

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*

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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 xxix - xlvi of the draft, contain a useful overview of revised Article
11 9. 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
2
- 3 1. “Consumer-goods transactions” and “consumer transactions.”
- 4 A. Definitions. § 9-102(a)(16), (18).
- 5 B. Proposed compromise solution to consumer-consumer creditor differences.
- 6 1. Background; proposed solution. See Prefatory Comment, 5.i., at xlv.
- 7 2. Deleted provisions. See Prefatory Comment 5.i., at xlv.
- 8 3. Revised provisions. See Prefatory Comment 5.i., at xlv.
- 9 4. Resolution. See Prefatory Comment 5.i., at xlvi.
- 10 5. Additional consumer-related provisions. See Prefatory Comment 5.i., at
11 xlvii.
- 12 2. Filing.
- 13 A. Identity of person who files a record; authorization to file a record; debtor’s
14 right to file termination statement. See Prefatory Comment 5.g., at xxxrx; §
15 9-508.
- 16 B. Deletion of mandatory filing office communication requirement. See Prefatory
17 Comment 5.g., at xli; § 9-520(a).
- 18 C. Extended (30-year) effectiveness of financing statement in a “manufactured-
19 home transaction” or a “public-finance transaction. See Prefatory Comment
20 5.g., at xli; §§ 9-102(a)(37), (44) (definitions); 9-516(c).
- 21 3. Scope of Article 9.
- 22 A. Sales of promissory notes. See Prefatory Comments 5.a., at xxxi; 5.d., at xxxv;
23 5.e., at xxxviii; §§ 9-102(a)(43) (definition); 9-112(a)(3) (scope); 9-308A(a)(4)
24 (automatic perfection); 9-327 (priority).
- 25 B. “Healthcare insurance receivables. See Prefatory Comments 5.a, at xxxi; 5.d.,
26 at xxxv; §§ 9-103(c) (definition); 9-112(a)(3) (scope); 9-308A(12) (limited
27 automatic perfection).

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

1

3. Status and Schedule.

2 The Drafting Committee has met fourteen times (November, 1993; March,
3 1994; September-October, 1994; December, 1994; March, 1995; June, 1995;
4 December, 1995; March, 1996; June, 1996; November, 1996; March, 1997;
5 November, 1997; February, 1998; and March, 1998). Meetings of the ALI Members
6 Consultative Group on Article 9 were held on December 16-17, 1994, November 17,
7 1995, and October 31, 1996. NCCUSL considered the 1995 Annual Meeting Draft of
8 revised Article 9 at its annual meeting in August, 1995, the 1996 Annual Meeting
9 Draft of revised Article 9 at its annual meeting in July, 1996, and the 1997 Annual
10 Meeting Draft of revised Article 9 at its annual meeting in July, 1997. The ALI
11 Council reviewed Council Draft No. 1 (November 15, 1995) at its meeting on
12 December 8, 1995, Council Draft No. 2 (November 15, 1996) at its meeting on
13 December 13, 1996, and Council Draft No. 3 (November 20, 1997) at its meeting on
14 December 11, 1997. The Chair of the Drafting Committee and the Reporters made
15 informational reports to the membership of the ALI during its annual meetings in May,
16 1995, May, 1996, and May, 1997. The draft before the ALI membership at its May,
17 1997, meeting was Discussion Draft No. 2 (April 14, 1997).

18

4. Reorganization and Renumbering; Style.

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

28

5. Summary of Revisions.

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

33

a. Scope of Article 9.

34

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

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

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

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

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

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

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

36 *Support obligations and property securing rights to payment.* The draft also
37 addresses explicitly (i) obligations, such as guaranties and letters of credit, that support

1 payment or performance of collateral such as accounts, chattel paper, and payment
2 intangibles, and (ii) and property (including real property) that secures a right to
3 payment that is subject to an Article 9 security interest. See Sections 9-203, 9-308.

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

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

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

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

29 **b. Choice of Law.**

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

33 *Where to file: Location of debtor.* The draft changes the choice-of-law rule
34 governing perfection (i.e., where to file) for most collateral to the law of the
35 jurisdiction where the debtor is located. See Section 9-301. Under current law, the
36 jurisdiction of the debtor’s location governs only perfection and priority of a security

1 interest in accounts, general intangibles, mobile goods, and, for purposes of perfection
2 by filing, chattel paper and investment property.

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

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

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

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

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

32 **c. Duties of Secured Party.**

33 The draft provides for expanded duties of secured parties.

34 *Release of control.* Section 9-208 of the draft imposes upon a secured party
35 with control over a deposit account, investment property, or letter-of-credit rights the

1 duty to release control when there is no secured obligation and no commitment to give
2 value. Section 9-208A contains analogous provisions when an account debtor has
3 been notified to pay a secured party.

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

7 **d. Perfection.**

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

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

22 *Investment property: Control.* The perfection requirements for “investment
23 property (defined in Section 9-107), including perfection by control under Section 9-
24 108, remain substantially as under current law. However, a new provision in Section
25 9-312 is designed to ensure that a secured party remains in control in “repledge
26 transactions that are typical in the securities markets.

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

35 *Instruments, agricultural liens, and commercial tort claims: Filing.* The draft
36 expands the types of collateral in which a security interest may be perfected by filing

1 to include instruments. See Section 9-310. Agricultural liens and security interests in
2 commercial tort claims also are perfected by filing, under the draft. See Sections 9-308
3 and 9-309.

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

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

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

1 that a perfected security interest in collateral supported by a “support obligation (such
2 as an account supported by a guaranty) also is a perfected security interest in the
3 support obligation, and that a perfected security interest in an obligation secured by a
4 security interest or lien on property (e.g., a real estate mortgage) also is a perfected
5 security interest in the security interest or lien.

6 **e. Priority.**

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

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

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

33 *Software purchase-money security interests.* Section 9-322 contains a new
34 priority rule for a software purchase-money security interest. (The draft incorporates
35 the definition of “software” from Section 2B-102 of the current draft of Article 2B.)
36 A software PMSI is defined in Section 9-104 to include a PMSI in software that is
37 used in goods that are also subject to a PMSI. (Note also that the definition of “chattel

1 paper has been expanded to include records that evidence a monetary obligation and
2 a security interest in or lease of specific goods and software used in the goods.)

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

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

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

34 *Chattel paper and instruments.* Section 9-327 of the draft is the successor to
35 current Section 9-308. After extensive discussions and comment during the last year,
36 the Drafting Committee has settled on revisions to Section 9-327 that appear to reflect
37 a satisfactory balance to all concerned, although the result is a somewhat complicated
38 formulation. As under current Section 9-308, differing priority rules apply to
39 purchasers of chattel paper who give new value and take possession of the collateral

1 depending on whether a conflicting security interest in the collateral is claimed merely
2 as proceeds. The principal difference relates to the role of knowledge and the effect
3 of an indication of a previous assignment on the collateral. In addition, to qualify for
4 priority, purchasers of chattel paper, but not of instruments, must purchase in the
5 ordinary course of their business. Section 9-327 also affords priority to purchasers of
6 instruments who take possession in good faith and without knowledge that the
7 purchase violates the rights of the competing secured party.

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

11 *Miscellaneous priority provisions.* The draft also includes (i) clarifications of
12 selected good-faith-purchase and similar issues (Sections 9-315, 9-317, [9-318]); (ii)
13 new priority rules to deal with the “double debtor” problem arising when a debtor
14 creates a security interest in collateral acquired by the debtor subject to a security
15 interest created by another person (Section 9-323); (iii) new priority rules to deal with
16 the problems created when a change in corporate structure or the like results in a new
17 entity that has become bound by the original debtor’s after-acquired property
18 agreement (Section 9-323A); (iv) a provision enabling most transferees of money to
19 take free of a security interest (Section 9-329); (v) substantially rewritten and refined
20 priority rules dealing with accessions and commingled goods (Sections 9-332, 9-333);
21 (vi) revised priority rules for security interests in goods covered by a certificate of title
22 (Section 9-334); and (vii) provisions designed to ensure that security interests in
23 deposit accounts will not extend to most transferees of funds on deposit or payees from
24 deposit accounts and will not otherwise “clog” the payments system (Sections 9-338,
25 9-339).

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

36 **f. Proceeds.**

37 Section 9-313 of the draft expands the definition of “proceeds” of collateral to
38 include additional rights and property that arise out of collateral, including

1 distributions on account of collateral and claims arising out of the loss or
2 nonconformity of, defects in, or damage to collateral. The term also includes
3 collections on account of “support obligations, such as guarantees.

4 **g. Filing.**

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

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

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

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

31 *Financing statement formal requisites.* The formal requisites for a financing
32 statement are set out in Section 9-502 of the draft. A financing statement must provide
33 the name of the debtor and the secured party and an indication of the collateral that it
34 covers. Sections 9-503 and 9-506 address the sufficiency of a name provided on a
35 financing statement and clarify when a debtor’s name is correct and when an incorrect
36 name is insufficient. Section 9-504 addresses the indication of collateral covered.
37 Under Section 9-504, a super-generic description (e.g., “all assets” or “all personal

1 property) in a financing statement is a sufficient indication of the collateral. (Note,
2 however, that a super-generic description is inadequate for purposes of a security
3 agreement. See Sections 9-111, 9-203.) To facilitate electronic filing, the draft does
4 not require that the debtor's signature or other authorization appear on a financing
5 statement. Instead, it prohibits the filing of unauthorized financing statements and
6 imposes liability upon those who violate the prohibition. See Sections 9-508, 9-624.

7 *Filing office operations.* The draft, as did Discussion Draft No. 2, contains
8 several provisions governing filing operations. First, it prohibits the filing office from
9 rejecting an initial financing statement or other record for a reason other than one of
10 the few set forth in the draft. See Sections 9-521, 9-515. Second, the filing office is
11 obliged to link all subsequent records (e.g., assignments, continuation statements, etc.)
12 to the initial financing statement to which they relate. See Section 9-520. Third, under
13 the draft, the filing office may delete a financing statement and related records from
14 the files no earlier than one year after lapse (lapse normally is five years after the filing
15 date), and then only if a continuation statement has not been filed. See Sections 9-516,
16 9-520, 9-522. Thus, a financing statement and related records would be discovered by
17 a search of the files even after the filing of a termination statement. This approach
18 helps eliminate filing office discretion and also eases problems associated with
19 multiple secured parties and multiple partial assignments. Fourth, the draft mandates
20 performance standards for filing offices. See Section 9-520, 9-521, 9-523. Fifth, it
21 provides for the promulgation of administrative rules to deal with details best left out
22 of the statute and a duty of the filing office to submit periodic reports. See Section 9-
23 528, 9-529.

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

1 *Extended period of effectiveness for certain financing statements.* Section 9-
2 516 contains an exception to the usual rule that financing statements are effective for
3 five years unless a continuation statement is filed to continue the effectiveness for
4 another five years. Under that section, an initial financing statement filed in
5 connection with a “public-finance transaction” or a “manufactured-home transaction
6 (terms defined in Section 9-102) is effective for 30 years.

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

10 **h. Default and Enforcement.**

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

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

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

1 *Disposition of collateral: Warranties of title.* Section 9-610 imposes on a
2 secured party that disposes of collateral the warranties of title, quiet possession, and
3 the like that are otherwise applicable under other law, and it provides rules for the
4 exclusion or modification of those warranties.

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

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

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

32 *Strict foreclosure.* Section 9-618 permits a secured party to accept collateral
33 in partial satisfaction, as well as full satisfaction, of the obligations secured. This right
34 of strict foreclosure extends to intangible as well as tangible property. Section 9-320
35 clarifies the effects of an acceptance of collateral on the rights of junior claimants. It
36 rejects the approach taken by some courts—deeming a secured party to have
37 constructively retained collateral in satisfaction of the secured obligations—in the case
38 of a secured party's unreasonable delay in the disposition of collateral. Instead,
39 unreasonable delay is relevant when determining whether a disposition under Section

1 9-610 is commercially reasonable. (Special consumer-protection rules affecting these
2 provisions are described in section 5.i. below.)

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

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

29 **i. Consumer Transactions.**

30 The draft includes several provisions applicable only to “consumer
31 transactions or “consumer-goods transactions. Each term is defined in Section 9-
32 102.

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

1 emerged proved unsatisfactory to many representatives of both consumers and
2 consumer creditors.

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

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

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

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

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

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

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

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

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

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

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

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

12 (ii) Sections 9-104(f) and (g) (approving “dual status rule for purchase-
13 money security interests (i.e., rejecting “transformation rule) and setting burden of
14 proof) would be applicable only to non-consumer-goods transactions. (During its
15 March, 1998, meeting the Drafting Committee decided that the draft should contain
16 a statutory statement that no implications for consumer-goods transactions should be
17 drawn from the statutory treatment of non-consumer-goods transactions. See Section
18 9-104(i) of this draft.)

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

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

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

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

33 (vii) The comments would be modified to delete any explicit statement that
34 “price” is not a term of a disposition which is required to be commercially reasonable,

1 and an explanatory comment would be added to the effect that a low price mandates
2 enhanced judicial scrutiny of the terms of a disposition.

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

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

22 *Additional consumer-related provisions.*

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

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

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

33 **j. Good Faith.**

34 Section 9-102 contains a new definition of "good faith" that includes not only
35 "honesty in fact" but also "the observance of reasonable commercial standards of fair

1 dealing. The definition is similar to the ones adopted in connection with other,
2 recently completed revisions of the UCC.

3 **k. Transition Provisions.**

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

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

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

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

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

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

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

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

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

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

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

5 **PART 1**

6 **GENERAL PROVISIONS**

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

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

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

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

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

15 (2) “Accounting” means a record:

16 (A) authenticated by a secured party;

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

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

21 (3) “Agricultural lien” means an interest, other than a security interest, in
22 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, payment intangibles, and promissory notes
4 that have been sold.

5 (10) “Commercial tort claim” means a claim arising in tort if:

6 (A) the claimant is an organization; or

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

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

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

11 (11) “Communicate” means to:

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

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

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

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

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

21 (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 \$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 to the extent that:

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

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

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

21 (18) “Consumer transaction means a transaction to the extent that:

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

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

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

6 (19) “Debtor means:

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

9 (B) a seller of accounts, chattel paper, payment intangibles, or
10 promissory notes; or

11 (C) a consignee.

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

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

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

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

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

3 (25) “Filing office means an office designated in Section 9-501 as the
4 place to file a financing statement.

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

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

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

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

15 (30) “Goods :

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

17 (B) includes:

18 (i) fixtures;

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

21 (iii) the unborn young of animals; and

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

3 (C) does not include accounts, chattel paper, deposit accounts,
4 documents, general intangibles, instruments, investment property, letter-of-credit
5 rights, money, or oil, gas, or other minerals before extraction.

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

11 ‘s (32) “Instrument :

12 (A) means:

13 (i) a negotiable instrument; or

14 (ii) any other writing that:

15 (I) evidences a right to the payment of a monetary obligation;

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

17 (III) is of a type that in ordinary course of business is transferred

18 by delivery with any necessary indorsement or assignment; and

19 (B) does not include:

20 (i) investment property; or

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

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

1 (33) “Jurisdiction of organization, with respect to a registered
2 organization, means the jurisdiction under whose law the organization is organized.

3 (34) “Letter-of-credit right means a right to payment and performance
4 under a letter of credit. The term does not include the right of a beneficiary to demand
5 payment or performance under a letter of credit.

6 (35) “Lien creditor means a creditor that has acquired a lien on the
7 property involved by attachment, levy, or the like. The term includes:

- 8 (A) an assignee for benefit of creditors from the time of assignment;
- 9 (B) a trustee in bankruptcy from the date of the filing of the petition;
- 10 and
- 11 (C) a receiver in equity from the time of appointment.

12 (36) “Manufactured home means a structure, transportable in one or more
13 sections, which in the traveling mode, is eight body feet or more in width or forty body
14 feet or more in length, or, when erected on site, is three hundred twenty or more square
15 feet, and which is built on a permanent chassis and designed to be used as a dwelling
16 with or without a permanent foundation when connected to the required utilities, and
17 includes the plumbing, heating, air-conditioning, and electrical systems contained
18 therein; except that such term shall include any structure which meets all the
19 requirements of this paragraph except the size requirements and with respect to which
20 the manufacturer voluntarily files a certification required by the United States
21 Secretary of Housing and Urban Development and complies with the standards
22 established under Title 42, United States Code.

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

2 (A) that creates a purchase-money security interest in a manufactured

3 home; or

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

5 (38) “Mortgage means a consensual interest in real property, including

6 fixtures, which is created by a mortgage, trust deed, or similar transaction.

7 (39) “New debtor means a person that becomes bound as debtor under

8 Section 9-203(c) by a security agreement previously entered into by another person.

9 (40) “New value :

10 (A) means:

11 (i) money;

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

13 (iii) release by a transferee of an interest in property previously

14 transferred to the transferee; and

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

1 (41) “Obligor :

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (50) “Secured party” means:
- 2 (A) a person in whose favor a security interest is created or provided for
- 3 under a security agreement, whether or not any obligation to be secured is outstanding;
- 4 (B) a person that holds an agricultural lien;
- 5 (C) a consignor;
- 6 (D) a person to which accounts, chattel paper, payment intangibles, or
- 7 promissory notes have been sold; or
- 8 (E) if a security interest or agricultural lien is created or provided for
- 9 in favor of a trustee, indenture trustee, agent, collateral agent, or other representative,
- 10 that representative.
- 11 (51) “Security agreement” means an agreement that creates or provides for
- 12 a security interest.
- 13 (52) “State” means a State of the United States, the District of Columbia,
- 14 Puerto Rico, the United States Virgin Islands, or any territory or insular possession
- 15 subject to the jurisdiction of the United States.
- 16 (53) “Support obligation” means a secondary obligation or letter-of-credit
- 17 right that supports the payment or performance of an account, chattel paper, general
- 18 intangible, document, healthcare insurance receivable, instrument, or investment
- 19 property.
- 20 (54) “Tangible chattel paper” means chattel paper evidenced by a record
- 21 or records consisting of information that is inscribed on a tangible medium.

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

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

4 (B) transmitting electric or electronic communications;

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

6 (D) transmitting or producing and transmitting electricity, steam, gas,
7 or water.

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

10 “Account Section 9-103.

11 “Attach Section 9-203.

12 “Becomes Bound Section 9-203.

13 “Cash proceeds Section 9-313.

14 “Commodity account Section 9-107.

15 “Commodity contract Section 9-107.

16 “Commodity customer Section 9-107.

17 “Commodity intermediary Section 9-107.

18 “Construction mortgage Section 9-331.

19 “Consumer goods Section 9-106.

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

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

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

1	“Control (letter-of-credit right)	Section 9-110.
2	“Crops	Section 9-106.
3	“Equipment	Section 9-106.
4	“Farm products	Section 9-106.
5	“General intangibles	Section 9-103.
6	“Healthcare insurance receivable	Section 9-103.
7	“Inventory	Section 9-106.
8	“Investment property	Section 9-107.
9	“Livestock	Section 9-106.
10	“Noncash proceeds	Section 9-313.
11	“Payment intangible	Section 9-103.
12	“Proceeds	Section 9-313.
13	“Purchase-money security interest	Section 9-104.
14	“Purchase-money collateral	Section 9-104.
15	“Purchase-money obligation	Section 9-104.
16	“Request for an accounting	Section 9-209.
17	“Request regarding a list of collateral	Section 9-209.
18	“Request regarding a statement of	
19	account	Section 9-209.
20	“Secured party of record	Section 9-509A.
21	“Transfer statement	Section 9-617.

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

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

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

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

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

19 (a) “Account :

20 (1) means a right to payment of a monetary obligation, whether or not
21 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 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, and money. The term includes
21 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 of a monetary obligation for healthcare
3 goods or services provided.

4 (d) “Payment intangible” means a general intangible under which the account
5 debtor's principal obligation is a monetary obligation.

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

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

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

15 (c) A security interest in goods is a purchase-money security interest:

16 (1) to the extent that the goods are purchase-money collateral;

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

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

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

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

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

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

14 (f) In a transaction other than a consumer-goods transaction, if the extent to
15 which a security interest is a purchase-money security interest depends on the
16 application of a payment to a particular obligation, the payment must be applied:

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

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

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

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

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

7 (g) In a transaction other than a consumer-goods transaction, a purchase-
8 money security interest does not lose its status as such even if:

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

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

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

15 (h) In a transaction other than a consumer-goods transaction, a secured party
16 claiming a purchase-money security interest has the burden of establishing the extent
17 to which the security interest is a purchase-money security interest.

