



1 addressing these issues.

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

8  
9 The first part of the draft contains amendments to the statutory text, together with any  
10 related amendments to the comments. Because the statutory amendments are still under  
11 discussion, some of the statutory amendments are yet not accompanied by draft amendments to  
12 the comments. The second part of the draft contains amendments to the comments for which no  
13 change in statutory text is recommended.

14  
15  
16 PART ONE

17  
18 AMENDMENTS TO THE OFFICIAL TEXT AND RELATED COMMENTS

19  
20 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

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

22 \* \* \*

23 (7) “Authenticate” means:

24 (A) to sign; or

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

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

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

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

29 **Reporter’s Note**

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

32  
33  
34 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

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



1 certificate-of-title statutes to permit or require a state agency to maintain an electronic record  
2 that evidences ownership of the goods and in which a security interest in the goods may be  
3 noted. Such a record is a “certificate of title” if it is in fact maintained as an alternative to the  
4 issuance of a paper certificate of title, regardless of whether the certificate-of-title statute  
5 provides that the record is a certificate of title and even if the statute does not expressly state that  
6 the record is maintained instead of issuing a certificate of title.

7  
8 \* \* \*

9  
10  
11 **SECTION 9-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY**  
12 **SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES.**

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

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

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

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

26 \* \* \*

27 **Reporter's Note**

28  
29 The proposed amendment to the definition of “certificate of title” address the  
30 increasingly common practice of electronic notations of liens on goods subject to certificate-of-  
31 title statutes. Section 9-311(a) would be amended in light of the amendment to the definition.



1 “customer,” as defined in Section 4-104. As the customer, the secured party would enjoy the  
2 right (but not necessarily the exclusive right) to withdraw funds from, or close, the deposit  
3 account. See Sections 4-401(a), 4-403(a).  
4

5 Under subsection (a)(4), a secured party may obtain control if another person has control  
6 and the person acknowledges that it has control on the secured party’s behalf.  
7

8 \* \* \*  
9

10  
11 **SECTION 9-327. PRIORITY OF SECURITY INTERESTS IN DEPOSIT**

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

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

17 (2) Except as otherwise provided in paragraphs (3) and (4), security interests  
18 perfected by control under Section 9-314 rank according to priority in time of obtaining control.

19 For purposes of this paragraph, if a secured party obtained control through another person under  
20 Section 9-104(a)(4), the time of obtaining control is the time when the other person obtained  
21 control.

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

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

27 **Reporter’s Note**  
28

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

1 purposes of the first-to-obtain-control priority rule.  
2  
3

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

5 \* \* \*

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

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

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

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

17 \* \* \*

18 **SECTION 9-328. PRIORITY OF SECURITY INTERESTS IN INVESTMENT**  
19 **PROPERTY.** The following rules govern priority among conflicting security interests in the  
20 same investment property:  
21

22 \* \* \*

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

26 \* \* \*

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

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

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

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

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

16 \* \* \*

### 17 **Reporter's Note**

18  
19 New Section 9-106(a)(3) conforms "control" of a commodity contract to "control" of a  
20 security entitlement in Section 8-106. The corresponding amendment to Section 9-328(2)(C)  
21 explains when a secured party that has control under Section 9-106(a)(3) obtains control for  
22 purposes of the first-in-time priority rule.  
23

### 24 **SECTION 9-105. CONTROL OF ELECTRONIC CHATTEL PAPER.**

25  
26 **(a) [General rule: control of electronic chattel paper.]** A secured party has control of  
27 electronic chattel paper if a system employed for evidencing the transfer of interests in the  
28 chattel paper reliably establishes the secured party as the person to which the chattel paper was

1 assigned.

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

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

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

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

11 (4) copies or ~~revisions~~ amendments that add or change an identified assignee of  
12 the authoritative copy can be made only with the ~~participation~~ 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 that is not the authoritative copy; and

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

17 **Official Comment**

18 \* \* \*

19  
20  
21 2. **“Control” of Electronic Chattel Paper.** This Article covers security interests in  
22 “electronic chattel paper,” a new term defined in Section 9-102. This section governs how  
23 “control” of electronic chattel paper may be obtained. Subsection (a), which derives from  
24 Section 16 of the Uniform Electronic Transactions Act, sets forth the general test for control.  
25 Subsection (b) sets forth a safe harbor test that if satisfied, results in control under the general  
26 test in subsection (a).

27  
28 A secured party’s control of electronic chattel paper (i) may substitute for an  
29 authenticated security agreement for purposes of attachment under Section 9-203, (ii) is a  
30 method of perfection under Section 9-314, and (iii) is a condition for obtaining special, non-  
31 temporal priority under Section 9-330. Because electronic chattel paper cannot be transferred,

1 assigned, or possessed in the same manner as tangible chattel paper, a special definition of  
2 control is necessary. In descriptive terms, this section provides that control of electronic chattel  
3 paper is the functional equivalent of possession of “tangible chattel paper” (a term also defined  
4 in Section 9-102).

