

2 **Reporter’s Prefatory Note**

3 This is a preliminary draft of the “priority” approach to financing statements filed against
4 individual debtors. Under the draft, a financing statement providing either the name designated
5 under the “waterfall” in amended Section 9-503(a)(4) or the debtor’s “true” name under new
6 Section 9-503(h) would be sufficient to perfect and to achieve priority over a subsequent judicial
7 lien creditor. (The same would be true for a financing statement that provides a name that is
8 neither the “waterfall” name nor the “true” name but is disclosed by a Section 9-506(b) search
9 under either of those names). However, as explained more fully below, a security interest
10 perfected by a financing statement providing the “true” name would enjoy lower priority as
11 against most other competing claimants.

12 Even today, practical difficulties may arise if (1) the filing office rejects a filing in the
13 debtor’s “correct” name because of limitations on the field length or character set, (2) the filing
14 office accepts a filing in the “correct” name but indexes it such that the financing statement is not
15 disclosed by a standard-search-search under that name (e.g., because it truncates the name or
16 substitutes one or more characters), or (3) the filing office accepts the filing in the “correct” name
17 but refuses to do a search under that name. If the Joint Review Committee adopts the “priority”
18 approach, it may wish to consider whether, and, if so, how to address these problems in that
19 context.

20 The draft does not address Section 9-503(a)(2) and (3), which may require that a
21 financing statement provide the name of an individual when the debtor is decedent’s estate or a
22 trust.

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

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

25 * * *

26 (46A) “High-priority filing” means the filing of a financing statement providing
27 the name of the debtor that is sufficient under Section 9-503(a)(4).

28 * * *

29 (52A) “Low-priority filing” means the filing of a financing statement providing a
30 name of the debtor that is insufficient under Section 9-503(a)(4) but sufficient under Section 9-
31 503(h).

1 * * *

2 * * *

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

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

6 * * *

7 (3) * * *

8 * * *

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

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

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

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

20 (C) as to whom neither paragraph (A) nor paragraph (B) applies, and to
21 whom the United States has issued a passport that, at the time the financing statement is filed,

1 appears on its face not to have expired, only if it provides the name of the individual which is
2 indicated on the passport;

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

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

10 ~~(4)~~(5) in other cases:

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

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

15 * * *

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

20 (h) **[Exception for individual debtor's name.]** A financing statement that does
21 not sufficiently provide the name of a debtor who is an individual pursuant to subsection (a)(4)

1 nevertheless sufficiently provides the name of a debtor who is an individual if it provides the
2 individual name of the debtor.

3 **Reporter's Note**

4 1. A financing statement that provides the name determined under subsection (a)(4)
5 affords to the secured party all the benefits of being perfected by filing. The draft uses the term
6 "high-priority filing" for a filing of this kind. A name that would be disclosed by a search
7 described in Section 9-506(b) under the name specified in subsection (a)(4) would be "sufficient
8 under Section 9-503(a)(4)" within the meaning of the definition of "high-priority filing" and
9 would "sufficiently provide the name of a debtor who is an individual pursuant to subsection
10 (a)(4)" within the meaning of Section 9-503(h). The Joint Review Committee may wish to
11 consider whether this point is clear from the text.

12 2. Subsection (a)(4) adopts the cascading approach suggested by the Committee at its
13 March, 2009, meeting. The first four steps of the cascade are the debtor's driver's license,
14 identification card, U.S. passport, and non-U.S. passport, in that order. Because States use
15 different terms for the driver's licenses and identification cards they issue, the words "driver's
16 license" and "identification card" appear in brackets. If a debtor has been issued more than one
17 source document (i.e., license, identification card, or passport) described in the applicable
18 paragraph of Section 9-503(a)(4), the document that was issued most recently would be the one
19 that indicates the debtor's name for purposes of that paragraph. See subsection (g).

20 The last step in the cascade (draft Section 9-503(a)(4)(E)) is based upon the approach
21 taken by the filing-office regulations of some Canadian provinces. It is independent from the
22 remainder of these provisions. If the Joint Review Committee wishes to retain this approach, it
23 may wish to consider whether paragraph (E) is too limiting. For example, should it be expanded
24 to include debtors whose names do not include both a surname and a first given name?

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

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

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

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

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

28 In the example, the name on Debtor’s Illinois driver’s license would be irrelevant for
29 purposes of Indiana’s Section 9-503(a)(4), inasmuch as it was not issued by “this State,” i.e.,
30 Indiana. Of course, a financing statement providing that name might be effective under Section
31 9-506 (i.e., it might not be seriously misleading) and might satisfy Indiana’s Section 9-503(h)
32 (i.e., it might be the individual name of the debtor).

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

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

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

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

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

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

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

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

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

20 (d) **[Licensees and buyers of certain collateral.]** A licensee of a general intangible or a
21 buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or

1 investment property other than a certificated security takes free of a security interest if the
2 licensee or buyer gives value without knowledge of the security interest and before it is perfected
3 by a method other than a low-priority filing.