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

1 **SECTION 9-105.**

2 [deleted]

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

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

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

9 (c) “Farm products :

10 (1) means goods:

11 (A) that are:

12 (i) crops grown, growing, or to be grown, including crops produced
13 on trees, vines, and bushes and aquatic goods produced in aquacultural operations;

14 (ii) livestock, born or unborn, including aquatic goods produced in
15 aquacultural operations;

16 (iii) supplies used or produced in a farming operation; or

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

18 and

19 (B) with respect to which the debtor is engaged in a farming operation;

20 and

21 (2) does not include standing timber.

22 (d) “Inventory :

- 1 (1) means goods that:
- 2 (A) are leased by a person to another person;
- 3 (B) are held by a person for sale or lease or to be furnished under
- 4 contracts of service;
- 5 (C) are furnished by a person under contracts of service; or
- 6 (D) consist of raw materials, work in process, or materials used or
- 7 consumed in a business; and
- 8 (2) does not include farm products.

9 **SECTION 9-107. DEFINITIONS: “COMMODITY ACCOUNT”;**

10 **“COMMODITY CONTRACT”; “COMMODITY CUSTOMER”;**

11 **“COMMODITY INTERMEDIARY”; “INVESTMENT PROPERTY.”**

12 (a) “Commodity account means an account maintained by a commodity

13 intermediary in which a commodity contract is carried for a commodity customer.

14 (b) “Commodity contract means a commodity futures contract, an option on

15 a commodity futures contract, a commodity option, or another contract if the contract

16 or option is:

17 (1) traded on or subject to the rules of a board of trade that has been

18 designated as a contract market for such a contract pursuant to federal commodities

19 laws; or

20 (2) traded on a foreign commodity board of trade, exchange, or market, and

21 is carried on the books of a commodity intermediary for a commodity customer.

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

3 (d) “Commodity intermediary means:

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

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

9 (e) “Investment property means a security, whether certificated or
10 uncertificated, security entitlement, securities account, commodity contract, or
11 commodity account.

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

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

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

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

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

1 (c) A secured party that has control over all security entitlements or
2 commodity contracts carried in a securities account or commodity account has control
3 over the securities account or commodity account.

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

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

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

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

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

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

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

1 **SECTION 9-110A. CONTROL OVER ELECTRONIC CHATTEL PAPER.**

2 A secured party has control over electronic chattel paper if the record or records
3 comprising the chattel paper are created, stored, and transferred in a manner such that:

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

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

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

11 (4) copies or revisions that change the designation of the assignee of the
12 authoritative copy can be made only with the consent of the secured party;

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

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

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

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

5 (b) Except as otherwise provided in subsection (d), a description of collateral
6 reasonably identifies the collateral if it identifies the collateral by:

7 (1) specific listing;

8 (2) category;

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

11 (4) quantity;

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

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

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

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

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

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

1 (e) A description only by type of collateral defined in the [Uniform
2 Commercial Code] is an insufficient description of:

- 3 (1) a commercial tort claim; or
4 (2) in a consumer transaction, consumer goods, a security entitlement,
5 securities account, or commodity account.

6 [SUBPART 2. APPLICABILITY OF ARTICLE]

7 **SECTION 9-112. SCOPE.**

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

- 10 (1) any transaction, regardless of its form, that creates a security interest in
11 personal property or fixtures by contract;
12 (2) an agricultural lien;
13 (3) a sale of an account, chattel paper, payment intangible, or promissory
14 note; and
15 (4) a consignment.

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

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

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

1 (2) another statute of this State expressly governs the creation, perfection,
2 priority, or enforcement of a security interest created by this State or a governmental
3 unit of this State;

4 (3) a statute of another State, a foreign country, or a governmental unit of
5 another State or a foreign country, other than a statute generally applicable to security
6 interests, expressly governs creation, perfection, priority, or enforcement of a security
7 interest created by the State, country, or governmental unit.

8 (d) This article does not apply to:

9 (1) a landlord's lien, other than an agricultural lien;

10 (2) a lien given by statute or other rule of law for services or materials,
11 except:

12 (A) that Section 9-330 applies with respect to priority of the lien; and

13 (B) an agricultural lien;

14 (3) a transfer of a claim for wages, salary, or other compensation of an
15 employee;

16 (4) a sale of accounts, chattel paper, payment intangibles, or promissory
17 notes as part of a sale of the business out of which they arose;

18 (5) an assignment of accounts, chattel paper, payment intangibles, or
19 promissory notes which is for the purpose of collection only;

20 (6) an assignment of a right to payment under a contract to an assignee that
21 is also obliged to perform under the contract;

- 1 (7) an assignment of a single account, payment intangible, or promissory
2 note to an assignee in whole or partial satisfaction of a preexisting indebtedness;
- 3 (8) a transfer of an interest in or claim under a policy of insurance, except:
4 (A) a transfer by or to a healthcare provider of a healthcare insurance
5 receivable and any subsequent transfer of the right to payment; and
6 (B) that Sections 9-313 and 9-319 apply with respect to proceeds and
7 priorities in proceeds;
- 8 (9) a right represented by a judgment, other than a judgment taken on a
9 right to payment that was collateral;
- 10 (10) a right of recoupment or set-off, except that:
11 (A) Section 9-337 applies with respect to the effectiveness of rights of
12 recoupment or set-off against deposit accounts; and
13 (B) Section 9-404 applies with respect to defenses or claims of an
14 account debtor;
- 15 (11) the creation or transfer of an interest in or lien on real property,
16 including a lease or rents thereunder, except to the extent that provision is made for:
17 (A) liens on real property in Sections 9-203 and 9-308,
18 (B) fixtures in Section 9-331;
19 (C) fixture filings in Sections 9-501, 9-502, 9-512, 9-516, and 9-520;
20 and
21 (D) security agreements covering personal and real property in Section
22 9-604;

1 (12) a transfer of a claim arising in tort, except:
2 (A) a transfer of a commercial tort claim; and
3 (B) that Sections 9-313 and 9-319 apply with respect to proceeds and
4 priorities in proceeds; or
5 (13) a transfer of an interest in a deposit account in a consumer transaction,
6 except that Sections 9-313 and 9-319 apply with respect to proceeds and priorities in
7 proceeds.

8 **SECTION 9-113.**

9 [deleted]

10 **SECTION 9-114.**

11 [deleted]

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

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

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

19 **SECTION 9-116. SECURITY INTERESTS ARISING UNDER ARTICLE**

20 **2 OR 2A.** A security interest arising under Section 2-401, 2-505, 2-711(3), or 2A-
21 508(5) is subject to this article. However, as long as the debtor does not obtain
22 possession of the goods:

- 1 (1) the security interest is enforceable even if the requirements of Section
- 2 9-203(b)(3) have not been met;
- 3 (2) filing is not required to perfect the security interest; and
- 4 (3) the rights of the secured party on default by the debtor are governed by
- 5 Article 2 or 2A, as applicable; and
- 6 (4) the security interest has priority over a conflicting security interest
- 7 created by the debtor.

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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.

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

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

1 **SECTION 9-203. ATTACHMENT AND ENFORCEABILITY OF**
2 **SECURITY INTEREST; PROCEEDS; SUPPORT OBLIGATIONS; FORMAL**
3 **REQUISITES.**

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

7 (b) Except as otherwise provided in subsections (c), (d), and (e), and Section
8 4-210 on the security interest of a collecting bank, Section 5-118 on the security
9 interest of a letter of credit issuer or nominated person, Section 9-116 on a security
10 interest arising under Article 2 or 2A, and Section 9-206 on security interests in
11 investment property, a security interest is enforceable against the debtor and third
12 parties with respect to the collateral only if :

13 (1) value has been given;

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

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

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

20 (B) the collateral is in the possession of the secured party under Section
21 9-311 pursuant to the debtor's security agreement;

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

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

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

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

11 (2) the person:

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

14 (B) acquires or succeeds to all or substantially all of the assets of the
15 other person.

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

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

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

1 (e) The attachment of a security interest in collateral gives the secured party
2 the rights to proceeds provided by Section 9-313 and is also attachment of a security
3 interest in a support obligation for the collateral.

4 (f) The attachment of a security interest in a securities account is also
5 attachment of a security interest in the security entitlements carried in the securities
6 account;

7 (g) The attachment of a security interest in a commodity account is also
8 attachment of a security interest in the commodity contracts carried in the commodity
9 account.

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

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

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

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

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

22 (2) a commercial tort claim.

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

4 **SECTION 9-205. USE OR DISPOSITION OF COLLATERAL WITHOUT**
5 **ACCOUNTING PERMISSIBLE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (1) the security or other financial asset is:

12 (A) in the ordinary course of business transferred by delivery with any
13 necessary indorsement or assignment; and

14 (B) delivered under an agreement between persons in the business of
15 dealing with such securities or financial assets; and

16 (2) the agreement calls for delivery against payment.

17 (d) The security interest described in subsection (c) secures the person's
18 obligation to make payment to the seller.

19 [SUBPART 2. RIGHTS AND DUTIES]

20 **SECTION 9-207. RIGHTS AND DUTIES OF SECURED PARTY HAVING**
21 **POSSESSION OF OR CONTROL OVER COLLATERAL.**

1 (a) A secured party shall use reasonable care in the custody and preservation
2 of collateral in the secured party's possession if the secured party:

3 (1) is not a buyer of accounts, chattel paper, or payment intangibles or a
4 consignor; or

5 (2) is a buyer of accounts, chattel paper, or payment intangibles which is
6 entitled by agreement:

7 (A) to charge back uncollected collateral; or

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

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

- 1 (c) If a secured party has possession of collateral:
- 2 (1) reasonable expenses, including the cost of insurance and payment of
- 3 taxes or other charges, incurred in the custody, preservation, use, or operation of the
- 4 collateral are chargeable to the debtor and are secured by the collateral;
- 5 (2) the risk of accidental loss or damage is on the debtor to the extent of a
- 6 deficiency in any effective insurance coverage;
- 7 (3) the secured party shall keep the collateral identifiable, but fungible
- 8 collateral may be commingled; and
- 9 (4) the secured party may use or operate the collateral:
- 10 (A) for the purpose of preserving the collateral or its value;
- 11 (B) as permitted by an order of a court of appropriate jurisdiction;
- 12 or
- 13 (C) except in the case of consumer goods, in the manner and to the
- 14 extent agreed by the debtor.
- 15 (d) If a secured party has possession of or control over collateral, the secured
- 16 party:
- 17 (1) may hold as additional security any proceeds, except money or funds,
- 18 received from the collateral;
- 19 (2) shall apply money or funds received under paragraph (1) to reduce the
- 20 secured obligation, unless remitted to the debtor; and
- 21 (3) may create a security interest in the collateral.

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

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

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

6 **SECTION 9-208. ADDITIONAL DUTIES OF SECURED PARTY HAVING**
7 **CONTROL OVER COLLATERAL.**

8 (a) This section applies if:

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

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

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

13 (1) a secured party that has control over investment property under Section
14 8-106(d)(2) or 9-108(b) shall send the securities intermediary or commodity
15 intermediary with which the security entitlement or commodity contract is maintained
16 an authenticated record that releases the securities intermediary or commodity
17 intermediary from any further obligation to comply with entitlement orders or
18 directions originated by the secured party;

19 (2) a secured party that has control over a deposit account under Section
20 9-109(a)(2) shall send the bank with which the deposit account is maintained an
21 authenticated statement that releases the bank from any further obligation to comply
22 with instructions originated by the secured party;

1 (3) a secured party that has control over a deposit account under Section
2 9-109(a)(3) shall:

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

4 (B) transfer the balance on deposit into a deposit account in the debtor's
5 name; and

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

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

13 (a) Except as otherwise provided in subsection (c), 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 the secured party receives an authenticated demand
18 by the debtor, the secured party shall send to an account debtor that has received
19 notification of an assignment to the secured party as assignee under Section 9-404B(a)
20 an authenticated record that releases the account debtor from any further obligation to
21 the secured party.

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

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

5 (a) In this section:

6 (1) “Request means a record of a type described in paragraphs (2), (3), or
7 (4).

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

12 (3) “Request regarding a list of collateral means a record authenticated
13 by a debtor requesting that the recipient approve or correct a list of what the debtor
14 believes to be the collateral securing an obligation and reasonably identifying the
15 transaction or relationship that is the subject of the request.

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

21 (b) Subject to subsections (c), (d), and (e), a secured party shall comply with
22 a request within two weeks after receipt by authenticating and sending to the debtor

1 a correction or approval or an accounting, as applicable. This subsection does not
2 apply to a secured party that is a buyer of accounts, chattel paper, or payment
3 intangibles.

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

8 (d) A person that receives a request regarding a list of collateral, claims no
9 interest in the collateral when it receives the request, and claimed an interest in the
10 collateral at an earlier time shall comply with the request within two weeks after
11 receipt by sending to the debtor an authenticated record:

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

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

15 (e) A person that receives a request for an accounting or a request regarding
16 a statement of account, claims no interest in the obligations when it receives the
17 request, and claimed an interest in the obligations at an earlier time shall comply with
18 the request within two weeks after receipt by sending to the debtor an authenticated
19 record:

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

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

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

1 **PART 3**

2 **PERFECTION AND PRIORITY OF SECURITY INTERESTS**

3 [SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY]

4 **SECTION 9-301. LAW GOVERNING PERFECTION AND PRIORITY OF**
5 **SECURITY INTERESTS.** Except as otherwise provided in Sections 9-303 through
6 9-305, the following rules determine the law governing perfection, the effect of
7 perfection or nonperfection, and the priority of a security interest in collateral:

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

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

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

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

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

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

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

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

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

13 (b) The local law of the jurisdiction under whose certificate of title the goods
14 are covered governs perfection, the effect of perfection or nonperfection, and the
15 priority of a security interest in goods covered by a certificate of title from the time the
16 goods become covered by the certificate until the earlier of the time the certificate
17 becomes ineffective under the law of that jurisdiction or the time the goods become
18 covered subsequently by a certificate of title from another jurisdiction. After that time,
19 the goods are not covered by the first certificate of title.

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

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

3 (a) The local law of a bank’s jurisdiction governs perfection, the effect of
4 perfection or nonperfection, and the priority of a security interest in a deposit account
5 maintained with that bank.

6 (b) The following rules determine a bank’s jurisdiction for purposes of this
7 section:

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

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

14 (3) If neither paragraph (1) nor paragraph (2) applies and an agreement
15 between the bank and its customer expressly provides that the deposit account is
16 maintained at an office in a particular jurisdiction, that jurisdiction is the bank’s
17 jurisdiction.

18 (4) If none of paragraph (1), (2), or (3) applies, the bank’s jurisdiction is
19 the jurisdiction in which is located the office identified in an account statement as the
20 office serving the customer’s account.

21 (4) If none of the preceding paragraphs applies, the bank’s jurisdiction is
22 the jurisdiction in which is located the chief executive office of the bank.

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

3 (a) Subject to subsection (c), the local law of the issuer’s jurisdiction or a
4 nominated person’s jurisdiction governs perfection, the effect of perfection or
5 nonperfection, and the priority of a security interest in a letter-of-credit right if the
6 issuer’s jurisdiction or nominated person’s jurisdiction is a State.

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

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

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

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

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

18 (2) The local law of the issuer’s jurisdiction as specified in Section
19 8-110(d) governs perfection, the effect of perfection or nonperfection, and the priority
20 of a security interest in an uncertificated security.

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

4 (4) The local law of the commodity intermediary’s jurisdiction governs
5 perfection, the effect of perfection or nonperfection, and the priority of a security
6 interest in a commodity contract or commodity account.

7 (5) The following rules determine a commodity intermediary’s jurisdiction
8 for purposes of paragraph 4 and Section 9-314:

9 (A) If an agreement between the commodity intermediary and
10 commodity customer expressly provides the commodity intermediary’s jurisdiction for
11 purposes of this part, this article, or [the Uniform Commercial Code], that jurisdiction
12 is the commodity intermediary’s jurisdiction.

13 (B) If subparagraph (A) does not apply and an agreement between the
14 commodity intermediary and commodity customer expressly provides that it is
15 governed by the law of a particular jurisdiction, that jurisdiction is the commodity
16 intermediary’s jurisdiction.

17 (C) If neither subparagraph (A) nor subparagraph (B) applies and an
18 agreement between the commodity intermediary and commodity customer expressly
19 provides that the commodity account is maintained at an office in a particular
20 jurisdiction, that jurisdiction is the commodity intermediary’s jurisdiction.

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

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

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

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

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

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

13 **SECTION 9-306.**

14 [deleted]

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

16 (a) In this section, a "place of business" is a place where a debtor conducts its
17 affairs.

18 (b) Except as otherwise provided in this section, the following rules determine
19 a debtor's location:

20 (1) An individual debtor is located at the individual's residence.

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

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

3 (c) Subsection (b) applies only if a debtor’s residence, place of business, or
4 chief executive office, as applicable, is located either in a State or in a jurisdiction,
5 other than a State, whose law requires information concerning the existence of a
6 security interest to be made publicly available as a condition or result of the security
7 interest’s obtaining priority over the rights of a lien creditor with respect to the
8 collateral. If subsection (b) does not apply, the debtor is located in the District of
9 Columbia.

10 (d) A registered organization that is organized under the law of a State is
11 located in that State.

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

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

17 (2) in the State that the registered organization designates, if the law of the
18 United States authorizes the registered organization to designate its State of location;
19 or

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

1 (f) A registered organization continues to be located in the jurisdiction
2 specified by subsection (d) or (e) notwithstanding:

3 (1) the suspension, revocation, forfeiture, or lapse of the registered
4 organization's status as such in its jurisdiction of organization; or

5 (2) the dissolution of the registered organization.

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

7 (h) A branch or agency of a bank that is not organized under the law of the
8 United States or a State is located in the State in which the branch or agency is
9 licensed, if the branches or agencies of the bank are licensed in only one State.

10 (i) A foreign air carrier under the Federal Aviation Act of 1958, as amended,
11 is located at the designated office of the agent upon which service of process may be
12 made on behalf of the carrier.

13 (j) This section applies only for purposes of this part.

1 [SUBPART 2. PERFECTION]

2 **SECTION 9-308. WHEN SECURITY INTEREST OR AGRICULTURAL**
3 **LIEN IS PERFECTED; CONTINUITY OF PERFECTION.**

4 (a) Except as otherwise provided in this section and Section 9-308A, a security
5 interest is perfected if it has attached and all of the applicable requirements for
6 perfection in Sections 9-309 through 9-314A have been satisfied. A security interest
7 is perfected when it attaches if the applicable requirements are satisfied before the
8 security interest attaches.

9 (b) An agricultural lien is perfected if it has become effective and all of the
10 applicable requirements for perfection in Sections 9-309 and 9-314A have been
11 satisfied. An agricultural lien is perfected when it becomes effective if the applicable
12 requirements are satisfied before the statutory lien becomes effective.

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

16 (d) Perfection of a security interest in collateral also perfects a security interest
17 in a support obligation for the collateral.

18 (e) Perfection of a security interest in a securities account also perfects a
19 security interest in the security entitlements carried in the securities account;

20 (f) Perfection of a security interest in a commodity account also perfects a
21 security interest in the commodity contracts carried in the commodity account.

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

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

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

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

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

14 (3) a sale of a payment intangible;

15 (4) a sale of a promissory note;

16 (5) a security interest created by the transfer of a healthcare insurance
17 receivable to the provider of the healthcare goods or services; and

18 (6) a security interest arising under Section 2-401, 2-505, 2-711(3), or 2A-
19 508(5), until the debtor obtains possession of the collateral;

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

21 (8) a security interest of an issuer or nominated person arising under Section

22 5-118.

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

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

5 (11) a security interest in a commodity contract or a commodity account created
6 by a commodity intermediary;

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

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

11 **SECTION 9-309. WHEN FILING REQUIRED TO PERFECT SECURITY**
12 **INTEREST OR AGRICULTURAL LIEN; SECURITY INTERESTS AND**
13 **AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT**
14 **APPLY.**

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

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

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

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

21 (3) in property subject to a statute, regulation, or treaty described in Section
22 9-309A(a);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (c) Except as otherwise provided in subsection (e) and Sections 9-311 and
16 9-314(d) and (e) for goods covered by a certificate of title, a security interest in
17 property subject to a statute, regulation, or treaty described in subsection (a) may be
18 perfected only by compliance with those requirements, and a security interest so
19 perfected remains perfected notwithstanding a change in the use or transfer of
20 possession of the collateral.