5  
6 **3. Development of Control Systems.** This Article leaves to the marketplace the  
7 development of systems and procedures, through a combination of suitable technologies and  
8 business practices, for dealing with control of electronic chattel paper in a commercial context.  
9 Systems that evolve for control of electronic chattel paper may or may not involve a third party  
10 custodian of the relevant records. As under UETA, a system must be shown to reliably establish  
11 that the secured party is the assignee of the chattel paper. Reliability is a high standard and  
12 encompasses the general principles of uniqueness, identifiability, and unalterability found in  
13 subsection (b) without setting forth strict guidelines as to how these principles must be achieved.  
14 However, the standards applied to determine whether a party is in control of electronic chattel  
15 paper should not be more stringent than the standards now applied to determine whether a party  
16 is in possession of tangible chattel paper. For example, just as a secured party does not lose  
17 possession of tangible chattel paper merely by virtue of the possibility that a person acting on its  
18 behalf could wrongfully redeliver the chattel paper to the debtor, so control of electronic chattel  
19 paper would not be defeated by the possibility that the secured party’s interest could be  
20 subverted by the wrongful conduct of a person (such as a custodian) acting on its behalf.

21  
22 This section and the concept of control of electronic chattel paper are not based on the  
23 same concepts as are control of deposit accounts (Section 9-104), security entitlements, a type of  
24 investment property (Section 9-106), and letter-of-credit rights (Section 9-107). The rules for  
25 control of that collateral are based on existing market practices and legal and regulatory regimes  
26 for institutions such as banks and securities intermediaries. Analogous practices for electronic  
27 chattel paper are developing nonetheless. The flexible approach adopted by this section,  
28 moreover, should not impede the development of these practices and, eventually, legal and  
29 regulatory regimes, which may become analogous to those for, e.g., investment property.

30  
31 **34. “Authoritative Copy” of Electronic Chattel Paper.** One requirement for  
32 establishing control under subsection (b) is that a particular copy be an “authoritative copy.”  
33 Although other copies may exist, they must be distinguished from the authoritative copy. This  
34 may be achieved, for example, through the methods of authentication that are used or by  
35 business practices involving the marking of any additional copies. When tangible chattel paper  
36 is converted to electronic chattel paper, in order to establish that a copy of the electronic chattel  
37 paper is the authoritative copy it may be necessary to show that the tangible chattel paper no  
38 longer exists or has been permanently marked to indicate that it is not the authoritative copy.

39  
40 ~~**4. Development of Control Systems.** This Article leaves to the marketplace the~~  
41 ~~development of systems and procedures, through a combination of suitable technologies and~~  
42 ~~business practices, for dealing with control of electronic chattel paper in a commercial context.~~  
43 ~~However, achieving control under this section requires more than the agreement of interested~~  
44 ~~persons that the elements of control are satisfied. For example, paragraph (4) contemplates that~~  
45 ~~control requires that it be a physical impossibility (or sufficiently unlikely or implausible so as to~~  
46 ~~approach practical impossibility) to add or change an identified assignee without the~~  
47 ~~participation of the secured party (or its authorized representative). It would not be enough for~~

1 the assignor merely to agree that it will not change the identified assignee without the assignee-  
2 secured party's consent. However, the standards applied to determine whether a party is in  
3 control of electronic chattel paper should not be more stringent than the standards now applied to  
4 determine whether a party is in possession of tangible chattel paper. Control of electronic chattel  
5 paper contemplates systems or procedures such that the secured party must take some action  
6 (either directly or through its designated custodian) to effect a change or addition to the  
7 authoritative copy. But just as a secured party does not lose possession of tangible chattel paper  
8 merely by virtue of the possibility that a person acting on its behalf *could* wrongfully redeliver  
9 the chattel paper to the debtor, so control of electronic chattel paper would not be defeated by the  
10 possibility that the secured party's interest *could* be subverted by the wrongful conduct of a  
11 person (such as a custodian) acting on its behalf.  
12

13 Systems that evolve for control of electronic chattel paper may or may not involve a third  
14 party custodian of the relevant records. However, this section and the concept of control of  
15 electronic chattel paper are not based on the same concepts as are control of deposit accounts  
16 (Section 9-104), security entitlements, a type of investment property (Section 9-106), and letter-  
17 of-credit rights (Section 9-107). The rules for control of that collateral are based on existing  
18 market practices and legal and regulatory regimes for institutions such as banks and securities  
19 intermediaries. Analogous practices for electronic chattel paper are developing nonetheless.  
20 The flexible approach adopted by this section, moreover, should not impede the development of  
21 these practices and, eventually, legal and regulatory regimes, which may become analogous to  
22 those for, e.g., investment property.  
23

#### 24 Reporter's Note

25  
26 1. Subsection (a) is new. With its addition, satisfaction of the requirements currently  
27 enumerated in Section 9-105 would become sufficient, but not necessary, to establish control.  
28 Control may arise under the general standard (new subsection (a)) even if the specific  
29 requirements are not satisfied.  
30

31 Subsection (a) largely conforms to Section 7-106, which defines control of an electronic  
32 document of title. However, two changes were necessary. First, in keeping with the general  
33 usage in Article 9, Section 9-105 uses the term "assign" rather than "transfer." Second, although  
34 Section 7-106 (which is not limited to secured parties) expands the control concept to include not  
35 only an assignee of an electronic document of title but also a person to which an electronic  
36 document is originally issued, under Section 9-105 only an assignee electronic chattel paper can  
37 have control of the chattel paper.  
38

39 The amendments to paragraphs (4), (5), and (6) of subsection (b) are stylistic.  
40

41 2. The change from current Section 9-105 to the revised Section *ipso facto* may result in  
42 a secured party's achieving control of electronic chattel paper. In these circumstances, control  
43 would date from the effective date of the revision and would not relate back.  
44

#### 45 SECTION 9-316. CONTINUED PERFECTION OF SECURITY INTEREST 46

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

2 \* \* \*

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

6 (1) Subject to paragraph (4), a financing statement filed before the change  
7 pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) is effective to  
8 perfect a security interest in the collateral if the financing statement would have been effective to  
9 perfect a security interest in the collateral had the debtor not changed its location.

