the former article (because, e.g., they did not
10 accurately describe the collateral or were filed in the wrong place) but which would
11 perfect a security interest under this article. Under subsection (b), such a financing
12 statement is effective to perfect a security interest to the extent it complies with this
13 article.

14 **4. Perfection by Filing: Change in Applicable Law.** Subsection (c)
15 provides that a financing statement filed in the proper jurisdiction under former Section
16 9-103 remains effective for all purposes, despite the fact that Part 3 of this article
17 would require filing of a financing statement in a different jurisdiction. However, the
18 financing statement becomes ineffective at the earlier of the time it would become
19 effective under the previously applicable law or five years after the effective date. This
20 temporal limitation addresses some nonuniform versions of former Article 9 that
21 extend the effectiveness of a financing statement beyond five years.

22 **5. Continuing perfection by filing.** A financing statement filed before the
23 effective date of this article may be continued only by filing in the State and office
24 designated by this article. This result is accomplished in the following manner:
25 Paragraph (2) of subsection (c) indicates that, as a general matter, a continuation
26 statement filed after the effective date of this article does not continue the effectiveness
27 of a financing statement filed under the law designated by former Section 9-103.
28 Instead, an initial financing statement must be filed. See Section 9-707. Of course, if
29 former Section 9-103 and revised Part 3 direct one to the same jurisdiction, then a
30 continuation statement filed in the jurisdiction designated by Section 9-103 is effective.
31 See subsection (d).

32 **6. Perfection by Filing: Change in Filing Office.** Subsections (e) and (f)
33 contain provisions analogous to those in subsections (c) and (d). Under these
34 subsections, a continuation statement is not effective to continue the effectiveness of
35 a financing statement filed in the office designated by former Section 9-401 unless
36 revised Section 9-501 prescribes the same filing office. If the filing offices are
37 different, then the procedure in Section 9-707 should be followed.

1 **7. Continuation Statements.** In some cases, this article reclassifies collateral
2 covered by a financing statement filed under former Article 9. For example, collateral
3 consisting of the right to payment for real estate sold would be a “general intangible
4 under the former article but an “account under this article. To continue perfection
5 under those circumstances, which include the circumstances described in subsection
6 (c), (d), (e), and (f), under subsection (g) a continuation statement must comply not
7 only with the normal requirements for a continuation statement (see Section 9-516) but
8 also must contain an indication of collateral that satisfies the requirement of Section
9 9-502(a). Similarly, the sufficiency of the debtor’s name and the secured party’s name
10 on the continued financing statement must comply with this article after it takes effect.

11 **Example 2:** A pre-effective date financing statement covers “all
12 general intangibles of a debtor. A “general intangible, as defined
13 under former Article 9 would include rights to payment for lottery
14 winnings. These rights to payment are “accounts under revised Article
15 9, however. A post-effective date continuation statement will not
16 continue the effectiveness of the pre-effective date financing statement
17 with respect to lottery winnings unless it amends the indication of
18 collateral covered to include “accounts, “rights to payment for lottery
19 winnings, or another appropriate indication. If the continuation
20 statement does not amend the indication of collateral, the continuation
21 statement will be effective to continue the effectiveness of the financing
22 statement only with respect to “general intangibles as defined in
23 revised Article 9.

24 **SECTION 9-707. INITIAL FINANCING STATEMENT IN LIEU OF**
25 **CONTINUATION STATEMENT.**

26 (a) The effectiveness of a financing statement filed before this Act takes effect
27 may be continued by filing in the office specified in Section 9-501 an initial financing
28 statement that complies with the requirements of subsection (b) if:

29 (1) ~~perfection of a security interest is conditioned on the filing of a~~
30 ~~financing statement in that office~~ an office in this State is effective to perfect a security
31 interest; and

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

(b) To be effective for purposes of subsection (a), an initial financing statement must:

(1) comply with 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 ~~number~~, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement;

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

(4) unless the indication of the collateral in the financing statement is sufficient under this Act, indicate the collateral.