21 (d) Except as otherwise provided in subsection (e) and Section 9-314(d) and
22 (e), duration and renewal of perfection of a security interest perfected by compliance

1 with the requirements prescribed by a statute, regulation, or treaty described in
2 subsection (a) are governed by the statute, regulation, or treaty. In other respects the
3 security interest is subject to this article.

4 (e) During any period in which collateral is inventory held for sale or lease by
5 a person or leased by that person as lessor and that person is in the business of selling
6 or leasing goods of that kind, this section does not apply to a security interest in that
7 collateral created by that person as debtor.

8 **SECTION 9-310. PERFECTION OF SECURITY INTERESTS IN**
9 **INSTRUMENTS, CHATTEL PAPER, INVESTMENT PROPERTY,**
10 **DOCUMENTS, MONEY, DEPOSIT ACCOUNTS, LETTER-OF-CREDIT**
11 **RIGHTS, AND GOODS COVERED BY DOCUMENTS; PERFECTION BY**
12 **PERMISSIVE FILING; TEMPORARY PERFECTION WITHOUT FILING OR**
13 **TRANSFER OF POSSESSION.**

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

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

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

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

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

1 (c) While goods are in the possession of a bailee that has issued a negotiable
2 document covering the goods:

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

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

7 (d) A security interest in goods in the possession of a bailee that has issued a
8 non-negotiable document covering the goods is perfected by:

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

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

11 (3) filing as to the goods.

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

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

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

22 (A) ultimate sale or exchange; or

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

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

7 (A) ultimate sale or exchange; or

8 (B) presentation, collection, enforcement, renewal, or registration of
9 transfer.

10 (g) After the 20-day period specified in subsection (e) or (f) expires, perfection
11 depends upon compliance with this article.

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

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

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

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

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

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

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

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

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

17 (e) A security interest is perfected by possession when the secured party takes
18 possession and remains perfected by possession only while the secured party retains
19 possession.

20 (f) A security interest in a certificated security is perfected by delivery when
21 delivery of the certificated security occurs under Section 8-301 and remains perfected
22 by delivery until the debtor obtains possession of the security certificate.

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

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

5 (1) the acknowledgment is effective under subsection (c) or Section 8-
6 301(a) even if the acknowledgment violates the rights of a debtor; and

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

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

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

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

19 (b) A security interest in a deposit account, electronic chattel paper, or a letter-
20 of-credit right is perfected by control when the secured party obtains control and
21 remains perfected by control only while the secured party retains control.

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,
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; 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) the proceeds are not acquired with cash proceeds;

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

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

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

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

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

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

1 **SECTION 9-314. CONTINUED PERFECTION OF SECURITY INTEREST**
2 **OR AGRICULTURAL LIEN FOLLOWING CHANGE IN APPLICABLE LAW.**

3 (a) A security interest perfected pursuant to the law designated in Section
4 9-301(1) or 9-305(b) or an agricultural lien perfected pursuant to the law designated
5 in Section 9-302 remains perfected until the earliest of:

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (f) A security interest in deposit accounts, letter-of-credit rights, or investment
20 property perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a
21 nominated person's jurisdiction, the securities intermediary's jurisdiction, or the

1 commodity intermediary's jurisdiction, as applicable remains perfected until the earlier
2 of:

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

5 (2) the expiration of four months after a change of the applicable
6 jurisdiction.

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

13 [SUBPART 3. PRIORITY]

14 **SECTION 9-315. INTERESTS THAT TAKE PRIORITY OVER AND**
15 **TAKE FREE OF UNPERFECTED SECURITY INTEREST OR**
16 **AGRICULTURAL LIEN.**

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

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

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

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

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

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

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

16 **SECTION 9-315A. RIGHTS AND TITLE OF CONSIGNEE AND SELLER**
17 **OF ACCOUNT OR CHATTEL PAPER WITH RESPECT TO CREDITORS**
18 **AND PURCHASERS.**

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

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

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

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

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

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

- 16 (1) without knowledge of the security interest;
- 17 (2) for value;
- 18 (3) for the buyer's own personal, family, or household purposes; and
- 19 (4) before a person files a financing statement covering the goods.

20 (c) To the extent that it affects the priority of a security interest over a buyer
21 of consumer goods under subsection (b), the period of effectiveness of a filing made

1 in the jurisdiction in which the debtor is located is governed by Section 9-314(a) and
2 (b).

3 (d) A buyer in ordinary course of business buying oil, gas, or other minerals
4 at the wellhead or minehead or after extraction takes free of an interest arising out of
5 an encumbrance.

6 (e) Subsections (a) and (b) do not affect a security interest in goods in the
7 possession of the secured party under Section 9-311.

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

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

13 [To be moved from Article 2B]

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

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

21 (1) Conflicting security interests and agricultural liens rank according to
22 priority in time of filing or perfection. Priority dates from the earlier of the time a

1 filing covering the collateral is first made or the security interest or agricultural lien is
2 first perfected, if there is no period thereafter when there is neither filing nor
3 perfection.

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

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

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

12 (1) cash proceeds of the collateral; and

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

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

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

1 (f) If a statute under which an agricultural lien in collateral is created provides
2 that the agricultural lien has priority over a conflicting security interest or agricultural
3 lien in the same collateral, the statute governs priority if the agricultural lien is
4 perfected.

5 **SECTION 9-319A.**

6 [deleted]

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

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

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

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

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

20 (1) without knowledge of the lien; or

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

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

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

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

8 (2) 45 days after the purchase.

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

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

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

16 (2) 45 days after the lease contract becomes enforceable.

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

20 **SECTION 9-321.**

21 [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 as all or part of the
15 price of the collateral has priority over a security interest securing an obligation
16 incurred for value given to enable the debtor to acquire rights in or the use of
17 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 security interest created by a debtor is
5 subordinate to a security interest in the same collateral created by another person,
6 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.

1 **SECTION 9-323A. PRIORITY OF SECURITY INTERESTS CREATED BY**
2 **NEW DEBTOR.**

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

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

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

13 (1) A security interest of a secured party that has control over investment
14 property has priority over a security interest of a secured party that does not have
15 control over the investment property.

16 (2) A possessory security interest in a certificated security in registered form
17 which is perfected under Section 9-311(a) has priority over a conflicting security
18 interest perfected by a method other than control.

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

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

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

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

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

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

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

17 (2) Except as otherwise provided in paragraphs (3) and (4), security interests
18 perfected by control rank according to priority in time of obtaining control.

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

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

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

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

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

11 (B) security interests perfected by control rank according to priority in time
12 of obtaining control.

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

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

17 (a) A purchaser of chattel paper has priority over a security interest in the
18 chattel paper is claimed merely as proceeds of inventory subject to a security interest
19 and, except as otherwise provided in Section 9-325, in proceeds of the chattel paper
20 if:

1 (1) in good faith and in the ordinary course of the purchaser's business, the
2 purchaser gives new value and takes possession or obtains control of the chattel paper;
3 and

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

6 (b) A purchaser of chattel paper has priority over a security interest in the
7 chattel paper which is claimed other than merely as proceeds of inventory subject to
8 a security interest and, except as otherwise provided in Section 9-325, in proceeds of
9 the chattel paper if the purchaser gives new value and takes possession or obtains
10 control of the chattel paper in good faith, in the ordinary course of the purchaser's
11 business, and without knowledge that the purchase violates the rights of the secured
12 party.

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

18 (d) For purposes of subsections (b) and (c), if chattel paper or an instrument
19 indicates that it has been assigned to an identified assignee other than the purchaser,
20 a purchaser of the chattel paper or instrument has knowledge that the purchase violates
21 the rights of the secured party.

1 (e) For purposes of this section, the holder of a purchase-money security
2 interest in inventory gives new value for chattel paper constituting proceeds of the
3 inventory.

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

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

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

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

18 **SECTION 9-329. TRANSFER OF MONEY; TRANSFER OF FUNDS FROM**
19 **DEPOSIT ACCOUNT.**

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

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

4 **SECTION 9-330. PRIORITY OF CERTAIN LIENS ARISING BY**
5 **OPERATION OF LAW.**

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

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

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

12 (3) the effectiveness of which depends on the person’s possession of the
13 goods.

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

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

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

20 (b) A security interest under this article may be created in goods that are
21 fixtures or may continue in goods that become fixtures. A security interest does not

1 exist under this article in ordinary building materials incorporated into an improvement
2 on land.

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

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

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

12 (1) the security interest is a purchase-money security interest;

13 (2) the interest of the encumbrancer or owner arises before the goods
14 become fixtures; and

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

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

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

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

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

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

5 (A) factory or office machines;

6 (B) equipment that is not primarily used or leased for use in the
7 operation of the real property; or

8 (C) replacements of domestic appliances that are consumer goods;

9 (3) the conflicting interest is a lien on the real property obtained by legal
10 or equitable proceedings after the security interest was perfected by any method
11 permitted by this article; or

12 (4) the security interest is:

13 (A) created in a manufactured home in a manufactured-home
14 transaction; and

15 (B) perfected [pursuant to a statute described in Section 9-309A(a)(2).

16 (g) A security interest in fixtures, whether or not perfected, has priority over
17 a conflicting interest of an encumbrancer or owner of the real property if:

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

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

1 (h) The priority of the security interest under subsection (g) continues for a
2 reasonable time if the debtor's right to remove the goods as against the encumbrancer
3 or owner terminates.

4 (i) Except as otherwise provided in subsections (f) and (g), a security interest
5 in fixtures is subordinate to a construction mortgage recorded before the goods become
6 fixtures if the goods become fixtures before the completion of the construction. A
7 mortgage has this priority to the same extent as a construction mortgage to the extent
8 that it is given to refinance a construction mortgage.

9 **SECTION 9-332. ACCESSIONS.**

10 (a) “Accession means goods that are physically united with other goods in a
11 manner such that the identity of the original goods is not lost.

12 (b) A security interest may be created in an accession and continues in
13 collateral that becomes an accession.

14 (c) If a security interest is perfected when the collateral becomes an accession,
15 the security interest remains perfected in the collateral.

16 (d) Except as otherwise provided in subsection (e), the other provisions of this
17 part determine the priority of a security interest in an accession.

18 (e) A security interest in an accession is subordinate to a security interest in the
19 whole which is perfected by compliance with the requirements of a certificate-of-title
20 statute under Section 9-309A(d).

1 (f) On default, subject to Part 6, a secured party may remove an accession from
2 other goods if the security interest in the accession has priority over the claims of every
3 person having an interest in the whole.

4 (g) A secured party that removes an accession from other goods under
5 subsection (f) shall promptly reimburse any encumbrancer or owner of the whole or
6 of the other goods, other than the debtor, for the cost of repair of any physical injury
7 to the whole or the other goods. The secured party need not reimburse the
8 encumbrancer or owner for any diminution in value of the whole or the other goods
9 caused by the absence of the accession removed or by any necessity for replacing it.
10 A person entitled to reimbursement may refuse permission to remove until the secured
11 party gives adequate assurance for the performance of the obligation to reimburse.

12 **SECTION 9-333. COMMINGLED GOODS.**

13 (a) In this section, “commingled goods” means goods that are physically united
14 with other goods in such a manner that their identity is lost in a product or mass.

15 (b) A security interest does not exist in commingled goods as such; however,
16 a security interest may attach to a product or mass that results when goods become
17 commingled goods.

18 (c) If collateral becomes commingled goods, a security interest attaches to the
19 product or mass.

20 (d) If a security interest in collateral is perfected before the collateral becomes
21 commingled goods, the security interest that attaches to the product or mass under
22 subsection (c) is perfected.

1 (e) Except as otherwise provided in subsection (f), the other provisions of this
2 part, as applicable, determine the priority of a security interest that attaches to the
3 product or mass under subsection (c).

4 (f) If more than one security interest attaches to the product or mass under
5 subsection (c), the following rules determine priority:

6 (1) A security interest that is perfected under subsection (d) has priority
7 over a security interest that is unperfected at the time the collateral becomes
8 commingled goods.

9 (2) If more than one security interest is perfected under subsection (d), the
10 security interests rank equally in proportion to value of the collateral at the time it
11 became commingled goods.

12 **SECTION 9-334. PRIORITY OF SECURITY INTERESTS IN GOODS**
13 **COVERED BY CERTIFICATE OF TITLE.** If, while a security interest in goods
14 is perfected by any method under the law of another jurisdiction, this State issues a
15 certificate of title that does not show that the goods are subject to the security interest
16 or contain a statement that they may be subject to security interests not shown on the
17 certificate:

18 (1) a buyer of the goods, other than a person that is in the business of selling
19 goods of that kind, takes free of the security interest if the buyer gives value and
20 receives delivery of the goods after issuance of the certificate and without knowledge
21 of the security interest; and

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.

1 **SECTION 9-339. BANK’S RIGHT TO REFUSE TO ENTER INTO OR**
2 **DISCLOSE EXISTENCE OF CONTROL AGREEMENT.** This article does not
3 require a bank to enter into an agreement of the type described in Section 9-109(a)(2)
4 even if its customer so requests or directs. A bank that has entered into such an
5 agreement is not required to confirm the existence of the agreement to another person
6 unless requested to do so by its customer.

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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 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.

SECTION 9-403. AGREEMENT NOT TO ASSERT DEFENSES AGAINST ASSIGNEE.

(a) In this section, "value" has the meaning provided in Section 3-303(a).

(b) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(1) for value;

(2) in good faith;

1 (3) without notice of a claim of a property or possessory right to the
2 property assigned; and

3 (4) without notice of a defense or claim in recoupment of the type that may
4 be asserted against a person entitled to enforce a negotiable instrument under Section
5 3-305(a).

6 (c) An agreement described in subsection (b) is not enforceable with respect
7 to defenses of a type that may be asserted against a holder in due course of a negotiable
8 instrument under Section 3-305(b).

9 (d) In a consumer transaction, if a record evidences the account debtor's
10 obligation, other law requires that the record contain a statement to the effect that the
11 rights of an assignee are subject to claims or defenses that the account debtor could
12 assert against the original obligee, and the record does not contain such a statement:

13 (1) the record has the same effect as if the record contained such a
14 statement; and

15 (2) the account debtor may assert against an assignee those claims and
16 defenses that would have been available if the record contained such a statement.

17 (e) This section is subject to other law that establishes a different rule for an
18 account debtor who is an individual and who incurred the obligation primarily for
19 personal, family, or household purposes.

20 (f) Except as otherwise provided in subsection (d), this section does not
21 displace other law that gives effect to an agreement by an account debtor not to assert
22 a claim or defense against an assignee.

1 **SECTION 9-404. RIGHTS ACQUIRED BY ASSIGNEE; CLAIMS AND**
2 **DEFENSES AGAINST ASSIGNEE.**

3 (a) Unless an account debtor has made an enforceable agreement not to assert
4 defenses or claims, and subject to subsections (b) through (e), the rights of an assignee
5 are subject to:

6 (1) all the terms of the agreement between the account debtor and assignor
7 and any defense or claim in recoupment arising from the transaction that gave rise to
8 the contract; and

9 (2) any other defense or claim of the account debtor against the assignor
10 which accrues before the account debtor receives a notification of the assignment
11 authenticated by the assignor or the assignee.

12 (b) Subject to subsection (c) and except as otherwise provided in subsection
13 (d), the claim of an account debtor against an assignor may be asserted against an
14 assignee under subsection (a) only to reduce the amount the account debtor owes.

15 (c) This section is subject to other law that establishes a different rule for an
16 account debtor who is an individual and who incurred the obligation primarily for
17 personal, family, or household purposes.

18 (d) In a consumer transaction, if a record evidences the account debtor's
19 obligation, other law requires that the record contain a statement to the effect that the
20 account debtor's recovery against an assignee with respect to claims and defenses
21 against the assignor shall not exceed amounts paid by the account debtor under the
22 record, and the record does not contain such a statement, the extent to which a claim

1 of an account debtor against the assignor may be asserted against an assignee is
2 determined as if the record contained such a statement.

3 (e) This section does not apply to a transfer of a healthcare insurance
4 receivable.

5 **SECTION 9-404A. MODIFICATION OF ASSIGNED CONTRACT.**

6 (a) A modification of or substitution for an assigned contract is effective
7 against an assignee if made in good faith and in accordance with reasonable
8 commercial standards. The assignee acquires corresponding rights under the modified
9 or substituted contract. The assignment may provide that the modification or
10 substitution is a breach of contract by the assignor. This subsection is subject to
11 subsections (b) through (d).

12 (b) Subsection (a) applies to the extent that:

13 (1) the right to payment or a part thereof under an assigned contract has not
14 been fully earned by performance; or

15 (2) the right to payment or a part thereof has been fully earned by
16 performance and the account debtor has not received notification of the assignment
17 under Section 9-404B(a).

18 (c) This section is subject to other law that establishes a different rule for an
19 account debtor who is an individual and who incurred the obligation primarily for
20 personal, family, or household purposes.

21 (d) This section does not apply to a transfer of a healthcare insurance
22 receivable.

1 **SECTION 9-404B. DISCHARGE OF ACCOUNT DEBTOR;**
2 **NOTIFICATION OF ASSIGNMENT; IDENTIFICATION AND PROOF OF**
3 **ASSIGNMENT; TERM PROHIBITING ASSIGNMENT INEFFECTIVE.**

4 (a) Subject to subsections (b) through (h), an account debtor on an account,
5 chattel paper, or payment intangible may discharge its obligation by paying the assignor
6 until, but not after, the account debtor receives a notification, authenticated by the
7 assignor or the assignee, that the amount due or to become due has been assigned and
8 that payment is to be made to the assignee. After receipt of the notification, the
9 account debtor may discharge its obligation by paying the assignee and may not
10 discharge the obligation by paying the assignor.

11 (b) Subject to subsection (g), notification is ineffective under subsection (a):

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

13 (2) to the extent that an agreement between an account debtor and a seller
14 of a payment intangible limits the account debtor's duty to pay a person other than the
15 seller and the limitation is effective under other law; or

16 (3) at the option of an account debtor, if the notification notifies the account
17 debtor to make less than the full amount of any installment or other periodic payment
18 to the assignee, regardless of whether:

19 (A) only a portion of the account, chattel paper, or general intangible has
20 been assigned to that assignee;

21 (B) a portion has been assigned to another assignee; or

1 (C) the account debtor knows that the assignment to that assignee is
2 limited.

3 (c) Subject to subsection (g), if requested by the account debtor, an assignee
4 shall seasonably furnish reasonable proof that the assignment has been made. Unless
5 the assignee complies, the account debtor may discharge its obligation by paying the
6 assignor even if the account debtor has received a notification under subsection (a).

7 (d) Except as otherwise provided in subsection (e) and Sections 2A-303 and
8 9-405, and subject to subsection (g), a term in an agreement between an account debtor
9 and an assignor or in a promissory note is ineffective if:

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

14 (2) the creation, attachment, or perfection of the security interest would
15 cause a default, breach, right of recoupment, claim, defense, termination, right of
16 termination, or remedy under the account, chattel paper, or payment intangible.

17 (e) Subsection (d) does not apply to the sale of a payment intangible or
18 promissory note.

19 (f) Subject to subsection (g), an account debtor may not waive or vary its
20 option under subsection (b)(3).

1 (g) This section is subject to other law that establishes a different rule for an
2 account debtor who is an individual and who incurred the obligation primarily for
3 personal, family, or household purposes.

4 (h) This section does not apply to a transfer of a healthcare insurance
5 receivable.

6 **SECTION 9-405. RESTRICTIONS ON CREATION OR ENFORCEMENT**
7 **OF SECURITY INTEREST IN LEASEHOLD INTEREST OR IN LESSOR'S**
8 **RESIDUAL INTEREST.**

9 (a) Except as otherwise provided in subsection (b), a provision in a lease
10 agreement is ineffective if it:

11 (1) prohibits the creation or enforcement of a security interest in an interest
12 of a party under the lease contract or in the lessor's residual interest in the goods; or

13 (2) makes such a transfer an event of default.

14 (b) A lease provision described in subsection (b) is enforceable to the extent
15 that there is:

16 (1) a transfer by the lessee of the lessee's right of possession or use of the
17 goods in violation of the provision; or

18 (2) a delegation of a material performance of either party to the lease
19 contract in violation of the provision.

20 (c) Neither the granting nor the enforcement of a security interest in the lessor's
21 interest under the lease contract or the lessor's residual interest in the goods is a transfer
22 that materially impairs the prospect of obtaining return performance by, materially

1 changes the duty of, or materially increases the burden or risk imposed on, the lessee
2 within Section 2A-303(5). This subsection does not apply to the extent that there is a
3 delegation of a material performance of the lessor.