10 (2) Subject to paragraph (4), if a security interest that is perfected by a financing  
11 statement that is effective under subsection (1) becomes perfected under the law of the other  
12 jurisdiction before the earlier of the time the financing statement would have become ineffective  
13 under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) or the expiration of  
14 the four-month period, it remains perfected thereafter.

15 (3) If the security interest does not become perfected under the law of the other  
16 jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have  
17 been perfected as against a purchaser of the collateral for value.

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

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

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

1 according to the following rules:

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

6 \* \* \*

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

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

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

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

17 \* \* \*

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

### 20 Reporter's Note

21  
22 1. When a debtor changes its location, the law governing perfection generally changes  
23 also. See Section 9-301(1). Current Section 9-316 addresses security interests that are perfected  
24 (i.e., that have attached and as to which any required perfection step has been taken) before the  
25 debtor changes its location. It does not apply to security interests that have not attached before  
26 the debtor's location changes. Suppose, for example, that Debtor is an individual who resides in  
27 Pennsylvania. Lender perfects a security interest in Debtor's inventory by filing in  
28 Pennsylvania. Then, without Lender's knowledge, Debtor's principal residence is relocated to

1 New Jersey. Under Section 9-316, Lender's security interest in inventory on hand as of the  
2 relocation date remains perfected for four months thereafter (or, if earlier, until perfection would  
3 have ceased under Pennsylvania law). However, although Lender's security interest attaches to  
4 inventory that Debtor acquires after relocating to New Jersey, the security interest is unperfected  
5 because Lender has not filed in New Jersey.

6  
7 New Section 9-316(h) would change the result. In the example, Lender's filing in  
8 Pennsylvania would be effective to perfect a security interest in inventory acquired by Debtor  
9 within the four months after Debtor relocates (assuming that the financing statement would not  
10 have become ineffective earlier). The security interest will remain continuously perfected if,  
11 before the expiration of the four-month period (and before the financing statement would have  
12 become ineffective), the security interest is perfected under the law of New Jersey. Otherwise,  
13 the security interest will become unperfected at the end of the four-month period (or, if earlier,  
14 when perfection would have ceased) and will be deemed never to have been perfected.

15  
16 2. Under current law, a competing secured party generally can rely on the public record  
17 in New Jersey to determine its priority as to collateral acquired by Debtor post-relocation. This  
18 is because a filing against Debtor in another state would be ineffective to perfect a security  
19 interest in that collateral. Proposed Section 9-316(h) would make Lender's pre-relocation filing  
20 in Pennsylvania effective against collateral acquired after the Debtor relocates to New Jersey.  
21 Under the normal rule in Section 9-322(a)(1), the priority of Lender's security interest in that  
22 collateral would date from the time a filing covering the collateral was first made in  
23 Pennsylvania. Application of this rule in cases covered by proposed Section 9-316(h) would  
24 impose a new risk on a competing secured party. Accordingly, new Section 9-322(b)(3) would  
25 date Lender's priority from the time it became perfected under the law of the other jurisdiction  
26 (New Jersey).

27  
28 Proposed Section 9-322(b)(3) carries with it its own difficulties. Suppose, for example,  
29 that both Lender and Bank file financing statements under Pennsylvania law while Debtor is  
30 located in Pennsylvania. Lender files first. Debtor then relocates to New Jersey. Both Lender  
31 and Bank file against Debtor in New Jersey within four-months after relocation, but Bank files  
32 first. If Section 9-322(b)(3) were to apply, Bank's security interest—previously junior—would  
33 become senior. New Section 9-322(h) preserves Lender's priority under these circumstances.

34  
35 3. Standing alone, new Section 9-316(h)(1) would impose on buyers, lessees, and  
36 licensees a risk that is analogous to the risk that the section would impose on secured parties that  
37 take an interest in collateral acquired after the debtor's relocation. Paragraph (h)(4) paragraph  
38 would protect these purchasers.

39  
40 4. Although new subsection (h) is likely to be most useful to creditors having a security  
41 interest in inventory and receivables, it would apply to all kinds of collateral.

42  
43 5. The addition of subsection (h) will require explanatory and other changes to the  
44 Official Comments. The revised Comments will also explain the application of this subsection  
45 to entities that convert from one organizational form to another. They may also include a  
46 general statement to the effect that, when used in this section, "another jurisdiction" and "the  
47 other jurisdiction" mean the jurisdiction whose Section 9-316 is being applied.

1  
2           **SECTION 9-316. ~~CONTINUED PERFECTION OF SECURITY INTEREST~~**  
3 **FOLLOWING EFFECT OF CHANGE IN GOVERNING LAW.**

4           \* \* \*

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

9                   (1) Subject to paragraph (4), the financing statement is effective to perfect a  
10 security interest in collateral in which the new debtor has or acquires rights before or within four  
11 months after the new debtor becomes bound under Section 9-203(d), if the financing statement  
12 would have been effective to perfect a security interest in the collateral had it been acquired by  
13 the original debtor.

14                   (2) Subject to paragraph (4), a security interest that is perfected by the financing  
15 statement and which becomes perfected under the law of the other jurisdiction before the earlier  
16 of the expiration of the four-month period or the time the financing statement would have  
17 become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c)  
18 remains perfected thereafter.