Reporters' Comments

1. Continuation of Financing Statements Not Filed in the Proper Filing office under Revised Article 9. This section deals with continuing the effectiveness of financing statements that are filed in the proper place under former Sections 9-103 and 9-401, but which would be filed in the wrong place under this article. Section 9-706 provides that, under these circumstances, filing a continuation statement in the office designated by former Sections 9-103 and 9-401 would not be effective. This section provides the means by which the effectiveness of such a financing statement can be continued—filing an initial financing statement in the office designated by this article. Unlike a continuation statement, however, the initial financing statement described in this section may be filed any time during the effectiveness of the other financing statement and not only within the last six months.

2. Requirements of Initial Financing Statement Filed in Lieu of Continuation Statement. Subsection (b) sets forth the requirements for the initial

1 financing statement. These requirements are needed to inform the searcher that the
2 initial financing statement operates to continue a financing statement filed elsewhere
3 and to enable the searcher to locate and discover the attributes of the other financing
4 statement.

5 **SECTION 9-708. PERSONS ENTITLED TO FILE INITIAL FINANCING**
6 **STATEMENT OR CONTINUATION STATEMENT.** A person is entitled to file
7 an initial financing statement or a continuation statement if:

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

9 (2) the filing is necessary under this part:

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

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

13 Reporters' Comments

14 This section permits a secured party to file an initial financing statement or
15 continuation statement if necessary under this part to continue the effectiveness of a
16 financing statement filed before this Act takes effect or to perfect or otherwise continue
17 the perfection of a security interest.

18 **SECTION 9-709 ~~9-708~~. PRIORITY.**

19 (a) [Former Article 9] determines the priority of conflicting claims to collateral
20 if the positions of the parties were fixed before this Act takes effect. In other cases, this
21 Act determines priority.

22 (b) For purposes of Section 9-319(a), the priority of a security interest that
23 becomes a perfected security interest under Section 9-705 dates from the time the
24 applicable requirements for perfection ~~is~~ are satisfied. This subsection does not apply

1 to conflicting security interests each of which becomes a perfected security interest
2 under Section 9-705.

3 (c) For purposes of Section 9-319(a), the priority of a security interest that
4 becomes enforceable under Section 9-203 of this Act dates from the time this Act takes
5 effect if the security interest is perfected under this Act by the filing of a financing
6 statement before this Act takes effect ~~and~~ which would not have been effective to
7 perfect the security interest under [former Article 9] ~~dates from the time this Act takes~~
8 ~~effect~~. This subsection does not apply to conflicting security interests each of which
9 is perfected by the filing of such a financing statement.

10 Reporters' Comments

11 **1. Unperfected Security Interests Under Former Article 9 that Become**
12 **Perfected Under Revised Article 9.** Subsection (b) deals with the case in which an
13 unperfected security interest becomes perfected by virtue of the enactment of this
14 Article. It is designed to prevent the enactment of this Article from adversely affecting
15 the priority of a conflicting security interest. The Drafting Committee may wish to
16 consider whether this case is governed by subsection (a) and can be dealt with
17 exclusively in the Official Comments.

18 **Example 1:** In 1999, SP-1 obtains a security interest in a right to
19 payment for lottery winnings—a “general intangible” (as defined under
20 former Article 9). SP-1's security interest is unperfected because it files
21 a financing statement covering only “accounts. In 2000, D creates a
22 security interest in the same right to payment in favor of SP-2, who files
23 a financing statement covering “accounts and general intangibles. At
24 the time this Article takes effect in 2001, SP-2's perfected security
25 interest has priority over SP-1's unperfected security interest. However,
26 Section 9-705 causes SP-1's security interest to become perfected
27 because the financing statement covering “accounts adequately covers
28 the lottery payments under this article. Application of the first-to-file-
29 or-perfect rule of Section 9-319(a) would result in SP-2's being
30 subordinated because SP-1 filed first. Under subsection (b), however,
31 SP-1's priority dates from the effective date of this article. SP-2, having
32 filed before that date, would have priority.

1 The special rule in subsection (b) does not apply if both competing security interests
2 were unperfected before the effective date of this Article and became perfected under
3 Section 9-705.

4 **Example 2:** In 1999, SP-1 obtains a security interest in a right to
5 payment for lottery winnings—a “general intangible” (as defined under
6 former Article 9). SP-1's security interest is unperfected because it
7 files a financing statement covering only “accounts.” In 2000, D
8 creates a security interest in the same right to payment in favor of SP-2,
9 who makes the same mistake and also files a financing statement
10 covering “accounts.” At the time this Article takes effect in 2001, SP-
11 1's unperfected security interest has priority over SP-2's unperfected
12 security interest. Section 9-705 makes both security interests perfected.
13 The first-to-file-or-perfect rule of Section 9-319(a) applies, with the
14 result that SP-1 has priority.