4 **SECTION 9-406. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY**
5 **NOTES, HEALTHCARE INSURANCE RECEIVABLES, AND CERTAIN**
6 **GENERAL INTANGIBLES INEFFECTIVE.**

7 (a) Except as otherwise provided in subsection (b), a term in a promissory note
8 or in an agreement between an account debtor and a debtor which relates to a
9 healthcare insurance receivable or a general intangible, including a contract, permit,
10 license, or franchise, and which prohibits, restricts, or requires the consent of the
11 person obligated on the promissory note or the account debtor to the assignment or
12 transfer of or creation, attachment, or perfection of a security interest in the general
13 intangible, is ineffective to the extent that:

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

16 (2) the creation, attachment, or perfection of the security interest would
17 cause a default, breach, right of recoupment, claim, defense, termination, right of
18 termination, or remedy under the promissory note, healthcare insurance receivable, or
19 general intangible.

20 (b) Subsection (a) applies to a security interest in a payment intangible or
21 promissory note only if the security interest arises out of a sale of the payment
22 intangible or promissory note.

1 (c) A provision in a statute or governmental rule or regulation which prohibits,
2 restricts, or requires the consent of a government or governmental body or official to
3 the assignment or transfer of or creation of a security interest in a promissory note or
4 a healthcare insurance receivable or general intangible, including a contract, permit,
5 license, or franchise, between an account debtor and a debtor is ineffective to the extent
6 that:

7 (1) the provision would impair the creation, attachment, or perfection of a
8 security interest; 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 promissory note, healthcare insurance receivable, or general intangible.

12 (d) To the extent that a term in a promissory note or in an agreement between
13 an account debtor and a debtor which relates to a healthcare insurance receivable or a
14 general intangible, or provision in a statute, rule, or regulation, is ineffective under
15 subsection (a) or (c) but is effective under other law, the creation, attachment, or
16 perfection of a security interest in the promissory note, healthcare insurance receivable,
17 or general intangible:

18 (1) is not enforceable against the account debtor;

19 (2) imposes no duties or obligations on the account debtor; and

20 (3) does not require the account debtor to recognize the security interest, pay
21 or render performance to the secured party, or accept payment or performance from the
22 secured party.

1 (e) This section prevails over any inconsistent provisions of the following
2 statutes, rules, and regulations:

3 *[List here any statutes, rules, and regulations containing provisions*
4 *inconsistent with this section.]*

5 *Legislative Note: States that amend statutes, rules, and regulations to remove*
6 *provisions inconsistent with this section need not enact subsection (e).*

7 **SECTION 9-406A. RESTRICTIONS ON ASSIGNMENT OF LETTER-OF-**
8 **CREDIT RIGHTS INEFFECTIVE.**

9 (a) A term in a letter of credit or a rule of law, custom, or practice applicable
10 to the letter of credit which prohibits, restricts, or requires the consent of an applicant,
11 issuer, or nominated person to a beneficiary's assignment of or creation of a security
12 interest in a letter-of-credit right is ineffective to the extent that:

13 (1) the term or rule of law, custom, or practice would impair the creation,
14 attachment, or perfection of a security interest in the letter-of-credit right; or

15 (2) the creation, attachment, or perfection of the security interest would
16 cause a default, breach, claim, defense, termination, right of termination, or remedy
17 under the letter-of-credit right.

18 (b) To the extent that a term in a letter of credit is ineffective under subsection
19 (a) but is effective under Article 5, other law, or a custom or practice applicable to the
20 letter of credit, to the transfer of a right to draw or otherwise demand performance
21 under the letter of credit, or to the assignment of a right to proceeds of the letter of
22 credit, the creation, attachment, or perfection of a security interest in the letter-of-credit
23 right:

1 (1) is not enforceable against the applicant, issuer, nominated person, or
2 transferee beneficiary;

3 (2) imposes no duties or obligations on the applicant, issuer, nominated
4 person, or transferee beneficiary; and

5 (3) does not require the applicant, issuer, nominated person, or transferee
6 beneficiary to recognize the security interest, pay or render performance to the secured
7 party, or accept payment or other performance from the secured party.

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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.

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

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.

1 **SECTION 9-502. CONTENTS OF FINANCING STATEMENT;**
2 **MORTGAGE AS FINANCING STATEMENT; TIME OF FILING FINANCING**
3 **STATEMENT.**

4 (a) Subject to subsection (b), a financing statement is sufficient only if it:

5 (1) provides the name of the debtor;

6 (2) provides the name of the secured party or a representative of the secured
7 party; and

8 (3) indicates the collateral covered by the financing statement.

9 (b) Except as otherwise provided in Section 9-501(b), to be sufficient, a
10 financing statement that covers timber to be cut or as-extracted collateral or which is
11 filed as a fixture filing and the collateral is goods that are or are to become fixtures also
12 must:

13 (1) indicate that it covers this type of collateral;

14 (2) indicate that it is to be filed [for record] in the real property records;

15 (3) provide a description of the real property [sufficient to give constructive
16 notice of the mortgage under the law of this State if the description were contained in
17 a mortgage of the real property]; and

18 (4) if the debtor does not have an interest of record in the real property,
19 provide the name of a record owner.

20 *Legislative Note: Language in brackets is optional. Where the State has any special*
21 *recording system for real property other than the usual grantor-grantee index (as, for*
22 *instance, a tract system or a title registration or Torrens system) local adaptations of*
23 *subsection (b) and Section 9-520(b) through (d) may be necessary. See, e.g., Mass.*
24 *Gen. Laws Chapter 106, Section 9-410.*

1 (c) A real property mortgage is effective from the date of recording as a
2 financing statement filed as a fixture filing or as a financing statement covering timber
3 to be cut or as-extracted collateral only if:

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

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

8 (3) the mortgage complies with the requirements for a financing statement
9 in this section other than an indication that it is to be filed in the real property records;
10 and

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

12 (d) A financing statement may be filed before a security agreement is made or
13 a security interest otherwise attaches.

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

15 (a) A financing statement sufficiently provides the name of the debtor:

16 (1) if the debtor is a registered organization, only if the financing statement
17 provides the name of the debtor as shown on the public records of the debtor's
18 jurisdiction of organization;

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

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

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

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

7 (4) in other cases:

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

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

12 (b) A financing statement that provides the name of the debtor in accordance
13 with subsection (a) is not rendered ineffective by the absence of:

14 (1) a trade or other name of the debtor; or

15 (2) unless required under subsection (a)(4)(B), names of partners, members,
16 associates, or other persons comprising the debtor.

17 (c) A financing statement that provides only the debtor's trade name does not
18 sufficiently provide the name of the debtor.

19 (d) A financing statement may provide the name of more than one debtor and
20 the name of more than one secured party.

1 (e) Failure to indicate the representative capacity of a secured party or
2 representative of a secured party does not affect the sufficiency of a financing
3 statement.

4 **SECTION 9-504. INDICATION OF COLLATERAL.** A financing statement
5 sufficiently indicates the collateral that it covers if the financing statement provides:

6 (1) a description of the collateral pursuant to Section 9-111; or

7 (2) an indication that the financing statement covers all assets or all personal
8 property.

9 **SECTION 9-505. FILING AND COMPLIANCE WITH OTHER STATUTES**
10 **AND TREATIES FOR CONSIGNMENTS, LEASES, BAILMENTS, AND**
11 **OTHER TRANSACTIONS.**

12 (a) A consignor, lessor, or bailor of goods or a buyer of a payment intangible
13 or promissory note may file a financing statement, or may comply with a statute or
14 treaty described in Section 9-309A(a), using the terms “consignor, “consignee,
15 “lessor, “lessee, “bailor, “bailee, “owner, “registered owner , “buyer, “seller,
16 or words of similar import, instead of the terms “secured party and “debtor.

17 (b) This part applies to the filing of such a financing statement and, as
18 appropriate, to compliance that is equivalent to filing a financing statement under
19 Section 9-309A(c), but the filing or compliance is not of itself a factor in determining
20 whether the collateral secures an obligation. If it is determined for another reason that
21 the collateral secures an obligation, a security interest held by the consignor, lessor,

1 bailor, owner, or buyer which attaches to the collateral is perfected by the filing or
2 compliance.

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

4 (a) A financing statement substantially complying with the requirements of this
5 part is effective even if it contains minor errors or omissions, unless the errors or
6 omissions make the financing statement seriously misleading.

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

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

15 (d) For purposes of Section 9-510(b), the "debtor's correct name" in subsection
16 (c) means the correct name of the new debtor.

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

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

1 (b) Except as otherwise provided in subsection (c) and Section 9-510, a
2 financing statement is not rendered ineffective if, after the financing statement is filed,
3 the information contained in the financing statement becomes seriously misleading
4 under the standard set forth in Section 9-506.

5 (c) If a debtor so changes its name that a filed financing statement becomes
6 seriously misleading under the standard set forth in Section 9-506:

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

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

13 **SECTION 9-508. PERSONS ENTITLED TO FILE A RECORD.**

14 (a) A person is entitled to file an initial financing statement, amendment that
15 adds collateral covered by a financing statement, or amendment that adds a debtor to
16 a financing statement only if:

17 (1) the debtor authorizes the filing in an authenticated record; or

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

21 (b) By authenticating a security agreement, a debtor authorizes the filing of an
22 initial financing statement, and an amendment, covering:

1 (1) the collateral described in the security agreement; and
2 (2) property that becomes collateral under Section 9-313(c)(2), whether or
3 not the security agreement expressly covers proceeds.

4 (c) A person is entitled to file an amendment other than an amendment that
5 adds collateral covered by a financing statement or an amendment that adds a debtor
6 to a financing statement only if:

7 (1) the secured party of record authorizes the filing; or
8 (2) the amendment is a termination statement for a financing statement as
9 to which the secured party of record has failed to file or send a termination statement
10 as required by Section 9-511(b) or (d).

11 (d) If there is more than one secured party of record for a financing statement,
12 each secured party of record may authorize the filing of an amendment under
13 subsection (c).

14 **SECTION 9-508A. EFFECTIVENESS OF FILED RECORD.**

15 (a) Subject to subsection (c), a filed record is effective only to the extent that
16 it was filed by a person entitled to file it under Section 9-508.

17 (b) A record authorized by one secured party of record does not affect the
18 financing statement with respect to another secured party of record.

19 (c) If a person is entitled to file a termination statement only under Section 9-
20 508(c)(2), the filed termination statement is effective only if the debtor authorizes the
21 filing and the termination statement indicates that the debtor authorized it to be filed.

1 (d) A continuation statement that is filed outside the six-month period
2 described in Section 9-516(d) is ineffective.

3 **SECTION 9-509. AMENDMENT OF FINANCING STATEMENT.**

4 (a) Subject to Section 9-508, a person may add or delete collateral covered by
5 a financing statement or, subject to subsection (e), otherwise amend the information
6 contained in a financing statement by filing an amendment that identifies, by its file
7 number, the initial financing statement to which the amendment relates.

8 (b) Except as otherwise provided in Section 9-516, the filing of an amendment
9 does not extend the period of effectiveness of the financing statement.

10 (c) A financing statement that is amended by an amendment that adds collateral
11 is effective as to the added collateral only from the date of the filing of the amendment.

12 (d) A financing statement that is amended by an amendment that adds a debtor
13 is effective as to the added debtor only from the date of the filing of the amendment.

14 (e) An amendment is ineffective to the extent it:

15 (1) purports to delete all secured parties of record and fails to provide the
16 name of a new secured party of record; or

17 (2) purports to delete all debtors and fails to provide the name of a debtor
18 not previously covered by the financing statement.

19 **SECTION 9-509A. SECURED PARTY OF RECORD.**

20 (a) A secured party of record with respect to a financing statement is a person
21 whose name is provided as the name of the secured party or a representative of the
22 secured party in an initial financing statement that has been filed.

1 (b) If an effective amendment of a financing statement which provides the
2 name of a person as a secured party or a representative of a secured party is filed, the
3 person named in the amendment is a secured party of record.

4 (c) A person remains a secured party of record until the filing of an effective
5 amendment of the financing statement which deletes that the person.

6 **SECTION 9-510. EFFECTIVENESS OF FINANCING STATEMENT IF**
7 **NEW DEBTOR BECOMES BOUND BY SECURITY AGREEMENT.**

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

13 (b) If the difference between the name of the original debtor and that of the
14 new debtor causes a filed financing statement that is effective under subsection (a) to
15 be seriously misleading under the standard set forth in Section 9-506:

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

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

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

3 **SECTION 9-511. TERMINATION STATEMENT.**

4 (a) A termination statement for a financing statement is an amendment of the
5 financing statement which:

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

8 (2) indicates either that it is a termination statement or that the identified
9 financing statement is no longer effective.

10 (b) The secured party shall cause the secured party of record for a financing
11 statement to file in the filing office a termination statement for the financing statement
12 if the financing statement covers consumer goods and:

13 (1) there is no outstanding secured obligation and no commitment to
14 make an advance, incur an obligation, or otherwise give value; or

15 (2) the debtor did not authorize the filing of the initial financing
16 statement.

17 (c) To comply with subsection (b), the secured party shall cause the secured
18 party of record to file the termination statement:

19 (1) within one month after there is no outstanding secured obligation and
20 no commitment to make an advance, incur an obligation, or otherwise give value; or

21 (2) if earlier, within 20 days after the debtor sends to the secured party an
22 authenticated demand.

1 (d) In cases not governed by subsection (b), within 20 days after the debtor
2 sends to the secured party an authenticated demand, the secured party shall cause the
3 secured party of record for a financing statement to send to the debtor a termination
4 statement for the financing statement or file the termination statement with filing office
5 if:

6 (1) there is no outstanding secured obligation and no commitment to make
7 an advance, incur an obligation, or otherwise give value;

8 (2) the debtor did not authorize the filing of the initial financing statement;
9 or

10 (3) the financing statement covers accounts, chattel paper, or payment
11 intangibles that have been sold but as to which the account debtor or other person
12 obligated has discharged its obligation.

13 (e) Except as otherwise provided in Section 9-508A, upon the filing of a
14 termination statement with the filing office, the financing statement to which the
15 termination statement relates becomes ineffective.

1 **SECTION 9-512. ASSIGNMENT OF POWERS OF SECURED PARTY OF**
2 **RECORD.**

3 (a) Except as otherwise provided in subsection (d), an initial financing
4 statement may reflect an assignment of all of the secured party's power to authorize an
5 amendment to the financing statement by providing the name and mailing address of
6 the assignee as the name and address of the secured party. Upon the filing of the initial
7 financing statement, the assignee named in an initial financing statement filed under
8 this subsection is the secured party of record for the financing statement.

9 (b) Except as otherwise provided in subsection (d), a secured party of record
10 may assign of record all or part of its power to authorize an amendment to a financing
11 statement by filing in the filing office an amendment of the financing statement which:

12 (1) identifies, by its file number, the initial financing statement to which it
13 relates;

14 (2) provides the name of the assignor; and

15 (3) provides the name and mailing address of the assignee.

16 (c) Upon the filing of an amendment under subsection (b), the assignee named
17 in an amendment filed under that subsection becomes a secured party of record for the
18 financing statement.

19 (d) An assignment of record of a security interest in a fixture covered by a real
20 property mortgage that is effective as a fixture filing under Section 9-502(d) may be
21 made only by an assignment of record of the mortgage in the manner provided by other
22 law of this State

1 **SECTION 9-513.**

2 [deleted]

3 **SECTION 9-514.**

4 [deleted]

5 **SECTION 9-515. WHAT CONSTITUTES FILING; EFFECTIVENESS OF**
6 **FILING.**

7 (a) Except as otherwise provided in subsection (b), communication of a record
8 to a filing office and tender of the filing fee or acceptance of the record by the filing
9 office constitutes filing.

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

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

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

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

17 (A) in the case of an initial financing statement, the record does not
18 provide a name for the debtor;

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

2 (i) does not identify the initial financing statement as required by
3 Section 9-509 or 9-519, as applicable; or

4 (ii) identifies an initial financing statement whose effectiveness has
5 lapsed under Section 9-516; or

6 (C) in the case of an initial financing statement that provides the name
7 of a debtor identified as an individual or an amendment that provides a name of a
8 debtor identified as an individual which was not previously provided in the financing
9 statement to which the record relates, the record does not identify the debtor's last
10 name; and

11 (4) in the case of an initial financing statement and an amendment that adds
12 a secured party of record, the record does not provide a name and mailing address for
13 the secured party of record;

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

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

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

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

21 (i) a type of organization for the debtor;

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

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

3 (6) in the case of an assignment reflected in an initial financing statement
4 under Section 9-512(a) or an amendment filed under Section 9-512(b), the record does
5 not provide a name and mailing address for the assignee; or

6 (7) in the case of a continuation statement, the record is not filed within the
7 six-month period specified in Section 9-516(d).

8 (c) For purposes of subsection (b):

9 (1) a record does not provide information if the filing office is unable to
10 read or decipher the information; and

11 (2) a record that does not indicate that it is an amendment or identify an
12 initial financing statement to which it relates, as required by Section 9-509, 9-511, 9-
13 512, 9-516, or 9-519, is an initial financing statement.

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

19 **SECTION 9-516. DURATION AND EFFECTIVENESS OF FINANCING**
20 **STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT.**

21 (a) A continuation statement for a financing statement is an amendment of the
22 financing statement which:

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

3 (2) indicates that it is a continuation statement for, or that it is filed to
4 continue the effectiveness of, the identified financing statement.

5 (b) Except as otherwise provided in subsections (c), (f), (g) and (h), a filed
6 financing statement is effective for a period of five years after the date of filing.

7 (c) Except as otherwise provided in subsections (g) and (h), an initial financing
8 statement filed in connection with a public-finance transaction or manufactured-home
9 transaction is effective for a period of 30 years after the date of filing if it indicates that
10 it is filed in connection with a public-finance transaction or manufactured-home
11 transaction.

12 (d) The effectiveness of a filed financing statement lapses on the expiration of
13 the period of its effectiveness unless before the lapse a continuation statement is filed
14 pursuant to subsection (e). Upon lapse, a financing statement becomes ineffective and
15 any security interest or agricultural lien that was perfected by the financing statement
16 becomes unperfected, unless the security interest is perfected without filing. If the
17 security interest or agricultural lien becomes unperfected upon lapse, it is deemed never
18 to have been perfected as against a previous or subsequent purchaser of the collateral
19 for value.

20 (e) A continuation statement may be filed only within six months before the
21 expiration of the five-year period specified in subsection (b).

1 (f) Except as otherwise provided in Section 9-508A, upon timely filing of a
2 continuation statement, the effectiveness of the initial financing statement continues
3 for a period of five years commencing on the day on which the financing statement
4 would have become ineffective in the absence of the filing. Upon the expiration of the
5 five-year period, the financing statement lapses in the same manner as provided in
6 subsection (d), unless, before the lapse, another continuation statement is filed pursuant
7 to subsection (e). Succeeding continuation statements may be filed in the same manner
8 to continue the effectiveness of the initial financing statement.

9 (g) If a debtor is a transmitting utility and a filed financing statement so
10 indicates, the financing statement is effective until a termination statement is filed.

11 (h) A real property mortgage that is effective as a fixture filing under Section
12 9-502(d) remains effective as a fixture filing until the mortgage is released or satisfied
13 of record or its effectiveness otherwise terminates as to the real property.

14 **SECTION 9-517.**

15 [deleted]

16 **SECTION 9-518. EFFECT OF INDEXING ERRORS.** The failure of the filing
17 office to index a record correctly does not affect the effectiveness of the record.

1 **SECTION 9-519. CLAIM CONCERNING INACCURATE OR**
2 **WRONGFULLY FILED RECORD.**

3 (a) A person may file in the filing office a correction statement with respect
4 to a record indexed there under the person's name if the person believes that the record
5 is inaccurate or was wrongfully filed.

6 (b) A correction statement must:

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

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

10 (3) either:

11 (A) provide the basis for the person's belief that the record or was
12 wrongfully filed; or

13 (B) provide the basis for the person's belief that the record is inaccurate
14 and indicate the manner in which the person believes the record should be amended to
15 cure any inaccuracy.

16 (c) The filing of a correction statement does not affect the effectiveness of an
17 initial financing statement or other record.

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

20 (2) shall index a record that provides a name of a debtor which was not
21 previously provided in the financing statement to which the record relates also
22 according to the name that was not previously provided.

1 (d) If a financing statement is filed as a fixture filing or covers timber to be cut
2 or as-extracted collateral, [it must be filed for record and] the filing office shall index
3 it:

4 (1) under the names of the debtor and of each owner of record shown on the
5 financing statement as if they were the mortgagors under a mortgage of the real
6 property described; and

7 (2) to the extent that the law of this State provides for indexing of
8 mortgages under the name of the mortgagee, under the name of the secured party as if
9 the secured party were the mortgagee thereunder, or, if indexing is by description, as
10 if the financing statement were a mortgage of the real property described.