19                   (3) A security interest that is perfected by the financing statement but which does  
20 not become perfected under the law of the other jurisdiction before the earlier time or event  
21 becomes unperfected and is deemed never to have been perfected as against a purchaser of the  
22 collateral for value.

23                   (4) A security interest that is perfected solely by a financing statement that is  
24 effective solely under paragraph (1) is deemed to be unperfected as against a buyer, lessee, or

1 licensee of the collateral until it is perfected under the law of the other jurisdiction.

2 **Reporter's Note**

3  
4 1. New subsection (i) is similar to new subsection (h). Whereas the latter addresses a  
5 given debtor's change of location, the former addresses situations in which a successor to the  
6 debtor becomes bound as debtor by the original debtor's security agreement. See Section 9-  
7 203(d).

8  
9 Consider the difficulty faced by Lender under the facts of Official Comment 5 to Section  
10 9-316:

11  
12 Debtor is a Pennsylvania corporation. Debtor grants to Lender a security interest in  
13 Debtor's existing and after-acquired inventory. Lender perfects by filing in  
14 Pennsylvania. Debtor's shareholders decide to "reincorporate" in Delaware. They form  
15 a Delaware corporation (Newcorp) into which they merge Debtor. By virtue of the  
16 merger, Newcorp becomes bound by Debtor's security agreement. See Section 9-203.  
17 After the merger, Newcorp acquires inventory to which Lender's security interest  
18 attaches. Because Newcorp is located in Delaware, Delaware law governs perfection of a  
19 security interest in Newcorp's inventory. See Sections 9-301, 9-307.

20  
21 Delaware's current Section 9-316(a) applies to the pre-merger collateral that was  
22 transferred from Debtor to Newcorp, and in which Lender held a security interest perfected  
23 under Pennsylvania law. Under this section, Lender's security interest in the transferred  
24 collateral remains perfected for one year after the merger (assuming that perfection would not  
25 have ceased earlier under Pennsylvania law). Because Lender's financing statement was filed in  
26 Pennsylvania and not Delaware, current Section 9-316(a) would have no application to inventory  
27 acquired by Newcorp, a Delaware corporation, after the merger. For the same reason, Lender's  
28 security interest in Newcorp's post-merger inventory would be unperfected until Lender files  
29 against Newcorp in Delaware.

30  
31 Under new subsection (i), however, the financing statement filed in Pennsylvania would  
32 be effective to perfect a security interest that attaches to the post-merger collateral. The new  
33 subsection would eliminate the risk that a change in Debtor's location would result in security  
34 interests in post-relocation collateral being unperfected until Lender discovers the relocation and  
35 files in Delaware. The perfection afforded by the Pennsylvania financing statement would end  
36 four months after the merger (reincorporation) unless Lender perfects under Delaware law  
37 within the four-month period (or, if earlier, before the financing statement would have become  
38 ineffective under Pennsylvania law).

39  
40 2. In many cases, an original debtor (Debtor, a Pennsylvania corporation) will merge  
41 into a corporation (Survivor, a Delaware corporation) that has been operating before the merger.  
42 In these cases, subsection (i) would affect Lender's security interest not only in inventory  
43 acquired by Survivor after the merger but also in inventory held by Survivor at the time of the  
44 merger. Where Lender files against Debtor's inventory in Pennsylvania before the merger,  
45 amended Section 9-316 would yield the following results (assuming that the financing statement  
46 would not have become ineffective under Pennsylvania law):

1 a. *Transferred inventory.* Lender’s perfected security interest in the inventory that  
2 Survivor acquired from Debtor would remain perfected for one year after the merger.  
3 See subsection (a). If Lender perfects under Delaware law within the year, then the  
4 security interest would remain perfected thereafter. See subsection (b).  
5

6 b. *Survivor’s pre-merger inventory.* Lender’s security interest in collateral that Survivor  
7 had on hand at the time of the merger would attach and become perfected when Survivor  
8 becomes a new debtor. It would remain perfected for four months after Survivor  
9 becomes a new debtor. If Lender perfects under Delaware law within the four-month  
10 period, then the security interest would remain perfected thereafter. See subsection (i).  
11

12 c. *Inventory acquired post-merger.* Lender’s security interest in collateral that Survivor  
13 acquires within four months after Survivor becomes a new debtor would become  
14 perfected when Survivor acquires the collateral. If Lender perfects under Delaware law  
15 within the four-month period, then the security interest would remain perfected  
16 thereafter. See subsection (i).  
17

18 3. The cases described in Note 2 also may give rise to a “double-debtor” problem, in  
19 which Lender and Survivor’s secured parties hold competing security interests in the same  
20 inventory. Section 9-326 contains the priority rules addressing this problem. They have been  
21 amended to take account of new subsection (i).  
22

23 4. Under current law, the security interest of a secured party in the position of Lender  
24 would be unperfected, and a buyer, lessee, or licensee normally would take free of it under  
25 Section 9-317. New subsection (i)(4) preserves this result.  
26

27 5. Although new subsection (i) is likely to be most useful to creditors having a security  
28 interest in inventory and receivables, it would apply to all kinds of collateral.  
29

30 6. The addition of subsection (i) will require explanatory and other changes to the  
31 Official Comments. The revised Comments will also explain the application of this subsection  
32 to entities that convert from one organizational form to another.  
33  
34

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

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

1 under Section 9-508 or Sections 9-508 and 9-316(i)(1).