15 **2. Financing Statements Ineffective Under Former Article 9 and Effective**
16 **Under Revised Article 9.** Subsection (c) deals with the case in which a filing that
17 occurs before the effective date of this article would be ineffective to perfect a security
18 interest under former Article 9 but effective under this Article. For purposes of Section
19 9-319(a), the priority of a security interest that is perfected in this manner dates from
20 the time this Article takes effect.

21 **Example 3:** In 1999, SP-1 obtains a security interest in D's
22 instruments and files a financing statement covering “instruments.” In
23 2000, D grants a security interest in its accounts in favor of SP-2, who
24 files a financing statement covering “accounts.” After this article takes
25 effect in 2001, one of D's account debtors gives D a negotiable note to
26 evidence its obligation to pay. Under the first-to-file-or-perfect rule,
27 SP-1 would have priority in the instrument. However, subsection (c)
28 provides that, for purposes of Section 9-319(a), SP-1's priority dates
29 from the time this Article takes effect (2001). Accordingly, SP-2's
30 security interest would be senior.

31 Like subsection (b), subsection (c) does not apply to conflicting security interests each
32 of which is perfected by the filing of such a financing statement. Unlike subsection (b),
33 subsection (c) applies only if the security interest attaches after the Act takes effect.

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1 **SECTION 1-201. GENERAL DEFINITIONS.** Subject to additional definitions
2 contained in the subsequent Articles of this Act which are applicable to specific
3 Articles or Parts thereof, and unless the context otherwise requires, in this Act:

4 * * *

5 (9) “Buyer in ordinary course of business” means a person that buys goods who
6 in good faith, ~~and~~ without knowledge that the sale to him is in violation of violates the
7 ownership rights or security interest of another person a third party in the goods, and
8 buys in the ordinary course from a person, other than a pawnbroker, in the business of
9 selling goods of that kind ~~but does not include a pawnbroker.~~ A person buys goods in
10 the ordinary course if the sale to the person comports with the usual or customary
11 practices in the kind of business in which the seller is engaged or with the seller’s own
12 usual or customary practices. A person that sells oil, gas, or other minerals at the
13 wellhead or minehead is a person ~~All persons who sell minerals or the like (including~~
14 ~~oil and gas) at wellhead or minehead shall be deemed to be persons in the business of~~
15 selling goods of that kind. A buyer in ordinary course of business ~~“Buying”~~ may buy
16 ~~be~~ for cash, ~~or~~ by exchange of other property, or on secured or unsecured credit, and
17 may acquire and includes receiving goods or documents of title under a pre-existing
18 contract for sale ~~but does not include a transfer in bulk or as security for or in total or~~
19 ~~partial satisfaction of a money debt.~~ Only a buyer that takes possession of the goods
20 or has a right to recover the goods from the seller under Article 2 may be a buyer in
21 ordinary course of business. A person that acquires goods in a transfer in bulk or as

1 security for or in total or partial satisfaction of a money debt is not a buyer in ordinary
2 course of business.

3 * * *

4 (32) “Purchase includes taking by sale, discount, negotiation, mortgage,
5 pledge, lien, security interest, issue or re-issue, gift, or any other voluntary transaction
6 creating an interest in property.

7 * * *

8 (37) “Security interest means an interest in personal property or fixtures which
9 secures payment or performance of an obligation. ~~The retention or reservation of title~~
10 ~~by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2-401)~~
11 ~~is limited in effect to a reservation of a “security interest”.~~ The term also includes any
12 interest of a consignor and a buyer of accounts, or chattel paper, a payment intangible,
13 or a promissory note in a transaction that ~~which~~ is subject to Article 9. The special
14 property interest of a buyer of goods on identification of those goods to a contract for
15 sale under Section 2-401 is not a “security interest”, but a buyer may also acquire a
16 “security interest” by complying with Article 9. ~~Unless a consignment is intended as~~
17 ~~security, reservation of title thereunder is not a “security interest”, but a consignment~~
18 ~~in any event is subject to the provisions on consignment sales (Section 2-326).~~ Except
19 as otherwise provided in Section 2-505, the right of a seller or lessor of goods under
20 Article 2 or 2A to retain or acquire possession of the goods is not a “security interest”,
21 but a seller or lessor may also acquire a “security interest” by complying with Article
22 9. The retention or reservation of title by a seller of goods notwithstanding shipment

or delivery to the buyer (Section 2-401) is limited in effect to a reservation of a
“security interest.”