11 (e) If a financing statement is filed as a fixture filing or covers timber to be cut
12 or as-extracted collateral, the filing office shall index an assignment filed under Section
13 9-512(a) or an amendment filed under Section 9-512(b):

14 (1) under the name of the assignor as grantor; and

15 (2) to the extent that the law of this State provides for indexing the
16 assignment of a real property mortgage under the name of the assignee, under the name
17 of the assignee.

18 (f) The filing office shall maintain a storage and retrieval capability that:

19 (1) provides for retrieval of a record by the name of the debtor and by the
20 file number assigned to initial financing statement to which the record relates; and

21 (2) associates with one another an initial financing statement and each filed
22 record relating to the initial financing statement.

1 (g) The filing office may not remove a debtor’s name from the index until one
2 year after the effectiveness of a financing statement naming the debtor lapses under
3 Section 9-516 with respect all secured parties of record.

4 (h) The filing office shall perform the acts required by subsections (a) through
5 (e) at the time and in the manner prescribed by rule, but not later than two business
6 days after the filing office receives the record in question.

7 *Legislative Note: In States in which writings will not appear in the real property*
8 *records and indices unless actually recorded the bracketed language in subsection (c)*
9 *should be used.*

10 **SECTION 9-520A.**

11 [deleted.]

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

13 (a) A filing office shall refuse to accept a record for filing for a reason set forth
14 in Section 9-515(b) and may refuse to accept a record for filing only for a reason set
15 forth in Section 9-515(b).

16 (b) If a filing office refuses to accept a record for filing, it shall communicate
17 the fact of and reason for its refusal to the person that presented the record. The
18 communication must be made at the time and in the manner prescribed by rule but in
19 no event more than two business days after the filing office receives the record.

20 (c) A filing office that accepts written records may not refuse to accept a
21 written initial financing statement in the following form except for a reason set forth
22 in Section 9-515(b):

1

[INSERT FINANCING STATEMENT FORM]

1

[INSERT ADDENDUM 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

[INSERT CHANGE FORM]

1

[INSERT CHANGE ADDENDUM]

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 (a) Until at least one year after a financing statement lapses under Section 9-
8 516 with respect to all secured parties of record, the filing office shall maintain a record
9 of the information contained in the financing statement. The record must be retrievable
10 by using the name of the debtor and by using the file number assigned to the initial
11 financing statement to which the record relates.

12 (b) Except to the extent that a statute governing disposition of public records
13 provides otherwise, the filing office immediately may destroy any written record
14 evidencing a financing statement. However, if the filing office destroys a written
15 record, it shall maintain another record of the financing statement which complies with
16 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 (c) The filing office shall communicate the following information to any
17 person that requests it:

18 (1) whether there is on file on a date and time specified by the filing office,
19 but not a date earlier than three business days before the filing office receives the
20 request, any financing statement that:

21 (A) designates a particular debtor [or, if the request so states, designates
22 a particular debtor at the address specified in the request]; and

1 (B) has not lapsed under Section 9-516 with respect to all secured
2 parties of record; and

3 (C) if the request so states, has lapsed under Section 9-516 and a record
4 of which is maintained by the filing office under Section 9-522(a);

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

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

7 (d) In complying with its duty under subsection (c), the filing office may
8 communicate information in any medium. However, if requested, the filing office shall
9 communicate information by issuing [its written certificate] [a record that can be
10 admitted into evidence in the courts of this State without extrinsic evidence of its
11 authenticity].

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

16 (e) The filing office shall perform the acts required by subsections (a), (b), and
17 (c) at the time and in the manner prescribed by rule, but not later than two business
18 days after the filing office receives the request.

19 *Legislative Note: States whose filing office does not offer the additional service of*
20 *responding to search requests limited to a particular address should delete the*
21 *bracketed language in subsection (b)(1)(A).*

22 **SECTION 9-524. DELAY BY FILING OFFICE.** Delay by the filing office
23 beyond the time limits prescribed in this part is excused if:

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

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

5 **SECTION 9-525.**

6 [deleted]

7 **SECTION 9-526.**

8 [deleted]

9 **[SECTION 9-527. FEES.**

10 (a) Except as otherwise provided in subsection (f), the fee for filing and
11 indexing a record under this part, other than an initial financing statement of the kind
12 described in Section 9-502(c), is the amount specified in subsection (c), if applicable,
13 plus:

14 (1) \$ __[X]_____ if the record is communicated in writing and consists of
15 one or two pages;

16 (2) \$ __[2X]_____ if the record is communicated in writing and consists
17 of more than two pages; and

18 (3) \$ __[1/2X]___ if the record is communicated by another medium
19 authorized by rule.

20 (b) Except as otherwise provided in subsection (e), the fee for filing and
21 indexing an initial financing statement of the kind described in Section 9-502(c) is the
22 amount specified in subsection (c), if applicable, plus:

1 (1) \$ _____ if the financing statement indicates that it is filed in connection
2 with a public-finance transaction;

3 (2) \$ _____ if the financing statement indicates that it is filed in connection
4 with a manufactured-home transaction.

5 (c) Except as otherwise provided in subsection (e), the fee for each name more
6 than two required to be indexed, if the record is communicated in writing, is \$
7 _____.

8 (d) The fee for responding to a request for information from the filing office,
9 including for [issuing a certificate showing] [communicating] whether there is on file
10 any financing statement naming a particular debtor, is:

11 (1) \$ _____ if the request is communicated in writing; and

12 (2) \$ _____ if the request is communicated by another medium authorized
13 by rule.

14 (e) This section does not require a fee with respect to a mortgage that is
15 effective as a financing statement filed as a fixture filing or as a financing statement
16 covering timber to be cut or as-extracted collateral under Section 9-502(c). However,
17 the recording and satisfaction fees that otherwise would be applicable to the mortgage
18 apply.

19 *Legislative Note: A State may wish to place the provisions of this section together with*
20 *statutes setting fees for other services.*

21 **SECTION 9-528. ADMINISTRATIVE RULES.**

1 (a) The [insert appropriate official or governmental agency] [filing office] shall
2 adopt and publish rules to carry out the provisions of this article. The rules must be[:

3 (1)] consistent with this article[; and

4 (2) adopted and published in accordance with the [insert any applicable state
5 administrative procedure act].

6 (b) To keep the rules and practices of the filing office in harmony with the rules
7 and practices of filing offices in other jurisdictions that enact substantially this part, and
8 to keep the technology used by the filing office compatible with the technology used
9 by filing offices in other jurisdictions that enact substantially this part, the filing office,
10 so far as is consistent with the purposes, policies, and provisions of this article, in
11 adopting, amending, and repealing rules:

12 (1) shall consult with filing offices in other jurisdictions that enact
13 substantially this part; and

14 (2) shall consult the most recent version of the Model Rules promulgated
15 by the International Association of Corporate Administrators or any successor
16 organization; and

17 (3) shall take into consideration the rules and practices of, and the
18 technology used by, filing offices in other jurisdictions that enact substantially this part.

19 **SECTION 9-529. DUTY TO REPORT.**

20 (a) The [insert appropriate official or governmental agency] [filing office] shall
21 report [annually on or before _____] to the [Governor and Legislature] on the
22 operation of the filing office.

- 1 (b) The report must contain a statement of the extent to which:
- 2 (1) the filing office has complied with the time limits prescribed in this part
- 3 and the reasons for any noncompliance;
- 4 (2) the rules are not in harmony with the rules of filing offices in other
- 5 jurisdictions that enact substantially this part and the reasons for these variations; and
- 6 (3) the rules are not in harmony with the most recent version of the Model
- 7 Rules promulgated by the International Association of Corporate Administrators or any
- 8 successor organization and the reasons for these variations.

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PART 6

DEFAULT

[SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST]

SECTION 9-601. RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT; CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, OR PAYMENT INTANGIBLES.

(a) After default, a secured party has the rights provided in this part and, except as otherwise provided in Section 9-602(a), those provided by agreement of the parties.

A secured party:

(1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession or control of collateral has the rights and duties provided in Section 9-207.

(c) The rights referred to in subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) and Section 9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

1 (e) If a secured party has reduced its claim to judgment, the lien of any levy
2 that may be made upon the collateral by virtue of an execution based upon the
3 judgment relates back to the earliest of:

4 (1) the date of perfection of the security interest or agricultural lien in the
5 collateral;

6 (2) the date of filing a financing statement covering the collateral; or

7 (3) any date specified in a statute under which the agricultural lien was
8 created.

9 (f) A sale pursuant to an execution is a foreclosure of the security interest or
10 agricultural lien by judicial procedure within the meaning of this section. A secured
11 party may purchase at the sale and thereafter hold the collateral free of any other
12 requirements of this article.

13 (g) Except as otherwise provided in Section 9-607(c), this part imposes no
14 duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper,
15 payment intangibles, or promissory notes.

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

17 (a) To the extent that they give rights to a debtor or an obligor and impose
18 duties on a secured party, the rules stated in the following sections may not be waived
19 or varied by a debtor, a secondary obligor, or a consumer obligor in a consumer-goods
20 transaction, except as provided in subsection (b) and Section 9-623:

21 (1) Section 9-207(c)(4)(c), which deals with use and operation of the
22 collateral by the secured party;

1 (2) Section 9-209, which deals with requests for an accounting and requests
2 concerning a list of collateral and statement of account.

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

5 (4) Sections 9-608(a) and 9-614(d) insofar as they deal with application or
6 payment of noncash proceeds of collection, enforcement, or disposition;

7 (5) Sections 9-608(a) and 9-614(b) and (e) insofar as they require
8 accounting for or payment of surplus proceeds of collateral;

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

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

14 (8) Section 9-614(h), which deals with calculation of a deficiency or surplus
15 when a disposition is made to the secured party, a person related to the secured party,
16 or a secondary obligor;

17 (9) Section 9-614A, which deals with explanation of the calculation of a
18 surplus or deficiency;

19 (10) Section 9-618, 9-619, and 9-620, which deal with acceptance of
20 collateral in satisfaction of obligation;

21 (11) Section 9-621, which deals with redemption of collateral;

22 (12) Section 9-623, which deals with permissible waivers;

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

3 (b) An obligor other than a consumer obligor in a consumer-goods transaction
4 or a secondary obligor may waive or vary the rules referred to in subsection (a) to the
5 extent and in the manner provided by other law.

6 **SECTION 9-603. AGREEMENT ON STANDARDS CONCERNING**
7 **RIGHTS AND DUTIES.**

8 (a) The parties may determine by agreement the standards measuring the
9 fulfillment of the rights of a debtor or obligor and the duties of a secured party if the
10 standards are not manifestly unreasonable.

11 (b) Subsection (a) does not apply to the duty under Section 9-609 to refrain
12 from breaching the peace when taking possession of collateral.

13 **SECTION 9-604. PROCEDURE IF SECURITY AGREEMENT COVERS**
14 **REAL PROPERTY OR FIXTURES.**

15 (a) If a security agreement covers both personal and real property, a secured
16 party may proceed:

17 (1) under this part as to the personal property without prejudicing any rights
18 and remedies with respect to the real property; or

19 (2) as to both the personal property and the real property in accordance with
20 the rights and remedies with respect to the real property, in which case the other
21 provisions of this part do not apply.

1 (b) Subject to subsection (c), if a security agreement covers goods that are or
2 become fixtures, a secured party may proceed:

3 (1) under this part; or

4 (2) in accordance with the rights and remedies with respect to real property,
5 in which case the other provisions of this part do not apply.

6 (c) Subject to the other provisions of this part, if a secured party holding a
7 security interest in fixtures has priority over all owners and encumbrancers of the real
8 property, the secured party may, on default remove the collateral from the real property.

9 (d) A secured party that removes collateral shall promptly reimburse any
10 encumbrancer or owner of the real property, other than the debtor, for the cost of repair
11 of any physical injury caused by the removal. The secured party need not reimburse
12 the encumbrancer or owner for any diminution in value of the real property caused by
13 the absence of the goods removed or by any necessity of replacing them. A person
14 entitled to reimbursement may refuse permission to remove until the secured party
15 gives adequate assurance for the performance of the obligation to reimburse.

16 **SECTION 9-605. UNKNOWN DEBTOR OR SECONDARY OBLIGOR.** A
17 secured party does not owe a duty based on its status as secured party to a person, or
18 to a secured party or lienholder that has filed a financing statement against the person,
19 unless the secured party knows:

20 (1) that a person is a debtor or a secondary obligor;

21 (2) the identity of the person; and

22 (3) how to communicate with the person.

1 **SECTION 9-606. TIME OF DEFAULT FOR AGRICULTURAL LIEN.** For
2 purposes of this part, a default occurs in connection with an agricultural lien at the time
3 when the secured party becomes entitled to enforce the lien in accordance with the
4 statute under which it was created.

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

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

8 (1) may notify an account debtor or other person obligated on collateral to
9 make payment or otherwise render performance to or for the benefit of the secured
10 party;

11 (2) may take any proceeds to which the secured party is entitled under
12 Section 9-313;

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

19 (4) if it holds a security interest in a deposit account perfected by control
20 under Section 9-109(a)(1), may apply the balance of the deposit account to the
21 obligation secured by the deposit account; and

1 (5) if it holds a security interest in a deposit account perfected by control
2 under Section 9-109(a)(2) or (3), may instruct the bank to pay the balance of the
3 deposit account to or for the benefit of the secured party.

4 (b) If necessary to enable a secured party to exercise under subsection (a)(3)
5 the right of a debtor to enforce nonjudicially any mortgage, the secured party may
6 record in the office in which the mortgage is recorded:

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

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

10 (A) a default has occurred; and

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

12 (c) A secured party shall proceed in a commercially reasonable manner if the
13 secured party:

14 (1) undertakes to collect from or enforce an obligation of an account debtor
15 or other person obligated on collateral; and

16 (2) is entitled to charge back uncollected collateral or otherwise to full or
17 limited recourse against the debtor or against a secondary obligor.

18 (d) The secured party may deduct from the collections made pursuant to
19 subsection (c) reasonable expenses of collection and enforcement, including reasonable
20 attorney's fees and legal expenses incurred by the secured party.

21 (e) This section does not determine whether an account debtor, bank, or
22 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, and
4 the obligor is liable for any deficiency.

5 (b) If the underlying transaction is a sale of accounts, chattel paper, 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 **SECTION 9-609. SECURED PARTY'S RIGHT TO TAKE POSSESSION**
9 **AFTER DEFAULT.**

10 (a) A secured party has the right on default to take possession of the collateral.

11 (b) A secured party may take possession of collateral:

12 (1) pursuant to judicial process; or

13 (2) if it takes possession without breach of the peace, without judicial
14 process.

15 (c) If a security agreement so provides, a secured party may require a debtor
16 to assemble the collateral and make it available to the secured party at a place to be
17 designated by the secured party which is reasonably convenient to both parties.

18 (d) Without removal, a secured party:

19 (1) may render equipment unusable; and

20 (2) may dispose of collateral on a debtor's premises under Section 9-610.

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

1 (a) A secured party after default may sell, lease, license, or otherwise dispose
2 of any or all of the collateral in its present condition or following any commercially
3 reasonable preparation or processing.

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

9 (c) A secured party may purchase collateral:

10 (1) at a public sale; or

11 (2) at a private sale only if the collateral is of a kind that is:

12 (A) customarily sold on a recognized market; or

13 (B) the subject of widely distributed standard price quotations.

14 (d) A contract for sale, lease, license, or other disposition includes the
15 warranties relating to title, possession, quiet enjoyment, and the like which by
16 operation of law accompany a voluntary disposition of property of the kind subject to
17 the contract.

18 (e) A secured party may disclaim or modify warranties under subsection (d):

19 (1) in a manner that would be effective to disclaim or modify the warranties
20 in a voluntary disposition of property of the kind subject to the contract of disposition;

21 or

1 (2) by communicating to the purchaser a record evidencing the contract for
2 disposition and containing an explicit disclaimer or modification of the warranties.

3 (f) A record is sufficient to disclaim warranties under subsection (e) if it
4 indicates “There is no warranty relating to title, possession, quiet enjoyment, or the like
5 in this disposition or contains words of similar import.

6 **SECTION 9-611. PERSONS ENTITLED TO NOTIFICATION BEFORE**
7 **DISPOSITION OF COLLATERAL.**

8 (a) In this section, “notification date” means the earlier of the date on which:

9 (1) a secured party sends to the debtor and any secondary obligor an
10 authenticated notification of disposition; or

11 (2) the debtor and any secondary obligor waive the right to notification.

12 (b) A secured party that disposes of collateral under Section 9-610 shall send
13 to a debtor and any secondary obligor a reasonable authenticated notification of
14 disposition. If the collateral is consumer goods, the secured party need not send
15 another notification. If the collateral is not consumer goods, the secured party shall
16 send an authenticated notification of disposition to:

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

19 (2) any other secured party that, 10 days before the notification date, held
20 a security interest in or agricultural lien on the collateral perfected by the filing of a
21 financing statement that:

22 (A) identified the collateral;

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

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

4 (3) any other secured party that, 10 days before the notification date, held
5 a security interest in the collateral perfected by compliance with a statute, regulation,
6 or treaty described in Section 9-309A(a).

7 (c) Subsection (b) does not apply if the collateral is perishable or threatens to
8 decline speedily in value or is of a type customarily sold on a recognized market.

9 (d) A secured party complies with the notification requirement specified in
10 subsection (b)(2) if:

11 (1) not later than 20 days or earlier than 30 days before the notification date,
12 the secured party requests, in a commercially reasonable manner, information
13 concerning financing statements indexed under the debtor's name in the office indicated
14 in subsection (b)(2); and

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

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

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

20 **SECTION 9-612. TIMELINESS OF NOTIFICATION BEFORE**
21 **DISPOSITION OF COLLATERAL.**

1 (a) Except as otherwise provided in subsection (b), whether a notification is
2 sent within a reasonable time is a question of fact.

3 (b) In a transaction other than a consumer transaction, a notification of
4 disposition sent after default and 10 days or more before the earliest time of disposition
5 set forth in the notification is sent within a reasonable time before the disposition.

6 (c) The limitation of the rule in subsection (b) to transactions other than
7 consumer transactions is intended to leave to the court the determination of the proper
8 rule in consumer transactions. The court may not draw from that limitation an
9 inference as to the nature of the proper rule in consumer transactions, and the court may
10 continue to apply established approaches.

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

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

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

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

19 (C) states the method of intended disposition;

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

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

3 (2) Whether the contents of a notification that lacks any of the information
4 set forth in paragraph (1) are nevertheless sufficient is a question of fact.

5 (3) The contents of a notification containing substantially the information
6 specified in paragraph (1) are sufficient even if the notification contains:

7 (A) information not specified by that paragraph; or

8 (B) minor errors that are not seriously misleading.

9 (4) A particular phrasing of the notification is not required.

10 (5) The following form of notification and the form appearing in Section
11 9-613A(a)(3), when completed, each contains sufficient information:

12 **NOTIFICATION OF DISPOSITION OF COLLATERAL**

13 To: [Name of debtor, obligor, or other person to which the
14 notification is sent]

15 From: [Name, address, and telephone number of secured
16 party]

17 Name of Debtor(s): [Include only if debtor(s) are not an addressee]

18 [For a public disposition:]

19 We will sell [or lease or license, as applicable] the [describe collateral] [to
20 the highest qualified bidder] in public as follows:

21 Day and Date: _____

22 Time: _____

1 Place: _____

2 [For a private disposition:]

3 We will sell [or lease or license, *as applicable*] the _____ [describe collateral]
4 privately sometime after _____ [day and date].

5 You are entitled to an accounting of the unpaid indebtedness secured by the
6 property that we intend to sell [or lease or license, *as applicable*] [for a charge of
7 \$ _____]. You may request an accounting by calling us at _____ [telephone number]

8 **[End of Form]**

9 **SECTION 9-613A. CONTENTS AND FORM OF NOTIFICATION BEFORE**
10 **DISPOSITION OF COLLATERAL: CONSUMER-GOODS TRANSACTION.**

11 (a) In a consumer-goods transaction, the following rules apply:

12 (1) A notification of disposition must contain the following information:

13 (A) the information specified in Section 9-613(a)(1);

14 (B) a description of any liability for a deficiency of the person to which
15 the notification is sent;

16 (C) a telephone number from which the amount that must be paid to the
17 secured party to redeem the collateral under Section 9-621 is available; and

18 (D) a telephone number or mailing address from which additional
19 information concerning the disposition and the obligation secured is available.