2 (b) [**Priority under other provisions; multiple original debtors.**] The other provisions  
3 of this part determine the priority among conflicting security interests in the same collateral  
4 perfected by filed financing statements that are effective solely under Section 9-508 or Sections  
5 9-508 and 9-316(i)(1). However, if the security agreements to which a new debtor became  
6 bound as debtor were not entered into by the same original debtor, the conflicting security  
7 interests rank according to priority in time of the new debtor's having become bound.

### 8 **Reporter's Note**

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

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

19  
20 Under current law, SP-D's security interest would attach to inventory that Survivor had  
21 on hand at the time of the merger or acquired after the merger. Section 9-508 makes SP-D's  
22 financing statement effective to perfect its security interest in this inventory, even though the  
23 financing statement was filed against Debtor. The first-to-file-or-perfect rule (Section 9-  
24 322(a)(1)) would award priority to SP-D. However, it is subject to Section 9-326, which awards  
25 priority to SP-S. Section 9-326 identifies the subordinated security interest as one that is  
26 "perfected by a filed financing statement that is effective solely under Section 9-508."

27  
28 Suppose instead that Survivor is a Delaware corporation and that SP-S perfected by filing  
29 in Delaware. As in the previous example, SP-D's security interest would attach to inventory that  
30 Survivor had on hand at the time of the merger or acquired after the merger. Here, SP-D faces  
31 two problems: Not only does SP-D's financing statement name Debtor and not Survivor, but it  
32 also is filed where Debtor is located (Pennsylvania) and not where Survivor is located  
33 (Delaware). Section 9-508 solves the first problem for SP-D, but not the second. Thus, until SP-  
34 D files in Delaware, SP-D's security interest in inventory that Survivor had on hand at the time  
35 of the merger or acquired after the merger would be unperfected.

36  
37 New subsection (i) would address this second problem by making SP-D's Pennsylvania  
38 filing effective with respect to inventory that Survivor had at the time of the merger and  
39 inventory that Survivor acquired within four months after the merger. To insure that the first-to-  
40 file-or-perfect rule subordinates a security interest like SP-D's, Section 9-326 would be amended

1 to subordinate a security interest that is perfected by a financing statement that is “effective  
2 solely under Section 9-508 or Sections 9-508 and 9-316(i)(1).”  
3  
4

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

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

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

14 \* \* \*

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

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

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

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

25 \* \* \*

26 (h) **[Limitation on subsection (b)(3).]** Subsection (b)(3) does not affect the priority of

1 competing security interests, each of which remains perfected under Section 9-316(i)(2).

2 **Reporter's Note**

3  
4 Consider this example:

5  
6 SP-D holds a security interest in the existing and after-acquired inventory of Debtor, a  
7 Pennsylvania corporation. In 2007 SP-D perfected its security interest by filing a  
8 financing statement against Debtor in Pennsylvania. SP-S holds a security interest in the  
9 existing and after-acquired inventory of Survivor, a Delaware corporation. In 2008 SP-S  
10 perfected its security interest by filing a financing statement against Survivor in  
11 Delaware. In 2009 Debtor merges into Survivor. Shortly after the merger, Survivor  
12 acquires additional inventory.

13  
14 SP-S's security interest would attach to the post-merger inventory and would be perfected by  
15 SP-S's filing in Delaware. SP-D's security interest also would attach to the post-merger  
16 inventory and, under new Section 9-316(i)(1), would be a perfected security interest until four  
17 months after the merger. Because SP-D's security interest would be perfected by a financing  
18 statement that is "effective solely under . . . Sections 9-508 and 9-316(i)(1)," Section 9-326(a)  
19 would subordinate SP-D's security interest to SP-S's.

20  
21 Now suppose that SP-D files an initial financing statement against Survivor in Delaware  
22 before the expiration of the four-month period. Under new Section 9-316(i)(2), SP-D's security  
23 interest in the inventory that Survivor acquired post-merger would remain perfected after the  
24 period expires. SP-D's Delaware filing should not, however, elevate the priority of SP-D's  
25 subordinate security interest. SP-S was the first to file against Survivor; Debtor never had an  
26 interest in the collateral in question, which Survivor acquired independently of the merger. But  
27 once SP-D files against Survivor in Delaware, SP-D's security interest in this collateral no  
28 longer would be perfected by a financing statement that is "effective solely under . . . Sections 9-  
29 508 and 9-316(i)" and so no longer would be covered by the subordination rule in Section 9-  
30 326(a).

31  
32 The amendments to Section 9-322(a) and (b) would preserve the subordination by dating  
33 SP-D's priority, for purposes of the first-to-file-or-perfect rule, from the time of its Delaware  
34 filing. The amendments would relieve SP-S, which was the first secured party to file against  
35 Survivor, from any need to check for subsequent filings by competing secured parties. (Note  
36 that the amendments would not affect the rule in Section 9-325(a), which governs the priority of  
37 security interests in inventory that Debtor transferred to Survivor in the merger.)

38  
39  
40 **SECTION 9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE**  
41 **OF SECURITY INTEREST OR AGRICULTURAL LIEN.**

42 \* \* \*

43 (b) **[Buyers that receive delivery.]** Except as otherwise provided in subsection (e), a

1 buyer, other than a secured party, of tangible chattel paper, tangible documents, goods,  
2 instruments, or a security certificate takes free of a security interest or agricultural lien if the  
3 buyer gives value and receives delivery of the collateral without knowledge of the security  
4 interest or agricultural lien and before it is perfected.