* * *

(38) “Send in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed to any address reasonable under the circumstances and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

* * *

Reporters' Comments

1. **“Buyer in Ordinary Course of Business.”** Many of the revisions to the definition of “buyer in ordinary course of business” in subsection (9) are for clarification and style. The second sentence of the subsection is new and tracks Section 6-102(1)(m). It explains what it means to buy “in the ordinary course.”

The penultimate sentence of subsection (9) also is new. It prevents a buyer that does not have the right to possession against the seller from taking free of the rights of third parties. Concerning when a buyer obtains possessory rights, see Sections 2-502 and 2-716, below. This revision is not intended to affect a buyer’s status as a buyer in ordinary course of business in cases (such as a “drop shipment”) involving delivery by the seller to a person buying from the buyer or a donee from the buyer. The requirement relates to whether *as against the seller* the buyer or one taking through the buyer has possessory rights. The Official Comments will make this clear.

2. **“Purchase.”** The definition of “purchase” has been revised to make explicit reference to taking “by . . . security interest.” This is consistent with most authorities.

3. **“Security Interest.”** The definition of “security interest” in subsection (37) has been revised to include the interest of a consignor and the interest of a buyer of payment intangibles. See Section 9-112. It also has been revised to make clear that,

1 with certain exceptions, *in rem* rights of sellers and lessors under Articles 2 and 2A are
2 not “security interests. Among the rights that are not security interests are the right
3 to withhold delivery under Section 2-702(1), 2-703(a), or 2A-525, the right to stop
4 delivery under Section 2-705 or 2A-526, and the right to reclaim under Section 2-
5 507(2) or 2-702(2).

6 4. “**Send.** The definition of “send has been broadened to include
7 communications “to any address reasonable under the circumstances.

8 **SECTION 2-210. DELEGATION OF PERFORMANCE; ASSIGNMENT OF**
9 **RIGHTS.**

10 * * *

11 (2) Unless otherwise agreed all rights of either seller or buyer can be assigned
12 except where the assignment would materially change the duty of the other party, or
13 increase materially the burden or risk imposed on him by his contract, or impair
14 materially his chance of obtaining return performance. A right to damages for breach
15 of the whole contract or a right arising out of the assignor's due performance of his
16 entire obligation can be assigned despite agreement otherwise. If there is a conflict
17 between this subsection and Section 9-404B, Section 9-404B governs.

18 * * *

19 **Reporters' Comments**

20 1. **Conflict with Article 9.** Section 9-404B makes rights to payment for goods
21 sold (“accounts”) freely alienable, even in the unlikely event that the assignment would
22 materially change the buyer’s duty, increase materially the burden or risk imposed on
23 the buyer by the contract, or impair materially the buyer’s chance of obtaining return
24 performance. The new sentence resolves any conflict between Section 9-404B and
25 subsection (2) in favor of free alienability of the seller’s right to payment.

1 **SECTION 2-326. SALE ON APPROVAL AND SALE OR RETURN;**
2 **~~CONSIGNMENT SALES AND RIGHTS OF CREDITORS.~~**

3 (1) Unless otherwise agreed, if delivered goods may be returned by the buyer
4 even though they conform to the contract, the transaction is

5 (a) a "sale on approval" if the goods are delivered primarily for use, and

6 (b) a "sale or return" if the goods are delivered primarily for resale.

7 (2) ~~Except as provided in subsection (3), goods~~ Goods held on approval are not
8 subject to the claims of the buyer's creditors until acceptance; goods held on sale or
9 return are subject to such claims while in the buyer's possession.