20 (2) A particular phrasing of the notification is not required.

21 (3) The following form of notification, when completed, contains sufficient
22 information:

1 owe(s) to us. *[Include the following sentence only if the addressee is obligated on the*
2 *secured debt.]* IF WE GET LESS MONEY THAN YOU OWE, YOU WILL STILL
3 OWE US THE DIFFERENCE, and we may sue you and take part of your wages or
4 other property. *[Include the following sentence only if the addressee is a debtor.]* If
5 we get more money than [you] [name of obligor, if different] owe(s) to us, [you]
6 [name of obligor, if different] will get the extra money.

7 You can stop the sale [and get] [and the debtor will get] the property back. To do
8 this, [you] [name of obligor, if different] must:

9 Pay us the full amount of the debt plus our costs before the sale. Then [you]
10 [name of obligor, if different] will not owe us any more money. To learn the
11 exact amount you must pay, call us at [telephone number].

12 If you want us to explain to you in writing how we have figured the amount that
13 you owe us, you may call us at [telephone number]. [We will charge you
14 \$ _____ for the explanation.]

15 **[End of Form]**

16 (4) A notification in the form of paragraph (3) is sufficient even if it
17 contains errors in information not required by paragraph (1), unless the error is
18 misleading with respect to rights arising under this article.

19 (b) The limitation of the rule in subsection (a)(4) to notifications in a particular
20 form and to information not required by subsection (a)(1) is intended to leave to the
21 court the determination of the proper rule for notifications in another form and for
22 errors in information not required by subsection (a)(1). The court may not draw from

1 that limitation an inference as to the nature of the proper rule for notifications in
2 another form or for errors in information not required by paragraph (1), and the court
3 may continue to apply established approaches.

1 **SECTION 9-614. APPLICATION OF PROCEEDS OF DISPOSITION;**
2 **LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS.**

3 (a) In this section:

4 (1) “Person related to, with respect to an individual, means:

5 (A) the spouse of the individual;

6 (B) a brother, brother-in-law, sister, or sister-in-law of the individual;

7 (C) an ancestor or lineal descendant of the individual or the individual’s
8 spouse; and

9 (D) any other relative, by blood or marriage, of the individual or the
10 individual’s spouse who shares the same home with the individual.

11 (2) “Person related to, with respect to an organization, means:

12 (A) a person directly or indirectly controlling, controlled by, or under
13 common control with the organization;

14 (B) an officer or director of, or a person performing similar functions
15 with respect to, the organization;

16 (C) an officer or director of, or a person performing similar functions
17 with respect to, a person described in paragraph (A);

18 (D) the spouse of an individual described in paragraph (A), (B), or (C);

19 or

20 (E) an individual related by blood or marriage to an individual described
21 in paragraph (A), (B), (C), or (D) and who shares the same home with the individual.

1 (b) A secured party shall apply or pay over for application the cash proceeds
2 of disposition in the following order to:

3 (1) the reasonable expenses of retaking, holding, preparing for disposition,
4 processing, and disposing, and, to the extent provided for by agreement and not
5 prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured
6 party;

7 (2) the satisfaction of obligations secured by the security interest or
8 agricultural lien under which the disposition is made;

9 (3) the satisfaction of obligations secured by any subordinate security
10 interest in or other lien on the collateral if:

11 (A) the secured party receives from the holder of the subordinate
12 security interest an authenticated demand for proceeds before distribution of the
13 proceeds is completed; and

14 (B) if a consignor has an interest in the collateral, the subordinate
15 security interest or lien is senior to the interest of the consignor; and

16 (4) a secured party that is a consignor of the collateral if the secured party
17 receives from the consignor an authenticated demand for proceeds before distribution
18 of the proceeds is completed.

19 (c) If requested by a secured party, a holder of a subordinate security interest
20 or other lien shall furnish reasonable proof of the interest or lien within a reasonable
21 time. Unless the holder does so, the secured party need not comply with the holder's
22 demand under subsection (b)(3).

1 (d) A secured party need not apply or pay over for application noncash
2 proceeds of disposition under this section. A secured party that applies or pays over
3 for application noncash proceeds shall do so in a commercially reasonable manner.

4 (e) If the security interest under which a disposition is made secures payment
5 or performance of an obligation, after making the payments and applications required
6 by subsection (b):

7 (1) unless subsection (b)(4) requires the secured party to apply or pay over
8 cash proceeds to a consignor, the secured party shall account to and pay a debtor for
9 any surplus; and

10 (2) the obligor is liable for any deficiency.

11 (f) If the underlying transaction is a sale of accounts, chattel paper, or payment
12 intangibles:

13 (1) the debtor is not entitled to any surplus; and

14 (2) the obligor is not liable for any deficiency.

15 (g) The surplus or deficiency following a disposition is calculated based on the
16 amount of proceeds that would have been realized in a disposition complying with the
17 requirements of this part to a transferee other than the secured party, a person related
18 to the secured party, or a secondary obligor if:

19 (1) the transferee in the disposition is the secured party, a person related to
20 the secured party, or a secondary obligor; and

1 (2) the amount of proceeds of the disposition is significantly below the
2 range of proceeds that a complying disposition to a person other than the secured party,
3 a person related to the secured party, or a secondary obligor would have brought.

4 (h) A secured party that receives cash proceeds of a disposition in good faith
5 and without knowledge that the receipt violates the rights of the holder of a security
6 interest or other lien that is not subordinate to the security interest or agricultural lien
7 under which the disposition is made:

8 (1) takes the cash proceeds free of the security interest or other lien;

9 (2) is not obligated to apply the proceeds of the disposition to the
10 satisfaction of obligations secured by the security interest or other lien; and

11 (3) is not obligated to account to or pay the holder of the security interest
12 or other lien for any surplus.

13 **SECTION 9-614A. EXPLANATION OF CALCULATION OF SURPLUS OR**
14 **DEFICIENCY.**

15 (a) In this section:

16 (1) “Explanation” means a writing that:

17 (A) states the amount of the surplus or deficiency; and

18 (B) provides an explanation in accordance with subsection (c) of how
19 the secured party calculated the surplus or deficiency;

20 (C) states, if applicable, that future debits, credits, charges, rebates, and
21 expenses may affect the amount of the surplus or deficiency; and

1 (D) provides a telephone number or mailing address from which
2 additional information concerning the transaction is available.

3 (2) "Request" means a record:

4 (A) authenticated by a debtor or consumer obligor; and

5 (B) requesting that the recipient provide an explanation.

6 (b) In a consumer-goods transaction in which the debtor is entitled to a surplus
7 or a consumer obligor is liable for a deficiency under Section 9-614(e), the secured
8 party shall send an explanation to the debtor or consumer obligor, as applicable:

9 (1) before or when the secured party accounts to the debtor and pays any
10 surplus or first makes written demand on the consumer obligor for payment of the
11 deficiency; and

12 (2) within two weeks after receipt of a request.

13 (c) To comply with subsection (a)(1)(B), a writing must provide the following
14 information in the following order:

15 (1) the aggregate amount of obligations secured by the security interest
16 under which the disposition was made, calculated as of a specified date:

17 (A) if the secured party takes possession of the collateral after default,
18 not more than 35 days before the secured party takes possession; or

19 (B) if the secured party takes possession of the collateral before default
20 or does not take possession of the collateral, not more than 35 days before the
21 disposition;

22 (2) the amount of proceeds of the disposition;

1 (3) the aggregate amount of the obligations after deducting the amount of
2 proceeds;

3 (4) the amount, in the aggregate or by category, of expenses, including
4 expenses of retaking, holding, preparing for disposition, processing, and disposing of
5 the collateral, and attorney's fees secured by the collateral which are known to the
6 secured party and not reflected in the amount in paragraph (1);

7 (5) the types and amount, in the aggregate or by category, of credits,
8 including rebates of interest, to which the obligor is known to be entitled and which are
9 not reflected in the amount in paragraph (1); and

10 (6) the amount of the surplus or deficiency.

11 (d) A particular phrasing of the explanation is not required. An explanation
12 complying substantially with the requirements of subsection (a) is sufficient even if it
13 contains minor errors that are not seriously misleading.

14 (e) A debtor or consumer obligor is entitled without charge to one response to
15 a request under this section during any six-month period in which the secured party did
16 not send to the debtor or consumer obligor an explanation pursuant to subsection
17 (b)(1). The secured party may require payment of a charge not exceeding \$25 for each
18 additional response.

19 **SECTION 9-615. RIGHTS OF TRANSFeree OF COLLATERAL.**

20 (a) A secured party's disposition of collateral after default:

21 (1) transfers to a transferee for value all of the debtor's rights in the
22 collateral; and

1 (2) discharges the security interest under which the disposition is made; and

2 (3) discharges any subordinate security interest or other lien [other than
3 liens created under [cite acts or statutes providing for liens, if any, that are not to be
4 discharged]].

5 (b) The transferee takes free of the rights and interests described in subsection
6 (a) even if the secured party fails to comply with the requirements of this article or any
7 judicial proceedings:

8 (1) in a public sale, if the transferee:

9 (A) has no knowledge of any defects in the sale;

10 (B) does not buy in collusion with the secured party, other bidders, or
11 the person conducting the sale; and

12 (C) acts in good faith; and

13 (2) in any other case, if the transferee acts in good faith.

14 (c) If a transferee does not take free of the rights and interests described in
15 subsection (a), the transferee takes the collateral subject to:

16 (1) the debtor's rights in the collateral;

17 (2) the security interest or agricultural lien under which the disposition is
18 made; and

19 (3) any [subordinate] security interest or other lien.

1 **SECTION 9-616. RIGHTS AND DUTIES OF CERTAIN SECONDARY**
2 **OBLIGORS.**

3 (a) A secondary obligor acquires the rights and becomes obligated to perform
4 the duties of the secured party after the secondary obligor:

5 (1) receives an assignment of a secured obligation from the secured party;

6 (2) receives a transfer of collateral from the secured party and agrees to
7 accept the rights and assume the duties of the secured party; or

8 (3) is subrogated to the rights of a secured party with respect to collateral.

9 (b) An assignment, transfer, or subrogation described in subsection (a):

10 (1) is not a disposition of collateral under Section 9-610; and

11 (2) relieves the secured party of further duties under this article.

12 **SECTION 9-617. TRANSFER OF RECORD OR LEGAL TITLE.**

13 (a) In this section, "transfer statement" means a record authenticated by a
14 secured party stating:

15 (1) that the debtor has defaulted in connection with an obligation secured
16 by specified collateral;

17 (2) that the secured party has exercised its post-default remedies with
18 respect to the collateral;

19 (3) that, by reason of the exercise, a transferee has acquired the rights of the
20 debtor in the collateral; and

21 (4) the name and mailing address of the secured party, the debtor, and the
22 transferee.

1 (b) A transfer statement entitles the transferee to the transfer of record of all
2 rights of the debtor in the collateral specified in the statement in any official filing,
3 recording, registration, or certificate-of-title system covering the collateral. If a transfer
4 statement is presented with the applicable fee and request form to the official or office
5 responsible for maintaining the system, the official or office:

6 (1) shall accept the transfer statement;

7 (2) shall promptly amend its records to reflect the transfer; and

8 (3) if applicable, shall issue a new appropriate certificate of title in the name
9 of transferee.

10 (c) A transfer of the record or legal title to collateral to a secured party under
11 subsection (b) or otherwise is not of itself a disposition of collateral under this article
12 and does not of itself relieve the secured party of its duties under this article.

13 **SECTION 9-618. ACCEPTANCE OF COLLATERAL IN FULL OR**
14 **PARTIAL SATISFACTION OF OBLIGATION; COMPULSORY**
15 **DISPOSITION OF COLLATERAL.**

16 (a) In this section and in Sections 9-619 and 9-620, “proposal means a record
17 authenticated by a secured party and containing the terms on which the secured party
18 is willing to accept collateral in full or partial satisfaction of the obligation it secures.

19 (b) Except as otherwise provided in subsection (h), a secured party may accept
20 collateral in full or partial satisfaction of the obligation it secures only if:

21 (1) the debtor consents to the acceptance under subsection (d);

1 (2) the secured party does not receive, within the time set forth in subsection
2 (e), a notification of objection to the proposal authenticated by

3 (A) a person to which the secured party was required to send a proposal
4 under Section 9-619; or

5 (B) any other person holding an interest in the collateral subordinate to
6 the security interest that is the subject of the proposal;

7 (3) if the collateral is consumer goods, the collateral is not in the possession
8 of the debtor when the debtor consents to the acceptance; and

9 (4) subsection (f) does not require the secured party to dispose of the
10 collateral.

11 (c) A purported or apparent acceptance of collateral under this section is
12 ineffective unless:

13 (1) the secured party consents to the acceptance in an authenticated record
14 or sends to the debtor a proposal; and

15 (2) the conditions of subsection (b) are met.

16 (d) For purposes of this section:

17 (1) a debtor consents to an acceptance of collateral in partial satisfaction of
18 the obligation it secures only if the debtor agrees to the terms of the acceptance in a
19 record authenticated after default; and

20 (2) a debtor consents to an acceptance of collateral in full satisfaction of the
21 obligation it secures only if the debtor agrees to the terms of the acceptance in a record
22 authenticated after default or the secured party:

1 (A) sends to the debtor after default a proposal that is unconditional or
2 subject only to a condition that collateral not in the possession of the secured party be
3 preserved or maintained;

4 (B) in the proposal, proposes to accept collateral in full satisfaction of
5 the obligation it secures; and

6 (C) does not receive a notification of objection authenticated by the
7 debtor within 20 days after the proposal is sent.

8 (e) To be effective under subsection (b)(2), a notification of objection must be
9 received by the secured party:

10 (1) in the case of a person to which the proposal was sent pursuant to
11 Section 9-619, within 20 days after notification was sent to that person; and

12 (2) in other cases:

13 (A) within 20 days after the last notification was sent pursuant to
14 Section 9-619; or

15 (B) if a notification was not sent, before the debtor consents to the
16 acceptance under subsection (d).

17 (f) A secured party that has taken possession of collateral shall dispose of the
18 collateral pursuant to Section 9-610 within the time specified in subsection (g) if:

19 (1) 60 percent of the cash price has been paid in the case of a purchase-
20 money security interest in consumer goods; or

21 (2) 60 percent of the principal amount of the obligation secured has been
22 paid in the case of a non-purchase-money security interest in consumer goods.

1 (g) To comply with subsection (f), the secured party shall dispose of the
2 collateral:

3 (1) within 90 days after taking possession; or

4 (2) within any longer period to which the debtor and all secondary obligors
5 have agreed by authenticating a record containing a statement to that effect after
6 default.

7 (h) In a consumer transaction, a secured party may not accept collateral in
8 partial satisfaction of the obligation it secures.

9 **SECTION 9-619. NOTIFICATION OF PROPOSAL TO ACCEPT**
10 **COLLATERAL.**

11 (a) A secured party that desires to accept collateral in full or partial satisfaction
12 of the obligation it secures shall send its proposal to:

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

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

19 (A) identified the collateral;

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

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

1 (3) any other secured party that, [] days before the debtor consented to the
2 acceptance, held a security interest in the collateral perfected by compliance with a
3 statute, regulation, or treaty described in Section 9-309A(a).

4 (b) A secured party that desires to accept collateral in partial satisfaction of the
5 obligation it secures shall send its proposal to any secondary obligor in addition to the
6 persons described in subsection (a).

7 **SECTION 9-620. EFFECT OF ACCEPTANCE OF COLLATERAL.**

8 (a) A secured party's acceptance of collateral in full or partial satisfaction of
9 the obligation it secures:

10 (1) discharges the obligation to the extent consented to by the debtor;

11 (2) transfers to the secured party all of a debtor's rights in the collateral;

12 (3) discharges the security interest or agricultural lien that is the subject of
13 the debtor's consent and any subordinate security interest or other lien; and

14 (4) terminates any other subordinate interest.

15 (b) A subordinate interest is discharged or terminated under subsection (a)
16 whether or not the secured party is required to send or does send its proposal to the
17 holder of the interest. However, any person to which the secured party was required
18 to send, but did not send, its proposal has the remedy provided by Section 9-624(b).

19 **SECTION 9-621. RIGHT TO REDEEM COLLATERAL.**

20 (a) The debtor, any secondary obligor, or any other secured party or lienholder
21 may redeem the collateral.

22 (b) To redeem collateral, a person must tender:

1 (1) fulfillment of all obligations secured by the collateral; and
2 (2) the reasonable expenses and attorney's fees described in Section 9-
3 614(b)(1).

4 (c) A redemption may occur at any time before a secured party:

5 (1) has collected collateral under Section 9-607;

6 (2) has disposed of collateral or entered into a contract for its disposition
7 under Section 9-610; or

8 (3) has accepted collateral in full or partial satisfaction of the obligation it
9 secures under Section 9-618.

10 **SECTION 9-622.**

11 [Deleted.]

12 **SECTION 9-623. WAIVER.**

13 (a) A debtor, or secondary obligor may waive the right to notification of
14 disposition of collateral under Section 9-611 only by authenticating an agreement to
15 that effect after default.

16 (b) Except in a consumer-goods transaction, a debtor or secondary obligor may
17 waive the right to redeem collateral under Section 9-621 only by authenticating an
18 agreement to that effect after default.

19 [SUBPART 2. NONCOMPLIANCE WITH ARTICLE.]

20 **SECTION 9-624. REMEDIES FOR SECURED PARTY'S FAILURE TO**
21 **COMPLY WITH THIS ARTICLE.**

1 (a) If it is established that a secured party is not proceeding in accordance with
2 this article, a court may order or restrain collection, enforcement, or disposition of
3 collateral on appropriate terms and conditions.

4 (b) Subject to subsection (c), a secured party is liable for damages in the
5 amount of any loss caused by a failure to comply with this article. Loss caused by a
6 failure to comply with a request under Section 9-209 may include loss resulting from
7 the debtor's inability to obtain, or increased costs of, alternative financing.

8 (c) Except as otherwise provided in Section 9-627:

9 (1) a person that, at the time of the failure, was a debtor, was a secondary
10 obligor, or held a security interest in or other lien on the collateral has a right to recover
11 damages for its loss under subsection (b); and

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

17 (d) A debtor whose deficiency is eliminated under Section 9-625 may recover
18 damages for the loss of any surplus. However, a debtor or secondary obligor whose
19 deficiency is eliminated or reduced under Section 9-625 may not otherwise recover
20 under subsection (b) for noncompliance with the provisions of this part relating to
21 collection, enforcement, disposition, or acceptance.

1 (e) In addition to any damages recoverable under subsection (b), the debtor,
2 consumer obligor, or person named as a debtor in a filed record, as applicable, may
3 recover \$500 in each case from:

4 (1) a secured party that fails to comply with Section 9-208;

5 (2) a secured party that fails to comply with Section 9-208A;

6 (3) a person that, without reasonable excuse, fails to comply with a request
7 under Section 9-209;

8 (4) a person that files a record that the person is not entitled to file under
9 Section 9-508(a);

10 (5) a secured party that fails to cause the secured party of record to file or
11 send a termination statement as required by Section 9-511(b) or (d);

12 (6) a secured party that fails to comply with Section 9-614A(b)(1) and
13 whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

14 (7) a secured party that fails to comply with Section 9-614A(b)(2).

15 (f) A recipient of a request under Section 9-209 which never claimed an
16 interest in the collateral or obligations that are the subject of a request under that
17 section has a reasonable excuse for failure to comply with the request within the
18 meaning of subsection (e).

19 (g) If a secured party fails to comply with a request regarding a list of collateral
20 or a statement of account under Section 9-209, the secured party may claim a security
21 interest only as shown in the statement contained in the request as against a person that
22 is reasonably misled by the failure.

1 **SECTION 9-625. ACTION IN WHICH DEFICIENCY OR SURPLUS IS IN**

2 **ISSUE.** (a) In an action arising from a transaction, other than a consumer transaction,
3 in which the amount of a deficiency or surplus is in issue, the following rules apply:

4 (1) A secured party need not prove compliance with the provisions of this
5 part relating to collection, enforcement, disposition, or acceptance unless the debtor or
6 a secondary obligor places the secured party's compliance in issue.

7 (2) If the secured party's compliance is placed in issue, the secured party
8 has the burden of establishing that the collection, enforcement, disposition, or
9 acceptance was conducted in accordance with the applicable provisions of this part.