5 \* \* \*

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

11 \* \* \*

## 12 Official Comment

13 \* \* \*

### 14 6. Purchasers Other Than Secured Parties. \* \* \*

15  
16 Subsection (b) governs goods, as well as intangibles of the type whose transfer is effected  
17 by physical delivery of the representative piece of paper (tangible chattel paper, tangible  
18 documents, instruments, and security certificates). To obtain priority, a buyer must both give  
19 value and receive delivery of the collateral without knowledge of the existing security interest  
20 and before perfection. Even if the buyer gave value without knowledge and before perfection,  
21 the buyer would take subject to the security interest if perfection occurred before physical  
22 delivery of the collateral to the buyer. Subsection (c) contains a similar rule with respect to  
23 lessees of goods. Note that a lessee of goods in ordinary course of business takes free of all  
24 security interests created by the lessor, even if perfected. See Section 9-321.  
25

26 \* \* \*

27  
28 The rule of subsection (b) obviously is not appropriate where the collateral consists of  
29 intangibles and there is no representative piece of paper whose physical delivery is the only or  
30 the customary method of transfer. Therefore, with respect to such intangibles (including  
31 accounts, electronic chattel paper, general intangibles, and investment property other than  
32 certificated securities), subsection (d) gives priority to any buyer who gives value without  
33 knowledge, and before perfection, of the security interest. A licensee of a general intangible  
34 takes free of an unperfected security interest in the general intangible under the same  
35  
36

1 circumstances. Note that a licensee of a general intangible in ordinary course of business takes  
2 rights under a nonexclusive license free of security interests created by the licensor, even if  
3 perfected. See Section 9-321.

4  
5 \* \* \*

6  
7 **Reporter's Note**  
8

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

12  
13 2. This draft adds the word "tangible" before "documents" to conform to the  
14 amendments to Article 9 that accompany Revised Article 7.  
15

16  
17 **SECTION 9-406. DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF**  
18 **ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS**  
19 **ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES,**  
20 **AND PROMISSORY NOTES INEFFECTIVE.**

21 \* \* \*

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

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

30 (2) provides that the assignment or transfer or the creation, attachment,  
31 perfection, or enforcement of the security interest may give rise to a default, breach, right of  
32 recoupment, claim, defense, termination, right of termination, or remedy under the account,

1 chattel paper, payment intangible, or promissory note.

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

5 \* \* \*

6 **SECTION 9-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY**  
7 **NOTES, HEALTH-CARE-INSURANCE RECEIVABLES, AND CERTAIN GENERAL**  
8 **INTANGIBLES INEFFECTIVE.**

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

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

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

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



1 intangible or promissory note by accepting it in a “strict foreclosure” under Section 9-620.

2  
3  
4 **SECTION 9-515. DURATION AND EFFECTIVENESS OF FINANCING**

5 **STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT.**

6 \* \* \*

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

12 \* \* \*

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

16 \* \* \*

17 **Reporter’s Note**

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

19  
20  
21 **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.**

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

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

1                   \* \* \*

2                   (f) [Name of registered organization.] If the public organic record indicates more than  
3 one name of the debtor, then, for purposes of subsection (a)(1), “the name of the debtor indicated  
4 on the public organic record” means:

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

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

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

13  
14                   **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

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

16                   \* \* \*

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

19                   \* \* \*

20                   (67A) “Public organic record” means:

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

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

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

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

16                   \* \* \*

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

24                   \* \* \*

1 \* \* \*

2 **Reporter’s Note**

3  
4 1. The amendments to Section 9-503 and the related amendments to Sections 9-102 are  
5 meant to designate more clearly the public record that is relevant to determining the name of a  
6 debtor that is a registered organization. The relevant public record is always a “public organic  
7 record.” In most cases, this will be a record that is “filed with a State or the United States.”  
8 However, the term also includes a charter that is “issued by a State or the United States.” Any  
9 other public record that the State creates, such as a certificate of good standing or an index of  
10 domestic corporations, would not be a “public organic record” and so would be irrelevant to the  
11 determination of the debtor’s name under Section 9-503(a)(1).  
12

13 Section 9-503(f) covers two cases where the public organic record may indicate more  
14 than one name for the debtor. Under paragraph (1), the name that must be provided in the  
15 financing statement is the name that is indicated on the most recently filed public record that is  
16 intended to state, amend, or restate the debtor's name. If that record indicates more than one  
17 name of the debtor, the name that must be provided is the name that the record states to be the  
18 debtor’s name.  
19

20 The references to the “public organic record” in Section 9-503(a) and “the most recently  
21 filed or issued record” in Section 9-503(f) are not meant to refer to any randomly filed or issued  
22 record. Rather, they are meant to refer to the public organic record filed or issued with respect to  
23 the debtor and most recently filed or issued record that constitutes part of that public organic  
24 record. The Joint Review Committee may wish to consider whether these phrases should be  
25 amplified in the text.  
26

27 2. The amendments to the definition of “registered organization” also are meant to  
28 clarify that the term includes an organization that is created without the need for a public record  
29 but that is “formed” only when a public filing has been made. For example, under Delaware  
30 law, a statutory trust is “created by a governing instrument,” Del. Code Ann. tit. 12, §  
31 3801(g)(1), but is “formed at the time of the filing of the initial certificate of trust in the office of  
32 the Secretary of State or at any later date or time specified in the certificate of trust.” Del. Code  
33 Ann. § 3810(a)(2). The definition presents alternative approaches to clarifying that a  
34 Massachusetts business trust is a registered organization. The Joint Review Committee may  
35 wish to consider whether the approach taken should be extended to all organizations, not just  
36 statutory trusts.  
37