10 ~~(3) Where goods are delivered to a person for sale and such person maintains~~
11 ~~a place of business at which he deals in goods of the kind involved, under a name other~~
12 ~~than the name of the person making delivery, then with respect to claims of creditors~~
13 ~~of the person conducting the business the goods are deemed to be on sale or return.~~
14 ~~The provisions of this subsection are applicable even though an agreement purports to~~
15 ~~reserve title to the person making delivery until payment or resale or uses such words~~
16 ~~as "on consignment" or "on memorandum". However, this subsection is not applicable~~
17 ~~if the person making delivery~~

18 ~~(a) complies with an applicable law providing for a consignor's interest or~~
19 ~~the like to be evidenced by a sign, or~~

20 ~~(b) establishes that the person conducting the business is generally known~~
21 ~~by his creditors to be substantially engaged in selling the goods of others, or~~

~~(c) complies with the filing provisions of the Article on Secured Transactions (Article 9).~~

(3) ~~(4)~~ Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (Section 2-201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (Section 2-202).

Reporters' Comments

1. **True Consignments.** A true consignment is not a sale. Rather, it is a bailment for the purpose of sale. In a true consignment, other law (e.g., the common law of bailments), and not the Uniform Commercial Code, governs the rights of the consignor and consignee. Former Sections 2-326(3) and 9-114, both of which have been deleted, governed the rights of creditors of the consignee in a true consignment. These sections have been replaced by new provisions in Article 9. See, e.g., Sections 9-112(a)(4); 9-104(b); 9-315A. These provisions are quite similar to those found in former Section 2-326(3). If a true consignment is not a “consignment” as defined in Section 9-102 and thus is not governed by Article 9, law other than the Uniform Commercial Code governs the rights of the consignee’s creditors.

2. Consignments for Security. Some transactions that the parties denominate as “consignments” in fact are sales in which the seller retains an interest in the goods to secure their price. The Uniform Commercial Code treats these consignments like other secured sales. Article 2 applies to the sales aspect of the transaction (e.g., the terms of the contract for sale), whereas Article 9 governs the security aspects.

**SECTION 2-502. BUYER'S RIGHT TO GOODS ON SELLER'S
REPUDIATION, FAILURE TO DELIVER OR INSOLVENCY.**

(1) Subject to subsections (2) and (3) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on

1 making and keeping good a tender of any unpaid portion of their price recover them
2 from the seller if:

3 (a) in the case of goods bought for personal, family, or household purposes,
4 the seller repudiates or fails to deliver as required by the contract; or

5 (b) in other cases, the seller becomes insolvent within ten days after receipt
6 of the first installment on their price.

7 (2) The buyer's right to recover the goods under subsection (1)(a) vests upon
8 acquisition of a special property even if the seller had not then repudiated or failed to
9 deliver.

10 (3) If the identification creating his special property has been made by the
11 buyer he acquires the right to recover the goods only if they conform to the contract for
12 sale.

13 Reporters' Comments

14 1. **Consumer Goods.** The revisions to this section implement part of the
15 agreement concerning consumer-goods transactions. Normally, a buyer of goods has
16 no right to recover the goods from a seller who repudiates or fails to deliver in
17 accordance with the contract. Rather, the disappointed buyer must resort to an action
18 to recover damages. This section contains a very narrow exception that rarely, if ever,
19 has been utilized successfully: A buyer of goods who has paid at least part of the price
20 may recover the goods upon making and keeping good a tender of any unpaid portion
21 of the price, but only if the seller becomes insolvent within ten days after receipt of the
22 first installment of the price. The revisions, which are based upon Section 2-505 of the
23 March, 1998, draft of Revised Article 2, would enable every buyer of consumer goods
24 who paid at least part of the price to recover the goods from a defaulting seller.

25 2. **Interaction with Article 9.** Under subsection (2), the buyer's right to
26 recover the goods vests upon acquisition of a special property, which occurs upon
27 identification of the goods to the contract. See Section 2-501. Inasmuch as a secured
28 party normally acquires no greater rights in its collateral than its debtor had or had
29 power to convey, see Section 2-403(1) (first sentence), a buyer who acquires a right to
30 recover under this section will take free of a security interest that attaches to the goods

after the goods have been identified to the contract. The buyer will take free even if the buyer does not buy in ordinary course and even if the security interest is perfected. Of course, to the extent that the buyer pays the price after the security interest attaches, the payments will constitute proceeds of the security interest.

**SECTION 2-716. BUYER'S RIGHT TO SPECIFIC PERFORMANCE OR
REPLEVIN.**

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property even if the seller had not then repudiated or failed to deliver.