10 (3) Except as otherwise provided in Section 9-627, if a secured party fails
11 to prove that the collection, enforcement, disposition, or acceptance was conducted in
12 accordance with the provisions of this part relating to collection, enforcement,
13 disposition, or acceptance, the liability of a debtor or a secondary obligor for a
14 deficiency is limited to an amount by which the sum of the secured obligation,
15 expenses, and attorney's fees exceeds the greater of:

16 (A) the proceeds of the collection, enforcement, disposition, or
17 acceptance; or

18 (B) the amount of proceeds that would have been realized had the
19 noncomplying secured party proceeded in accordance with the provisions of this part
20 relating to collection, enforcement, disposition, or acceptance.

1 (4) For purposes of paragraph (3)(B), the amount of proceeds that would
2 have been realized is equal to the sum of the secured obligation, expenses, and
3 attorney's fees unless the secured party proves that the amount is less than that sum.

4 (5) If a deficiency or surplus is calculated under Section 9-614(h), the
5 debtor has the burden of establishing that the amount of proceeds of the disposition is
6 significantly below the range of prices that a complying disposition to an unrelated
7 third person would have brought.

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

13 **SECTION 9-626. DETERMINATION OF WHETHER CONDUCT WAS**
14 **COMMERCIALY REASONABLE.**

15 (a) The fact that a greater amount could have been obtained by a collection,
16 enforcement, disposition, or acceptance at a different time or in a different method
17 from that selected by the secured party is not of itself sufficient to preclude the secured
18 party from establishing that the collection, enforcement, disposition, or acceptance was
19 made in a commercially reasonable manner.

20 (b) A disposition of collateral is made in a commercially reasonable manner
21 if the disposition is made:

22 (1) in the usual manner on any recognized market therefor;

1 (2) at the price current in any recognized market at the time of the
2 disposition; or

3 (3) otherwise in conformity with reasonable commercial practices among
4 dealers in the type of property that was the subject of the disposition.

5 (c) A collection, enforcement, disposition, or acceptance is commercially
6 reasonable if it has been approved:

7 (1) in any judicial proceeding;

8 (2) by any bona fide creditors' committee;

9 (3) by any representative of creditors; or

10 (4) by any assignee for the benefit of creditors.

11 (d) Approval under subsection (c) need not be obtained and lack of approval
12 does not mean that the collection, enforcement, disposition, or acceptance is not
13 commercially reasonable.

1 **SECTION 9-627. NONLIABILITY AND LIMITATION ON LIABILITY OF**
2 **SECURED PARTY; LIABILITY OF SECONDARY OBLIGOR.**

3 (a) Unless a secured party knows that a person is a debtor or secondary obligor,
4 knows the identity of the person, and knows how to communicate with the person:

5 (1) the secured party is not liable to the person or to a secured party or
6 lienholder that has filed a financing statement against the person for failure to comply
7 with this article; and

8 (2) the secured party's failure to comply with this article does not affect the
9 liability of the person for a deficiency.

10 (b) A secured party is not liable to any person, and a person's liability for a
11 deficiency is not affected, because of any act or omission, other than the failure to send
12 a notification required by Section 9-611(b)(2), that occurs before the secured party
13 knows that the person is a debtor or a secondary obligor or knows that the person has
14 a security interest or other lien in the collateral.

15 (c) A secured party is not liable to any person, and a person's liability for a
16 deficiency is not affected, because of any act or omission arising out of the secured
17 party's reasonable belief that a transaction is not a consumer-goods transaction or a
18 consumer transaction or that goods are not consumer goods, if the secured party's belief
19 is based on:

20 (1) its reasonable reliance on a debtor's representation concerning the
21 purpose for which collateral was to be used, acquired, or held; or

1 (2) an obligor's representation concerning the purpose for which a secured
2 obligation was incurred.

3 (d) A secured party is not liable to any person under Section 9-624(c)(2) for its
4 failure to comply with Section 9-614A.

5 (e) A secured party is not liable under Section 9-624(c)(2) more than once with
6 respect to any one secured obligation.

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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 general principles reflected by Part 7. The Drafting Committee has not reviewed the Reporters' Comments.

SECTION 9-701. DEFINITION: "THIS ACT". For purposes of this part, "this Act" means *[insert description of legislation enacting revised Article 9]*.

SECTION 9-702. EFFECTIVE DATE. This Act takes effect at 12:01 a.m. on [January 1, 2001].

Reporters' Comments

We expect this article to be ready for submission to state legislatures by early 1999. However, in order to reduce problems during the transition period while this article may be enacted in some states and former Article 9 may remain effective in

1 others, the draft provides for an effective date of January 1, 2001. This approach would
2 permit this article to take effect at the same time in all states that enact revised Article
3 9 during the 1999 and 2000 legislative sessions, The effective date is placed in square
4 brackets, however, in contemplation that some states may enact this article after
5 January 1, 2001.

6 **SECTION 9-703. SAVINGS CLAUSE.**

7 (a) Transactions and liens that were not governed by [former Article 9], which
8 were validly entered into before this Act takes effect, and which would be subject to
9 this Act if they had been entered into after this Act takes effect and the rights, duties,
10 and interests flowing from those transactions remain valid after this Act takes effect.
11 They may be terminated, completed, consummated, or enforced as required or
12 permitted by this Act.

13 (b) This Act does not affect an action, case, or proceeding commenced before
14 this Act takes effect.

15 **Reporters' Comments**

16 **1. Pre-Effective Date Transactions Valid under non-Article 9 Law.**
17 Subsection (a) applies only to transactions that were governed by law other than former
18 Article 9, such as agricultural liens and security in interests in commercial tort claims
19 as original collateral. It provides that valid transactions retain their validity under this
20 article and that they may be terminated, completed, consummated, or enforced under
21 this article.

22 **2. Judicial Proceedings Commenced Before Effective Date.** As is usual in
23 transition provisions, subsection (b) provides that this article does not affect litigation
24 pending on the effective date.

1 security interests that are perfected under former Article 9 or other applicable law but
2 do not satisfy the requirements for enforceability (attachment) or perfection under this
3 article. These security interests are perfected security interests for one year. If the
4 security interest satisfies the requirements for attachment and perfection within that
5 period, the security interest remains perfected thereafter. If the security interest
6 satisfies only the requirements for attachment within that period, the security interest
7 becomes unperfected at the end of the one-year period.

8 **Example 1:** A pre-effective date security agreement in a consumer
9 transaction covers “all securities accounts. The security interest is
10 properly perfected. The collateral description is adequate under former
11 Article 9 (see former Section 9-115(3)) but is insufficient under revised
12 Article 9 (see Section 9-111(e)(2)). Unless the debtor authenticates a
13 new security agreement describing the collateral other than by “type
14 within the one-year period following the effective date, the security
15 interest becomes unenforceable at the end of that period.

16 Other examples under current Article 9 or other pre-Act law that would be effective as
17 attachment or enforceability steps but would be ineffective under revised Article 9
18 include an oral agreement to sell a payment intangible or possession by virtue of a
19 notification to a bailee under current Section 9-305. Neither the oral agreement nor the
20 notification would satisfy the revised Section 9-203 requirements for attachment.

21 **Example 2:** A pre-effective date possessory security interest in
22 instruments is perfected by a bailee’s receipt of notification under
23 former 9-305. The bailee has not, however, acknowledged that it holds
24 for the secured party’s benefit under revised Section 9-311. Unless the
25 bailee authenticates a record acknowledging that it holds for the secured
26 party within the one-year period following the effective date, the
27 security interest becomes unperfected at the end of that period.

28 **3. Interpretation of Pre-Effective Date Security Agreements.** Section 9-
29 102(a) defines “security agreement” as “an agreement that creates or provides for a
30 security interest. Under Section 1-201(3), an “agreement” is a “bargain of the parties
31 in fact. If parties to a pre-effective date security agreement describe the collateral by
32 using a term defined in former Article 9 in one way and defined in this article in
33 another way, in most cases it should be presumed that the bargain of the parties
34 contemplated the meanings of the terms under former Article 9.

35 **Example 3:** A pre-effective date security agreement covers “all
36 accounts” of a debtor. An “account,” as defined under former Article
37 9, does not include rights to payment for lottery winnings. These rights
38 to payment are “accounts” under this article, however. The agreement

1 of the parties presumptively created a security interest in “accounts as
2 defined in former Article 9. A different result might be appropriate, for
3 example, if the security agreement explicitly contemplated future
4 changes in the Article 9 definitions of types of collateral--e.g.,
5 “‘Accounts’ means ‘accounts’ as defined in the UCC Article 9 of [State
6 X], *as that definition may be amended from time to time.*

7 **SECTION 9-705. SECURITY INTEREST UNPERFECTED BEFORE**
8 **EFFECTIVE DATE.** A security interest that is enforceable when this Act takes effect
9 but which is subordinate to the rights of a lien creditor at that time:

10 (1) remains an enforceable security interest for a period of one year after
11 this Act takes effect;

12 (2) remains enforceable thereafter if the security interest becomes
13 enforceable under Section 9-203 of this Act before that time; and

14 (3) becomes perfected:

15 (A) when this Act takes effect if the applicable requirements for
16 perfection under this Act are satisfied before that time; or

17 (B) when the applicable requirements for perfection are satisfied if the
18 requirements are satisfied after that time.

19 **Reporters’ Comments**

20 **Unperfected Security Interests under Former Article 9.** This section deals with
21 security interests that are enforceable but unperfected under former Article 9 or other
22 applicable law. These security interests remain enforceable for one year after the
23 effective date and thereafter if the appropriate steps for attachment under this Act are
24 taken before that date. If the security interest satisfies the requirements for perfection
25 under this article, then it becomes a perfected security interest on the effective date.
26 If the security interest does not satisfy the requirements for perfection until sometime
27 thereafter, it becomes a perfected security interest at that later time.

1 **Example:** A security interest has attached under former Article 9 but
2 is unperfected because the filed financing statement covers “all of
3 debtor’s personal property and controlling case law has determined
4 that this identification of collateral in a financing statement is
5 insufficient. Upon the effective date of this act, the financing statement
6 becomes sufficient under revised 9-111(c). On that date the security
7 interest becomes perfected. (This assumes, of course, that the financing
8 statement is filed in the proper filing office under this article.)

9 **SECTION 9-706. EFFECTIVENESS OF ACTION TAKEN BEFORE**
10 **EFFECTIVE DATE OF THIS ACT.**

11 (a) If action other than the filing of a financing statement, is taken before this
12 Act takes effect and the action would have resulted in a security interest achieving
13 priority over the rights of a lien creditor had the security interest become enforceable
14 before this Act takes effect, the action is sufficient to perfect a security interest that
15 attaches one year after this Act takes effect. An attached security interest becomes
16 unperfected one year after this Act takes effect unless the security interest becomes a
17 perfected security interest under this Act before the expiration of that period.

18 (b) The filing of a financing statement before this Act takes effect is sufficient
19 to perfect a security interest that attaches after this Act takes effect to the extent the
20 filing would perfect the security interest under this Act.

21 (c) This Act does not render ineffective an effective financing statement that
22 is filed before this Act takes effect in accordance with the law of the jurisdiction
23 governing perfection as provided in [former Section 9-103]. However, except as
24 otherwise provided in subsection (d):

25 (1) the financing statement becomes ineffective at the earlier of:

1 (A) the time the financing statement would have become ineffective
2 under the law of the jurisdiction in which it is filed; or

3 (B) five years after this Act takes effect; and

4 (2) a continuation statement filed after this Act takes effect does not
5 continue the effectiveness of the financing statement.

6 (d) A continuation statement filed after this Act takes effect and in accordance
7 with the law of the jurisdiction governing perfection as provided in Part 3 is effective
8 to continue the effectiveness of a financing statement filed in that jurisdiction before
9 this Act takes effect.

10 (e) This Act does not render ineffective an effective financing statement that
11 was filed before this Act takes effect and in the office specified in [former Section 9-
12 401]. However, except as otherwise provided in subsection (f):

13 (1) the financing statement becomes ineffective at the earlier of:

14 (A) the time the financing statement would have become ineffective
15 under [former Article 9]; or

16 (B) five years after this Act takes effect; and

17 (2) a continuation statement filed after this Act takes effect does not
18 continue the effectiveness of the financing statement.

19 (f) A continuation statement filed after this Act takes effect and in the office
20 specified in Section 9-501 is effective to continue the effectiveness of a financing
21 statement filed in that office before this Act takes effect.

1 (g) A financing statement that includes a financing statement filed before this
2 Act takes effect and a continuation statement filed after this Act takes effect is effective
3 only to the extent that it satisfies the requirements of Section 9-502(a).

4 Reporters' Comments

5 1. **General.** This section addresses the situation in which the “perfection step
6 is taken under former Article 9 or other applicable law before the effective date of this
7 article, but the security interest does not attach until after that date.

8 2. **Perfection Other Than by Filing.** Subsection (a) applies when the
9 “perfection step is a step other than the filing of a financing statement. If the step that
10 would be a valid perfection step under former Article 9 or other law is taken before this
11 article takes effect, and if a security interest attaches within one year after it takes
12 effect, then the security interest becomes a perfected security interest. However, the
13 security interest becomes unperfected one year after the effective date unless the
14 requirements for attachment and perfection under this article are met within that period.

15 **Example 1:** D enters into a security agreement covering its inventory
16 in favor of SP. SP and D notify a third party that SP holds a security
17 interest in any of D’s inventory that may from time to time come into
18 the third party’s possession. After this article takes effect, the debtor
19 acquires new inventory and the third party acquires possession of the
20 new inventory. SP’s security interest attaches to the after-acquired
21 collateral. Under subsection (a), SP’s security interest is perfected
22 when the third party acquires possession by virtue of the pre-effective-
23 date notification. However, as explained in Comment 2, Example 2, to
24 Section 9-704, the security interest will become unperfected unless the
25 third party acknowledges that it holds for SP before the end of the one-
26 year period following the effective date.

27 3. **Perfection by Filing: Ineffective Filings Made Effective.** Subsection (b)
28 deals with financing statements filed under former Article 9 and which would not have
29 perfected a security interest under the former article (because, e.g., they did not
30 accurately describe the collateral or were filed in the wrong place) but which would
31 perfect a security interest under this article. Under subsection (b), such a financing
32 statement is effective to perfect a security interest to the extent it complies with this
33 article.

34 4. **Perfection by Filing: Change in Applicable Law.** Subsection (c)
35 provides that a financing statement filed in the proper jurisdiction under former Section
36 9-103 remains effective for all purposes, despite the fact that Part 3 of this article

1 would require filing of a financing statement in a different jurisdiction. However, the
2 financing statement becomes ineffective at the earlier of the time it would become
3 effective under the previously applicable law or five years after the effective date. This
4 temporal limitation addresses some nonuniform versions of former Article 9 that
5 extend the effectiveness of a financing statement beyond five years.

6 **5. Continuing perfection by filing.** A financing statement filed before the
7 effective date of this article may be continued only by filing in the State and office
8 designated by this article. This result is accomplished in the following manner:
9 Paragraph (2) of subsection (c) indicates that, as a general matter, a continuation
10 statement filed after the effective date of this article does not continue the effectiveness
11 of a financing statement filed under the law designated by former Section 9-103.
12 Instead, an initial financing statement must be filed. See Section 9-707. Of course, if
13 former Section 9-103 and revised Part 3 direct one to the same jurisdiction, then a
14 continuation statement filed in the jurisdiction designated by Section 9-103 is effective.
15 See subsection (d).

16 **6. Perfection by Filing: Change in Filing Office.** Subsections (e) and (f)
17 contain provisions analogous to those in subsections (c) and (d). Under these
18 subsections, a continuation statement is not effective to continue the effectiveness of
19 a financing statement filed in the office designed by former Section 9-401 unless
20 revised Section 9-501 prescribes the same filing office. If the filing offices are
21 different, then the procedure in Section 9-707 should be followed.

22 **7. Continuation Statements.** In some cases, this article reclassifies collateral
23 covered by a financing statement filed under former Article 9. For example, collateral
24 consisting of the right to payment for real estate sold would be a “general intangible
25 under the former article but an “account under this article. To continue perfection
26 under those circumstances, which include the circumstances described in subsection
27 (c), (d), (e), and (f), under subsection (g) a continuation statement must comply not
28 only with the normal requirements for a continuation statement (see Section 9-516) but
29 also must contain an indication of collateral that satisfies the requirement of Section
30 9-502(a). Similarly, the sufficiency of the debtor’s name and the secured party’s name
31 on the continued financing statement must comply with this article after it takes effect.

32 **Example 2:** A pre-effective date financing statement covers “all
33 general intangibles of a debtor. A “general intangible, as defined
34 under former Article 9 would include rights to payment for lottery
35 winnings. These rights to payment are “accounts under revised Article
36 9, however. A post-effective date continuation statement will not
37 continue the effectiveness of the pre-effective date financing statement
38 with respect to lottery winnings unless it amends the indication of
39 collateral covered to include “accounts, “rights to payment for lottery

1 winnings, or another appropriate indication. If the continuation
2 statement does not amend the indication of collateral, the continuation
3 statement will be effective to continue the effectiveness of the financing
4 statement only with respect to “general intangibles as defined in
5 revised Article 9.

6 **SECTION 9-707. INITIAL FINANCING STATEMENT IN LIEU OF**
7 **CONTINUATION STATEMENT.**

8 (a) The effectiveness of a financing statement filed before this Act takes effect
9 may be continued by filing in the office specified in Section 9-501 an initial financing
10 statement that complies with the requirements of subsection (b) if:

11 (1) the filing of a financing statement in that office is effective to perfect a
12 security interest; and

13 (2) the pre-effective-date financing statement was filed in an office in
14 another State or another office in this State.

15 (b) To be effective for purposes of subsection (a), an initial financing statement
16 must:

17 (1) comply with the requirements of Part 5 for an initial financing
18 statement;

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

1 (3) indicate that the pre-effective-date financing statement remains
2 effective; and

3 (4) unless the indication of the collateral in the financing statement is
4 sufficient under this Act, indicate the collateral.

5 Reporters' Comments

6 **1. Continuation of Financing Statements Not Filed in the Proper Filing**
7 **office under Revised Article 9.** This section deals with continuing the effectiveness
8 of financing statements that are filed in the proper place under former Sections 9-103
9 and 9-401, but which would be filed in the wrong place under this article. Section 9-
10 706 provides that, under these circumstances, filing a continuation statement in the
11 office designated by former Sections 9-103 and 9-401 would not be effective. This
12 section provides the means by which the effectiveness of such a financing statement
13 can be continued—filing an initial financing statement in the office designated by this
14 article. Unlike a continuation statement, however, the initial financing statement
15 described in this section may be filed any time during the effectiveness of the other
16 financing statement and not only within the last six months.

17 **2. Requirements of Initial Financing Statement Filed in Lieu of**
18 **Continuation Statement.** Subsection (b) sets forth the requirements for the initial
19 financing statement. These requirements are needed to inform the searcher that the
20 initial financing statement operates to continue a financing statement filed elsewhere
21 and to enable the searcher to locate and discover the attributes of the other financing
22 statement.

23 **SECTION 9-708. PERSONS ENTITLED TO FILE INITIAL FINANCING**
24 **STATEMENT OR CONTINUATION STATEMENT.** A person is entitled to file
25 an initial financing statement or a continuation statement if:

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

27 (2) the filing is necessary under this part:

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

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

2 Reporters' Comments

3 This section permits a secured party to file an initial financing statement or
4 continuation statement if necessary under this part to continue the effectiveness of a
5 financing statement filed before this Act takes effect or to perfect or otherwise continue
6 the perfection of a security interest.

7 **SECTION 9-709. PRIORITY.**

8 (a) [Former Article 9] determines the priority of conflicting claims to collateral
9 if the positions of the parties were fixed before this Act takes effect. In other cases, this
10 Act determines priority.

11 (b) For purposes of Section 9-319(a), the priority of a security interest that
12 becomes a perfected security interest under Section 9-705 dates from the time the
13 applicable requirements for perfection are satisfied. This subsection does not apply to
14 conflicting security interests each of which becomes a perfected security interest under
15 Section 9-705.

16 (c) For purposes of Section 9-319(a), the priority of a security interest that
17 becomes enforceable under Section 9-203 of this Act dates from the time this Act takes
18 effect if the security interest is perfected under this Act by the filing of a financing
19 statement before this Act takes effect which would not have been effective to perfect
20 the security interest under [former Article 9]. This subsection does not apply to
21 conflicting security interests each of which is perfected by the filing of such a financing
22 statement.