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

40  
41 The Article 9 filing system was designed to balance the needs of both filers, who need  
42 comfort that they have filed against the debtor’s correct name, and searchers, who need comfort  
43 that a search of the public record will reveal any financing statements that have been filed  
44 against the debtor.  
45

46 Like Former Section 9-402(1), Section 9-503(a)(4) provides that, when the debtor is an

1 individual, a financing statement is sufficient only if it provides the “name of the debtor.”  
2 Inasmuch as some individuals use variations of their name at various times—for example,  
3 sometimes using the full middle name and sometimes a middle initial—, this standard does not  
4 provide absolute certainty.

5  
6 American law provides each individual with nearly unlimited freedom to change his  
7 name. Unlike citizens of most other nations, citizens of the United States do not hold an official  
8 identity document, and so no single source for determining and verifying the debtor’s name is  
9 available. For these reasons, absolute certainty in concerning the name of an individual debtor  
10 seems impossible to achieve. Rather, the questions for the Joint Review Committee have been  
11 whether more certainty than is currently available is needed and, if it is, how much certainty can  
12 Article 9 provide and at what cost.

13  
14 Whether the existing level of certainty is sufficiently great that a statutory change is  
15 warranted has been the subject of some dispute. Many believe that it is not. The majority of  
16 reported cases in which a financing statement was held to be insufficient because of an error in  
17 the debtor’s name concern entity debtors, not individuals. Although some reported cases have  
18 held that filings against individual debtors were insufficient because they did not provide the  
19 correct name for the debtor, the financing statements typically were insufficient because they  
20 contained a typographical error or provided the debtor’s nickname rather than a “real” name, and  
21 not because the secured party chose the “wrong” name from among those appearing on  
22 documents disclosed through the exercise of due diligence. Indeed, no reported case has found  
23 that the name appearing on the debtor’s driver’s license is insufficient.

24  
25 The possibility that more than one name may satisfy the statutory requirement (e.g.,  
26 Franklin Delanao Roosevelt and Franklin D. Roosevelt) may require searchers to search under  
27 more than one name. However, the advent of on-line searching has significantly reduced the  
28 delay and cost of searching under more than one of the likely names and increased the ease of  
29 making multiple searches. Likewise, the burden of filing under more than one name has become  
30 quite small, inasmuch as filing is done electronically and most states charge a very low fee, or no  
31 fee at all, for adding an additional debtor name to a filing.

32  
33 Others believe that amendments to Article 9 are needed, although there is no clear  
34 agreement as to exactly what those amendments should contain. In response to their concerns,  
35 three different approaches towards clarifying what name or names are sufficient were developed.  
36 These approaches are:

37  
38 (A) to amend Article 9 to require that a financing statement provide the name for the  
39 debtor that appears on a driver’s license or other specified document (the “only if” approach);  
40

41 (B) to retain the current “name of the debtor” requirement but amend Article 9 to provide  
42 a “safe harbor” for satisfying this requirement (the “safe harbor” approach); and  
43

44 (C) to amend Article 9 to create two classes of security interests—one as to which a  
45 financing statement provides the name that appears on a driver’s license or other specified  
46 document filing and another as to which a financing statement provides the name of the debtor  
47 but not the name on the specified document, and to provide that a security interest in the latter

1 class generally does not have priority over competing secured parties, buyers, lessees, and  
2 licensees (the “priority” approach). The members of a task force of the American Bankers  
3 Association tend to favor this approach.  
4

5 The Reporter prepared drafts of sets of provisions that would implement each of these  
6 approaches. This draft includes one version of Alternatives A and C (the “only if” and “priority”  
7 approaches) and two versions of Alternative B (the “safe harbor” approach), one in which the  
8 safe harbor is a driver’s license or other specified document, and the other in which the safe  
9 harbor is a particular form of the debtor’s name.  
10

11 Alternatives A and B would affect only the rules concerning the content of a financing  
12 statement. The nonuniformity that would result if different States made different choices from  
13 among (i) keeping the current text of Section 9-503, (ii) adopting Alternative A, and (iii)  
14 adopting Alternative B appears to be manageable. However, Alternative C includes priority  
15 rules. If some States were to adopt Alternative C and others did not, the resulting nonuniformity  
16 would create significant problems, discussed more fully in the Reporter’s Note accompanying  
17 Alternative C.  
18

19 Even those who are not inclined to change current law appear to be open to the  
20 possibility of refining it. For example, Article 9 might be amended to provide that a financing  
21 statement is not seriously misleading if it contains an error in the debtor’s middle name, as long  
22 as the name it provides includes the correct middle initial. Or, it might be amended to provide  
23 that a financing statement is not seriously misleading if omits the debtor’s middle name  
24 altogether. In effect, this minimalist approach would be a fourth alternative to leaving the  
25 current text unchanged. The nonuniformity that would result if different States made different  
26 choices as between this approach and the current text of Section 9-503 appears to be  
27 manageable.  
28

29 Discussion at the Joint Review Committee has acknowledged the possibility of taking  
30 such “minimalist” approach. Perhaps because minimalist provisions are easy to imagine without  
31 seeing them in print, especially when compared with the three other approaches, it has not  
32 appeared in the draft to date.  
33