Reporters' Comments

1. **Consumer Goods.** The revisions to this section implement part of the agreement concerning consumer-goods transactions. This section contains two exceptions to the general rule that a buyer of goods has no right to recover the goods from a seller who repudiates or fails to deliver in accordance with the contract. Rather, the disappointed buyer must resort to an action to recover damages. Borrowing from Section 2-824 of the March, 1998, draft of Revised Article 2, subsection (3) has been revised to provide that, for consumer goods, the buyer's right to replevin vests upon the buyer's acquisition of a special property, which occurs upon identification of the goods to the contract. See Section 2-501.

2. Interaction with Article 9. Inasmuch as a secured party normally acquires no greater rights in its collateral than its debtor had or had power to convey, see Section 2-403(1) (first sentence), a buyer who acquires a right of replevin under subsection (3) will take free of a security interest that attaches to the goods after the goods have been identified to the contract. The buyer will take free even if the buyer does not buy in ordinary course and even if the security interest is perfected. Of course, to the extent that the buyer pays the price after the security interest attaches, the payments will constitute proceeds of the security interest.

SECTION 5-118. SECURITY INTEREST OF ISSUER OR NOMINATED
PERSON.

(a) An issuer or nominated person has a security interest in a document presented under a letter of credit and any identifiable proceeds of the collateral to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) Subject to subsection (c), as long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest under subsection (a), the security interest continues and is subject to Article 9, but:

(1) a security agreement is not necessary to make the security interest
enforceable under Section 9-203(b)(3); and

_____ (2) the security interest is perfected and it has priority over conflicting security interests in the collateral or its proceeds.

(c) A security interest that arises under this section is subject to the rights of a subsequent purchaser under Section 9-327 or 9-328 or a transferee under Section 9-329.

1 1. **Source.** New.

2 2. **Article 5 Security Interest.** This section gives the issuer of a letter of credit
3 or a nominated person thereunder an automatic perfected security interest in a
4 “document (as that term is defined in Section 5-102(a)(6)). The security interest arises
5 only if the document is presented to the issuer or nominated person under the letter of
6 credit and to the extent of the value that is given. This security interest is analogous
7 to that awarded to a collecting bank under Section 4-210. Under subsection (b)(2), the
8 security interest is perfected and has first priority. Because the security interest is
9 conditioned on presentation of the document, perfection by possession under Section
10 9-311 normally would occur even without the automatic perfection provided by
11 subsection (b)(2). Documents that are written on paper and that are not an otherwise-
12 defined type of collateral (e.g., a certificated security or a document of title) would be
13 goods, for example. The issuer or nominated party also could rely on temporary
14 perfection, under Section 9-310, or filing. However, because the definition of
15 document in Section 5-102(a)(6) includes records (e.g., electronic records) that may not
16 be goods, it is necessary to provide for automatic perfection (i.e., without filing). The
17 priority afforded by subsection (b) is limited by subsection (c), which recognizes that
18 subsequent purchasers of negotiable collateral or chattel paper should obtain protection
19 under Section 9-327 or 9-328, when applicable, as should transferees of funds under
20 Section 9-329.

21 It is arguable that this section is not necessary for a document that is a
22 certificated security, a negotiable instrument, or a negotiable document that is
23 presented to an issuer or nominated person. Those parties might achieve the same
24 result under a proper interpretation of Sections 2-506 and 4-210 and the good-faith-
25 purchaser rules of Articles 3, 7, and 8. See Section 9-328. However, those rules would
26 not apply to other types of documents. An issuer or nominated person might find these
27 non-negotiable documents to be quite important. For example, a confirmer who pays
28 the beneficiary must be assured that its rights to all documents are not impaired. It will
29 find it necessary to present all of the required documents to the issuer in order to be
30 reimbursed. For this reason, we believe that taking the general approach taken by
31 Section 4-210 is sound. However, because the security interest is not dependent on
32 continued possession, it is necessary to qualify the priority of the security interest
33 pursuant to subsection (c).

34 **SECTION 8-110. APPLICABILITY; CHOICE OF LAW.**

35 * * *

1 (e) The following rules determine a “securities intermediary’s jurisdiction for
2 purposes of this Section:

3 (1) If an agreement between the securities intermediary and its entitlement
4 holder expressly provides ~~specifies that it is governed by the law of a particular~~
5 ~~jurisdiction~~ the securities intermediary’s jurisdiction for purposes of this part, this
6 article, or this act, that jurisdiction is the securities intermediary’s jurisdiction.