23 Reporters' Comments

1 **1. Unperfected Security Interests Under Former Article 9 that Become**
2 **Perfected Under Revised Article 9.** Subsection (b) deals with the case in which an
3 unperfected security interest becomes perfected by virtue of the enactment of this
4 Article. It is designed to prevent the enactment of this Article from adversely affecting
5 the priority of a conflicting security interest. The Drafting Committee may wish to
6 consider whether this case is governed by subsection (a) and can be dealt with
7 exclusively in the Official Comments.

8 **Example 1:** In 1999, SP-1 obtains a security interest in a right to
9 payment for lottery winnings—a “general intangible” (as defined under
10 former Article 9). SP-1's security interest is unperfected because it files
11 a financing statement covering only “accounts. In 2000, D creates a
12 security interest in the same right to payment in favor of SP-2, who files
13 a financing statement covering “accounts and general intangibles. At
14 the time this Article takes effect in 2001, SP-2's perfected security
15 interest has priority over SP-1's unperfected security interest. However,
16 Section 9-705 causes SP-1's security interest to become perfected
17 because the financing statement covering “accounts” adequately covers
18 the lottery payments under this article. Application of the first-to-file-
19 or-perfect rule of Section 9-319(a) would result in SP-2's being
20 subordinated because SP-1 filed first. Under subsection (b), however,
21 SP-1's priority dates from the effective date of this article. SP-2, having
22 filed before that date, would have priority.

23 The special rule in subsection (b) does not apply if both competing security interests
24 were unperfected before the effective date of this Article and became perfected under
25 Section 9-705.

26 **Example 2:** In 1999, SP-1 obtains a security interest in a right to
27 payment for lottery winnings—a “general intangible” (as defined under
28 former Article 9). SP-1's security interest is unperfected because it
29 files a financing statement covering only “accounts. In 2000, D
30 creates a security interest in the same right to payment in favor of SP-2,
31 who makes the same mistake and also files a financing statement
32 covering “accounts. At the time this Article takes effect in 2001, SP-
33 1's unperfected security interest has priority over SP-2's unperfected
34 security interest. Section 9-705 makes both security interests perfected.
35 The first-to-file-or-perfect rule of Section 9-319(a) applies, with the
36 result that SP-1 has priority.

37 **2. Financing Statements Ineffective Under Former Article 9 and Effective**
38 **Under Revised Article 9.** Subsection (c) deals with the case in which a filing that
39 occurs before the effective date of this article would be ineffective to perfect a security

1 interest under former Article 9 but effective under this Article. For purposes of Section
2 9-319(a), the priority of a security interest that is perfected in this manner dates from
3 the time this Article takes effect.

4 **Example 3:** In 1999, SP-1 obtains a security interest in D's
5 instruments and files a financing statement covering "instruments. In
6 2000, D grants a security interest in its accounts in favor of SP-2, who
7 files a financing statement covering "accounts. After this article takes
8 effect in 2001, one of D's account debtors gives D a negotiable note to
9 evidence its obligation to pay. Under the first-to-file-or-perfect rule,
10 SP-1 would have priority in the instrument. However, subsection (c)
11 provides that, for purposes of Section 9-319(a), SP-1's priority dates
12 from the time this Article takes effect (2001). Accordingly, SP-2's
13 security interest would be senior.

14 Like subsection (b), subsection (c) does not apply to conflicting security interests each
15 of which is perfected by the filing of such a financing statement. Unlike subsection (b),
16 subsection (c) applies only if the security interest attaches after the Act takes effect.

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APPENDIX I

CONFORMING AMENDMENTS TO OTHER ARTICLES

[Marked to show changes from Official Text]

**SECTION 1-105. TERRITORIAL APPLICATION OF THE ACT;
PARTIES' POWER TO CHOOSE APPLICABLE LAW.**

* * *

(2) Where one of the following provisions of this Act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2-402.

Applicability of the Article on Leases. Sections 2A-105 and 2A-106.

Applicability of the Article on Bank Deposits and Collections. Section 4-102.

Governing law in the Article on Funds Transfers. Section 4A-507.

Letters of Credit. Section 5-116.

Bulk sales subject to the Article on Bulk Sales. Section 6-103. *[If a State adopts the repealer of Article 6, then this item should be deleted.]*

Applicability of the Article on Investment Securities. Section 8-110.

~~Perfection provisions of the Article on Secured Transactions. Section 9-103.~~

1 Law governing perfection, the effect of perfection or nonperfection, and the
2 priority of security interests. Sections 9-301 through 9-307.

3 **SECTION 1-201. GENERAL DEFINITIONS.** Subject to additional definitions
4 contained in the subsequent Articles of this Act which are applicable to specific
5 Articles or Parts thereof, and unless the context otherwise requires, in this Act:

6 * * *

7 (9) “Buyer in ordinary course of business” means a person that buys goods who
8 in good faith, and without knowledge that the sale to him is in violation of violates the
9 ownership rights or security interest of another person a third party in the goods, and
10 buys in the ordinary course from a person, other than a pawnbroker, in the business of
11 selling goods of that kind but does not include a pawnbroker. A person buys goods in
12 the ordinary course if the sale to the person comports with the usual or customary
13 practices in the kind of business in which the seller is engaged or with the seller’s own
14 usual or customary practices. A person that sells oil, gas, or other minerals at the
15 wellhead or minehead is a person All persons who sell minerals or the like (including
16 oil and gas) at wellhead or minehead shall be deemed to be persons in the business of
17 selling goods of that kind. A buyer in ordinary course of business “Buying” may buy
18 be for cash, or by exchange of other property, or on secured or unsecured credit, and
19 may acquire and includes receiving goods or documents of title under a pre-existing
20 contract for sale but does not include a transfer in bulk or as security for or in total or
21 partial satisfaction of a money debt. Only a buyer that takes possession of the goods
22 or has a right to recover the goods from the seller under Article 2 may be a buyer in

1 ordinary course of business. A person that acquires goods in a transfer in bulk or as
2 security for or in total or partial satisfaction of a money debt is not a buyer in ordinary
3 course of business.

4 * * *

5 (32) “Purchase includes taking by sale, discount, negotiation, mortgage,
6 pledge, lien, security interest, issue or re-issue, gift, or any other voluntary transaction
7 creating an interest in property.

8 * * *

9 (37) “Security interest means an interest in personal property or fixtures which
10 secures payment or performance of an obligation. ~~The retention or reservation of title~~
11 ~~by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2-401)~~
12 ~~is limited in effect to a reservation of a “security interest”.~~ The term also includes any
13 interest of a consignor and a buyer of accounts, or chattel paper, a payment intangible,
14 or a promissory note in a transaction that ~~which~~ is subject to Article 9. The special
15 property interest of a buyer of goods on identification of those goods to a contract for
16 sale under Section 2-401 is not a “security interest”, but a buyer may also acquire a
17 “security interest” by complying with Article 9. ~~Unless a consignment is intended as~~
18 ~~security, reservation of title thereunder is not a “security interest”, but a consignment~~
19 ~~in any event is subject to the provisions on consignment sales (Section 2-326).~~ Except
20 as otherwise provided in Section 2-505, the right of a seller or lessor of goods under
21 Article 2 or 2A to retain or acquire possession of the goods is not a “security interest”,
22 but a seller or lessor may also acquire a “security interest” by complying with Article

1 9. The retention or reservation of title by a seller of goods notwithstanding shipment
2 or delivery to the buyer (Section 2-401) is limited in effect to a reservation of a
3 “security interest.

4 * * *

5 (38) “Send in connection with any writing or notice means to deposit in the
6 mail or deliver for transmission by any other usual means of communication with
7 postage or cost of transmission provided for and properly addressed to any address
8 reasonable under the circumstances and in the case of an instrument to an address
9 specified thereon or otherwise agreed, or if there be none to any address reasonable
10 under the circumstances. The receipt of any writing or notice within the time at which
11 it would have arrived if properly sent has the effect of a proper sending.

12 * * *

13 Reporters’ Comments

14 1. **“Buyer in Ordinary Course of Business.”** Many of the revisions to the
15 definition of “buyer in ordinary course of business in subsection (9) are for
16 clarification and style. The second sentence of the subsection is new and tracks Section
17 6-102(1)(m). It explains what it means to buy “in the ordinary course.

18 The penultimate sentence of subsection (9) also is new. It prevents a buyer that
19 does not have the right to possession against the seller from taking free of the rights of
20 third parties. Concerning when a buyer obtains possessory rights, see Sections 2-502
21 and 2-716, below. This revision is not intended to affect a buyer’s status as a buyer in
22 ordinary course of business in cases (such as a “drop shipment) involving delivery by
23 the seller to a person buying from the buyer or a donee from the buyer. The
24 requirement relates to whether *as against the seller* the buyer or one taking through the
25 buyer has possessory rights. The Official Comments will make this clear.

26 2. **“Purchase.”** The definition of “purchase has been revised to make explicit
27 reference to taking “by . . . security interest. This is consistent with most authorities.

1 3. **“Security Interest.”** The definition of “security interest” in subsection (37)
2 has been revised to include the interest of a consignor and the interest of a buyer of
3 payment intangibles. See Section 9-112. It also has been revised to make clear that,
4 with certain exceptions, *in rem* rights of sellers and lessors under Articles 2 and 2A are
5 not “security interests. Among the rights that are not security interests are the right
6 to withhold delivery under Section 2-702(1), 2-703(a), or 2A-525, the right to stop
7 delivery under Section 2-705 or 2A-526, and the right to reclaim under Section 2-
8 507(2) or 2-702(2).

9 4. **“Send.”** The definition of “send” has been broadened to include
10 communications “to any address reasonable under the circumstances.

11 **SECTION 2-210. DELEGATION OF PERFORMANCE; ASSIGNMENT OF**
12 **RIGHTS.**

13 * * *

14 (2) Unless otherwise agreed all rights of either seller or buyer can be assigned
15 except where the assignment would materially change the duty of the other party, or
16 increase materially the burden or risk imposed on him by his contract, or impair
17 materially his chance of obtaining return performance. A right to damages for breach
18 of the whole contract or a right arising out of the assignor's due performance of his
19 entire obligation can be assigned despite agreement otherwise. If there is a conflict
20 between this subsection and Section 9-404B, Section 9-404B governs.

21 * * *

22 Reporters’ Comments

23 1. **Conflict with Article 9.** Section 9-404B makes rights to payment for goods
24 sold (“accounts”) freely alienable, even in the unlikely event that the assignment would
25 materially change the buyer’s duty, increase materially the burden or risk imposed on
26 the buyer by the contract, or impair materially the buyer’s chance of obtaining return
27 performance. The new sentence resolves any conflict between Section 9-404B and
28 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~~

1 1. **Consumer Goods.** The revisions to this section implement part of the
2 agreement concerning consumer-goods transactions. This section contains two
3 exceptions to the general rule that a buyer of goods has no right to recover the goods
4 from a seller who repudiates or fails to deliver in accordance with the contract. Rather,
5 the disappointed buyer must resort to an action to recover damages. Borrowing from
6 Section 2-824 of the March, 1998, draft of Revised Article 2, subsection (3) has been
7 revised to provide that, for consumer goods, the buyer's right to replevin vests upon the
8 buyer's acquisition of a special property, which occurs upon identification of the goods
9 to the contract. See Section 2-501.

10 2. **Interaction with Article 9.** Inasmuch as a secured party normally acquires
11 no greater rights in its collateral than its debtor had or had power to convey, see Section
12 2-403(1) (first sentence), a buyer who acquires a right of replevin under subsection (3)
13 will take free of a security interest that attaches to the goods after the goods have been
14 identified to the contract. The buyer will take free even if the buyer does not buy in
15 ordinary course and even if the security interest is perfected. Of course, to the extent
16 that the buyer pays the price after the security interest attaches, the payments will
17 constitute proceeds of the security interest.

18 **SECTION 5-118. SECURITY INTEREST OF ISSUER OR NOMINATED**
19 **PERSON.**

20 (a) An issuer or nominated person has a security interest in a document
21 presented under a letter of credit and any identifiable proceeds of the collateral to the
22 extent that the issuer or nominated person honors or gives value for the presentation.

23 (b) Subject to subsection (c), as long as and to the extent that an issuer or
24 nominated person has not been reimbursed or has not otherwise recovered the value
25 given with respect to a security interest under subsection (a), the security interest
26 continues and is subject to Article 9, but:

27 (1) a security agreement is not necessary to make the security interest
28 enforceable under Section 9-203(b)(3); and

1 Section 4-210 is sound. However, because the security interest is not dependent on
2 continued possession, it is necessary to qualify the priority of the security interest
3 pursuant to subsection (c).

4 **SECTION 8-110. APPLICABILITY; CHOICE OF LAW.**

5 * * *

6 (e) The following rules determine a “securities intermediary’s jurisdiction for
7 purposes of this Section:

8 (1) If an agreement between the securities intermediary and its entitlement
9 holder expressly provides ~~specifies that it is governed by the law of a particular~~
10 ~~jurisdiction~~ the securities intermediary’s jurisdiction for purposes of this part, this
11 article, or this act, that jurisdiction is the securities intermediary’s jurisdiction.

12 (2) If paragraph (1) does not apply and an agreement between the securities
13 intermediary and entitlement holder expressly provides that it is governed by the law
14 of a particular jurisdiction, that jurisdiction is the securities intermediary’s jurisdiction.

15 (3) ~~(2)~~ If neither paragraph (i) nor paragraph (ii) applies and an agreement
16 between the securities intermediary and its entitlement holder does not specify the
17 governing law as provided in paragraph (1), but expressly provides ~~specifies~~ that the
18 securities account is maintained at an office in a particular jurisdiction, that jurisdiction
19 is the securities intermediary’s jurisdiction.

20 (4) ~~(3)~~ If none of paragraph (i), (ii), or (iii) applies an agreement between
21 the securities intermediary and its entitlement holder does not specify a jurisdiction as
22 provided in paragraph (1) or (2), the securities intermediary’s jurisdiction is the

1 jurisdiction in which is located the office identified in an account statement as the
2 office serving the entitlement holder's account.

3 ~~(5) (4) If none of the other paragraphs applies an agreement between the~~
4 ~~securities intermediary and its entitlement holder does not specify a jurisdiction as~~
5 ~~provided in paragraph (1) or (2) and an account statement does not identify an office~~
6 ~~serving the entitlement holder's account as provided in paragraph (3), the securities~~
7 ~~intermediary's jurisdiction is the jurisdiction in which is located the chief executive~~
8 ~~office of the securities intermediary.~~

9 (f) A securities intermediary's jurisdiction is not determined by the physical
10 location of certificates representing financial assets, or by the jurisdiction in which is
11 organized the issuer of the financial asset with respect to which an entitlement holder
12 has a security entitlement, or by the location of facilities for data processing or other
13 record keeping concerning the account.

14 Reporters' Comments

15 This section has been revised to provide more flexibility for the parties to select
16 the security intermediary's jurisdiction. See also Sections 9-304(b) (bank's
17 jurisdiction); 9-305(a)(5) (commodity intermediary's jurisdiction).

1 **APPENDIX II**

2 **MODEL PROVISIONS FOR PRODUCTION-MONEY PRIORITY**

3 *Legislative Note: States that enact these model provisions should add the following*
4 *definitions to Section 9-102(a) after the definition of “proceeds,” and renumber the*
5 *other definitions accordingly:*

6 (xx) *“Production-money crops” has the meaning specified in Section*
7 *[9-104A].*

8 (xx) *“Production-money obligation” has the meaning specified in Section*
9 *[9-104A].*

10 (xx) *“Production-money security interest” has the meaning specified in Section*
11 *[9-104A].*

12 ***[MODEL SECTION [9-104A]. “PRODUCTION-MONEY CROPS”;***
13 ***“PRODUCTION-MONEY OBLIGATION;” PRODUCTION-MONEY SECURITY***
14 ***INTEREST; BURDEN OF ESTABLISHING PRODUCTION-MONEY SECURITY***
15 ***INTEREST.***

16 (a) *“Production-money crops” means crops that secure a production-money*
17 *obligation incurred with respect to the production of those crops.*

18 (b) *“Production-money obligation” means an obligation of an obligor*
19 *incurred for new value given to enable the debtor to produce crops if the value is in*
20 *fact used for the production of the crops.*

21 (c) *The production of crops includes tilling and otherwise preparing land for*
22 *growing, planting, cultivating, fertilizing, protecting from damage or disease,*
23 *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.*

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

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

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

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

13 (A) *to obligations that are not secured; and*

14 (B) *if more than one obligation is secured, to obligations secured by*
15 *production-money security interests in the order in which those obligations were*
16 *incurred.*

17 (f) *A production-money security interest does not lose its status as such even*
18 *if:*

19 (1) *the production-money crops also secure an obligation that is not a*
20 *production-money obligation;*

21 (2) *collateral that is not production-money crops also secures the*
22 *production-money obligation; or*

1 (a) *Except as otherwise provided in subsections (c), (d), and (e), if the*
2 *requirements of subsection (b) are met, a perfected production-money security interest*
3 *in production-money crops has priority over a conflicting security interest in the same*
4 *crops and, except as otherwise provided in Section 9-325, also has priority in their*
5 *identifiable proceeds.*

6 (b) *A production-money security interest has priority under subsection (a) if:*

7 (1) *the production-money security interest is perfected by filing when the*
8 *production-money secured party first gives new value to enable the debtor to produce*
9 *the crops;*

10 (2) *the production-money secured party gives an authenticated notification*
11 *to the holder of the conflicting security interest not less than 10 or more than 30 days*
12 *before the production-money secured party first gives new value to enable the debtor*
13 *to produce the crops if the holder had filed a financing statement covering the crops*
14 *before the date of the filing made by the production-money secured party; and*

15 (3) *the notification states that the production-money secured party has or*
16 *expects to acquire a production-money security interest in the debtor's crops and*
17 *contains a description of the crops.*

18 (c) *Except as otherwise provided in subsection (e) (d), if more than one*
19 *security interest qualifies for priority in the same collateral under subsection (a), the*
20 *security interests rank according to priority in time of filing under Section 9-319(a).*

21 (d) *To the extent that a person holding a perfected security interest in*
22 *production-money crops that are the subject of a production-money security interest*

1 gives new value to enable the debtor to produce the production-money crops and the
2 value is in fact used for the production of the production-money crops, the security
3 interests rank according to priority in time of filing under Section 9-319(a).

4 (e) To the extent that a person holds both an agricultural lien and a
5 production-money security interest in the same collateral securing the same
6 obligations, the rules of priority applicable to agricultural liens govern priority.]

7 *Legislative Note:* This section is optional. States that enact this section should place
8 it between Section 9-320 and 9-321 and number it accordingly, e.g., as Section 9-320A
9 or 9-320.1.

10 *Reporters' Comments*

11 1. **Source.** *New.*

12 2. **Legislative Option.** *This model section replaces the limited priority in crops*
13 *afforded by former Section 9-312(2). As explained in Section 9-104A, Comment 2, that*
14 *priority generally has been thought to be of little value for its intended beneficiaries.*
15 *Neither the Drafting Committee nor the agricultural financing community has been*
16 *able to reach a consensus on the desirability of including a special production-money*
17 *priority rule in Article 9. For this reason, the rule appears as a model, not a uniform,*
18 *optional provision for each State to consider during the legislative enactment process.*
19 *The Sponsors of the UCC have taken no position on this priority rule.*

20 3. **Priority of Production-Money Security Interests and Conflicting Security**
21 **Interests.** *This section attempts to balance the interests of the production-money*
22 *secured party with those of a secured party who has previously filed a financing*
23 *statement covering the crops that are to be produced. For example, to qualify for*
24 *priority under this section, the production-money secured party must notify the earlier-*
25 *filed secured party prior to extending the production-money credit. The notification*
26 *affords the earlier secured party the opportunity to prevent subordination by extending*
27 *the credit itself. Subsection (d) makes this explicit. If the holder of a security interest*
28 *in production-money crops which conflicts with a production-money security interest*
29 *gives new value for the production of the crops, the security interests rank according*
30 *to priority in time of filing under Section 9-319(a).*

31 4. **Multiple Production-Money Security Interests.** *In the case of multiple*
32 *production-money security interests that qualify for priority under subsection (a), the*
33 *first to file has priority. See subsection (c). Note that only a security interest perfected*

1 *by filing is entitled to production-money priority. See subsection (b)(1). Consequently,*
2 *subsection (c) does not adopt the first-to-file-or-perfect formulation.*

3 **5. Holder of Agricultural Lien and Production-Money Security Interest.**
4 *Subsection (e) deals with a creditor who holds both an agricultural lien and an Article*
5 *9 production-money security interest in the same collateral. In these cases, the priority*
6 *rules applicable to agricultural liens govern. The creditor can avoid this result by*
7 *waiving its agricultural lien.*