4 (e) [**Purchase-money security interest.**] Except as otherwise provided in Sections
5 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money
6 security interest before or within 20 days after the debtor receives delivery of the collateral, the
7 security interest takes priority over:

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

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

13 **Reporter's Note**

14 As against a lien creditor, a security interest perfected by a low-priority filing has the
15 same rights as any other perfected security interest. However, the draft assumes that non-secured
16 party buyers, lessees, and licensees generally would take their interests free of such a security
17 interest. To implement these results, subsections (b) (buyers of tangible collateral), (c) (lessees),
18 and (d) (licensees and buyers of intangible collateral) have been amended to distinguish between
19 security interests perfected by a low-priority filing and security interests perfected by other
20 methods. To implement the same distinction, PMSIs perfected by a low-priority filing are treated
21 separately in new subsection (e)(2).

22 When a security interest in original collateral is perfected by a low-priority filing, a
23 security interest that is perfected in proceeds under Section 9-315(c) likewise would be perfected
24 by a low-priority filing.

1 Under the first-to-file-or-perfect rule, SP-1's perfected security interest has priority over SP-2's.
2 Thereafter, SP-3 perfects by a high-priority filing. Under the first-to-file-or-perfect rule, SP-2's
3 security interest is senior to SP-3's; however, under the new exception in subsection (a)(1), SP-
4 3's security interest would be senior to SP-1's, which is senior to SP-2's, which is senior to SP-
5 3's, etc.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (f) **[Software purchase-money priority.]** Except as otherwise provided in ~~subsection~~
15 subsections (g) and (h), a perfected purchase-money security interest in software has priority over
16 a conflicting security interest in the same collateral, and, except as otherwise provided in Section
17 9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that
18 the purchase-money security interest in the goods in which the software was acquired for use has
19 priority in the goods and proceeds of the goods under this section.

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

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

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

5 (h) [Exception for low-priority filing.] This section does not award priority to the
6 holder of a security interest that is perfected by a low-priority filing except as against a
7 competing security interest that is perfected by a low-priority filing or when it attaches under
8 Section 9-309.

9 **Reporter's Note**

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

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

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

4 **Reporter's Note on Other Priority Rules**

5 The Joint Review Committee should note that the draft does not distinguish between
6 security interests perfected by a high-priority filing and those perfected by a low-priority filing in
7 the following circumstances:

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

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

13 3. Sections 9-326 and 9-325, which address "double-debtor" problems.

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

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

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

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

6 **Example 2:** A owns an item of equipment subject to a perfected security interest in favor
7 of SP-A. A sells the equipment to B, not in the ordinary course of business. B acquires
8 its interest subject to SP-A's security interest. Under current Section 9-325, if B creates a
9 security interest in the equipment in favor of SP-B, SP-B's security interest is subordinate
10 to SP-A's security interest, even if SP-B filed against B before SP-A filed against A, and
11 even if SP-B took a purchase-money security interest. Normally, SP-B could have
12 investigated the source of the equipment and discovered SP-A's filing before making an
13 advance against the equipment, whereas SP-A had no reason to search the filings against
14 someone other than its debtor, A.

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

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

27 * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **Reporter’s Note**

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

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

2 * * *

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

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

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

13 (1) in the case of a change under Section 9-507(d)(1)(A), 9-507(d)(2)(A), 9-
14 507(d)(3)(A), or 9-507(d)(4)(A), the name of the debtor that would be sufficient under Section 9-
15 504(a)(4) immediately after the apparent expiration; and

16 (2) in the case of a change under Section 9-507(d)(1)(B), 9-507(d)(2)(B), 9-
17 507(d)(3)(B), or 9-507(d)(4)(B), the name of the debtor indicated on the [driver’s license],
18 [identification card], or passport, as the case may be, that indicates a name different from the
19 name provided on the financing statement.

20 **Reporter’s Note**

21 Even if the debtor’s name changes, a filed financing statement does not become seriously
22 misleading if it can be found by searching under the debtor’s “correct” name, using the filing
23 office’s standard search logic. Draft Section 9-506(e) explains what is meant by the debtor’s

1 “correct name” when the debtor’s name changes under Section 9-507(d). If the name change
2 results from the expiration of the source document, the correct name is the name that Section 9-
3 503(a)(4) would yield after the expiration. If the name change results from the issuance of a new
4 source document, the correct name is the name that is indicated on the new document (which, of
5 course, is the name that Section 9-503(a)(4) would yield after the issuance of the new document).

6 **Reporter’s Note on Effect of Name Change on Priority**

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

10 **Example 1:** Financing statements covering an item of equipment are filed in this order:

- 11 C-1: Low priority
- 12 C-2: High priority
- 13 C-3: High priority

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

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

19 **Example 2:** Under the facts of Example 1, D changes his name, such that C-2’s and
20 C-3’s filings become low-priority and C-1’s filing remains low-priority. Would the first-to-file-
21 or-perfect rule apply, giving C-1’s security interest priority over the other two? (Compare 9-
22 316(b) and 9-515(c).)

23 **SECTION 9-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL.**

24 * * *

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

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

3 (1) the debtor;

4 (2) any secondary obligor; and

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

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

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

11 (i) identified the collateral;

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

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

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

18 * * *

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

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

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

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

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

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

11 **SECTION 9-621. NOTIFICATION OF PROPOSAL TO ACCEPT**
12 **COLLATERAL.**

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

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

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

21 (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 or offices in which to file a financing statement
3 against the debtor covering the collateral as of that date; and

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

7 * * *

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

10 **Reporter’s Note**

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