7 (2) If paragraph (1) does not apply and an agreement between the securities
8 intermediary and entitlement holder expressly provides that it is governed by the law
9 of a particular jurisdiction, that jurisdiction is the securities intermediary’s jurisdiction.

10 (3) ~~(2)~~ If neither paragraph (i) nor paragraph (ii) applies and an agreement
11 between the securities intermediary and its entitlement holder does not specify the
12 governing law as provided in paragraph (1), but expressly provides ~~specifies~~ that the
13 securities account is maintained at an office in a particular jurisdiction, that jurisdiction
14 is the securities intermediary’s jurisdiction.

15 (4) ~~(3)~~ If none of paragraph (i), (ii), or (iii) applies an agreement between
16 the securities intermediary and its entitlement holder does not specify a jurisdiction as
17 provided in paragraph (1) or (2), the securities intermediary’s jurisdiction is the
18 jurisdiction in which is located the office identified in an account statement as the
19 office serving the entitlement holder’s account.

20 (5) ~~(4)~~ If none of the other paragraphs applies an agreement between the
21 securities intermediary and its entitlement holder does not specify a jurisdiction as
22 provided in paragraph (1) or (2) and an account statement does not identify an office

1 ~~serving the entitlement holder's account as provided in paragraph (3), the securities~~
2 intermediary's jurisdiction is the jurisdiction in which is located the chief executive
3 office of the securities intermediary.

4 (f) A securities intermediary's jurisdiction is not determined by the physical
5 location of certificates representing financial assets, or by the jurisdiction in which is
6 organized the issuer of the financial asset with respect to which an entitlement holder
7 has a security entitlement, or by the location of facilities for data processing or other
8 record keeping concerning the account.

9 Reporters' Comments

10 This section has been revised to provide more flexibility for the parties to select
11 the security intermediary's jurisdiction. See also Sections 9-304(b) (bank's
12 jurisdiction); 9-305(a)(5) (commodity intermediary's jurisdiction).

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APPENDIX II

MODEL PROVISIONS FOR PRODUCTION-MONEY PRIORITY

Legislative Note: States that enact these model provisions should add the following definitions to Section 9-102(a) after the definition of “proceeds,” and renumber the other definitions accordingly:

(xx) “Production-money crops” has the meaning specified in Section [9-104A].

(xx) “Production-money obligation” has the meaning specified in Section [9-104A].

(xx) “Production-money security interest” has the meaning specified in Section [9-104A].

[MODEL SECTION [9-104A]. ~~PRODUCTION-MONEY SECURITY INTEREST;~~ “~~PRODUCTION-MONEY CROPS~~”; “~~PRODUCTION-MONEY OBLIGATION~~”; ~~PRODUCTION-OF CROPS~~; PRODUCTION-MONEY SECURITY INTEREST; BURDEN OF ESTABLISHING PRODUCTION-MONEY SECURITY INTEREST.

(a) “Production-money crops” means crops that secure a production-money obligation incurred with respect to the production of those crops.

(b) “Production-money obligation” means an obligation of an obligor incurred for new value given to enable the debtor to produce crops if the value is in fact used for the production of the crops.

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

1 (d) A security interest ~~in crops~~ is a production-money security interest to the
2 extent that the crops are ~~(“production-money crops”)~~ secure an obligation
3 ~~(“production-money obligation”)~~ of an obligor incurred for new value given to enable
4 the debtor to produce the production-money crops if the value is in fact used for the
5 production of the production-money crops.

6 (e) If the extent to which a security interest is a production-money security
7 interest depends on the application of a payment to a particular obligation, the
8 payment must be applied:

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

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

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

16 (A) to obligations that are not secured; and

17 (B) if more than one obligation is secured, to obligations secured by
18 production-money security interests in the order in which those obligations were
19 incurred.

20 (f) A production-money security interest does not lose its status as such even
21 if:

1 (1) the production-money crops also secure an obligation that is not a
2 production-money obligation;

3 (2) collateral that is not production-money crops also secures the
4 production-money obligation; or

5 (3) the production-money obligation has been renewed, refinanced, or
6 restructured.

7 (g) A secured party claiming a production-money security interest has the
8 burden of establishing ~~[whether and]~~ the extent to which the security interest is a
9 production-money security interest. ~~if either of the following is placed in issue:~~

10 ~~(1) the status of the security interest as a production-money security~~
11 ~~interest; or~~

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

13 Legislative Note: This section is optional. States that enact this section should place
14 it between Section 9-104 and 9-105 and number it accordingly, e.g., as Section 9-104A
15 or 9-104.1. States that do not enact this section also should not enact Section 9-320A.

16 Reporters' Comments

17 1. **Source.** New.

18 2. **Production-Money Priority; "Production-Money Security Interest."** There
19 appears to be a general consensus that the former rule affording special priority to
20 those who provide secured credit that enables a debtor to produce crops, found in
21 former Section 9-312(2), is not workable. However, after years of discussion, no
22 consensus concerning the rule has arisen among those who engage in agricultural
23 financing. The issue remains controversial, and opinions differ strongly over whether
24 to replace the rule with one that affords greater protection to providers of production
25 inputs or whether to eliminate the rule without replacing it.

26 Model Section 9-320A contains a revised production-money priority rule. That
27 section is a model, not uniform, provision. The sponsors of the UCC have taken no
28 position as to whether it should be enacted, instead leaving the matter for state

1 *legislatures to consider if they are so inclined. This position reflects the likely division*
2 *of views among state legislatures as to the desirability of the rule. In conjunction with*
3 *the new priority rule, this section—also a model section—provides a definition of*
4 *“production-money security interest.” It is patterned closely on Section 9-104, which*
5 *defines “purchase-money security interest.” Subsection (b) makes clear that a security*
6 *interest can obtain production-money status only to the extent that it secures value that*
7 *actually can be traced to the direct production of crops. To the extent that a security*
8 *interest secures indirect costs of production, such as general living expenses, the*
9 *security interest is not entitled to production-money treatment.*

10 ***[MODEL SECTION [9-320A]. PRIORITY OF PRODUCTION-MONEY***
11 ***SECURITY INTERESTS AND AGRICULTURAL LIENS.***

12 *(a) Except as otherwise provided in subsections (c), (d), and (e), if the*
13 *requirements of subsection (b) are met, a perfected production-money security interest*
14 *in production-money crops has priority over a conflicting security interest in the same*
15 *crops and, except as otherwise provided in Section 9-325, also has priority in their*
16 *identifiable proceeds.*

17 *(b) A production-money security interest has priority under subsection (a) if:*

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

21 *(2) the production-money secured party gives an authenticated notification*
22 *to the holder of the conflicting security interest not less than 10 or more than 30 days*
23 *before the production-money secured party first gives new value to enable the debtor*
24 *to produce the crops if the holder had filed a financing statement covering the crops*
25 *before the date of the filing made by the production-money secured party; and*

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

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

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

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

Legislative Note: This section is optional. States that enact this section should place it between Section 9-320 and 9-321 and number it accordingly, e.g., as Section 9-320A or 9-320.1. States that do not enact this section also should not enact Section 9-104A.

Reporters' Comments

1. *Source.* New.

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

1 **3. Priority of Production-Money Security Interests and Conflicting Security**
2 **Interests.** *This section attempts to balance the interests of the production-money*
3 *secured party with those of a secured party who has previously filed a financing*
4 *statement covering the crops that are to be produced. For example, to qualify for*
5 *priority under this section, the production-money secured party must notify the earlier-*
6 *filed secured party prior to extending the production-money credit. The notification*
7 *affords the earlier secured party the opportunity to prevent subordination by extending*
8 *the credit itself. Subsection (d) makes this explicit. If the holder of a security interest*
9 *in production-money crops which conflicts with a production-money security interest*
10 *gives new value for the production of the crops, the security interests rank according*
11 *to priority in time of filing under Section 9-319(a).*

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

17 **5. Holder of Agricultural Lien and Production-Money Security Interest.**
18 *Subsection (e) deals with a creditor who holds both an agricultural lien and an Article*
19 *9 production-money security interest in the same collateral. In these cases, the priority*
20 *rules applicable to agricultural liens govern. The creditor can avoid this result by*
21 *waiving its agricultural lien.*