34 Adoption of any of the alternatives under discussion would change current law. A  
35 financing statement that is effective under only under Section 9-503 as amended and is filed  
36 before the section’s effective date should take effect on the effective date, which would be the  
37 “time of filing” for purposes of Section 9-322(a)(1). Additional text (i.e., transition rules) will  
38 be necessary for implementation. The complexity of this text is likely to vary with the  
39 complexity of the approach adopted.  
40

41  
42 *[Alternative A: Name for Individual Debtor—“Only If” Approach]*  
43

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

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

1 name of the debtor:

2 \* \* \*

3 (3) \* \* \*

4 \* \* \*

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

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

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

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

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

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

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

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

3 \* \* \*

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

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

10 \* \* \*

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

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

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

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

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

23 (A) the [driver's license] that indicates the name appears on its face to  
24 expire and the name that, immediately upon the expiration, would be sufficient under Section 9-

1 503(a)(4) is different from the name provided; or

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

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

6 (A) the [identification card] that indicates the name appears on its face to  
7 expire and the name that, immediately upon the expiration, would be sufficient under Section 9-  
8 503(a)(4) is different from the name provided; or

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

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

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

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

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

20 \* \* \*

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

1 seriously misleading.

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

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

7 (1) in the case of a change under Section 9-507(d)(1)(A), 9-507(d)(2)(A), or 9-  
8 507(d)(3)(C), the name of the debtor that would be sufficient under Section 9-504(a)(4)  
9 immediately after the apparent expiration; and

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

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

### 15 **Reporter’s Note**

16  
17 1. Alternative A uses a cascade, or waterfall, to determine the name of an individual  
18 debtor which is sufficient for a financing statement. Although the particular steps in the cascade  
19 remain under discussion, the three steps under the draft are the debtor’s driver’s license,  
20 identification card, and U.S. passport, in that order. Because States use different terms for the  
21 driver’s licenses and identification cards they issue, the words “driver’s license” and  
22 “identification card” appear in brackets. If a debtor has been issued more than one identity  
23 document (i.e., license, identification card, or passport) described in the applicable paragraph of  
24 Section 9-503(a)(4), the document that was issued most recently would be the one that indicates  
25 the debtor’s name for purposes of that paragraph.

26  
27 The last step in the cascade (draft Section 9-503(a)(4)(D)) is based upon the approach  
28 taken by the filing-office regulations of some Canadian provinces. It is independent from the  
29 remainder of Alternative A and can be deleted or revised without affecting the remaining  
30 provisions. If the Joint Review Committee wishes to retain this approach, it may wish to  
31 consider whether paragraph (D) is too limiting. For example, should it be expanded to include  
32 debtors whose names do not include both a surname and a first given name? Should a special  
33 rule be provided for debtors whose names include both a matronymic and patronymic, e.g.,

1 Vicente Fox Quesada (the former President of Mexico)?  
2

3 2. The draft refers to a license or ID card issued by “this State.” Perfection of a security  
4 interest by filing is determined by the law of the jurisdiction in which the debtor is located. See  
5 Section 9-301(1). A debtor who is an individual is located at the individual’s principal  
6 residence. Thus, a given State’s Section 9-503 will apply during any period when the debtor  
7 maintains his principal residence in that State. Consider the following example:  
8

9 Debtor, who resides in Illinois, grants a security interest to SP in certain business  
10 equipment. SP files a financing statement with the Illinois filing office. The financing  
11 statement provides the name appearing on Debtor’s Illinois driver’s license (“Joseph  
12 Allan Jones”). Illinois’ Section 9-503(a)(4) (Alternative A) or 9-503(g) (Alternative B)  
13 would make this filing sufficient to satisfy subsection (a)(4), even though Debtor’s  
14 correct middle name is Alan, not Allan. As long as Illinois remains Debtor’s principal  
15 residence, Debtor’s acquisition of a driver’s license or ID card from another State would  
16 not affect the effectiveness of the Illinois filing.  
17

18 If the debtor relocates by changing his principal residence, perfection will be governed  
19 by the law of the debtor’s new location. As a consequence of the application of that State’s  
20 Section 9-316, a security interest that is perfected by filing under the law of the debtor’s former  
21 location will remain perfected for four months after the relocation, and thereafter if the secured  
22 party perfects under the law of the debtor’s new location. Consider the following example:  
23

24 Debtor, who resides in Illinois, grants a security interest to SP in certain business  
25 equipment. SP files a financing statement in Illinois that provides a name that is  
26 sufficient under Illinois’ Section 9-503(a)(4) (Alternative A) or 9-503(g) (Alternative B).  
27 On January 1, Debtor relocates to Indiana. Upon the relocation, the governing law  
28 changes from the law of Illinois to the law of Indiana. However, under Indiana’s Section  
29 9-316, a security interest perfected by the Illinois filing remains perfected for four  
30 months, i.e., through the end of April. If SP does not file in Indiana before the four-  
31 month period expires, then the security interest will become unperfected and will be  
32 deemed never to have been perfected as against a purchaser of the collateral for value.  
33 See Indiana’s Section 9-316(b).  
34

35 In the example, the name on Debtor’s Illinois driver’s license would be irrelevant for  
36 purposes of Indiana’s Section 9-503(a)(4) (Alternative A) or 9-503(g) (Alternative B), inasmuch  
37 as it was not issued by “this State,” i.e., Indiana. Of course, a financing statement providing that  
38 name might be effective under Section 9-506 (i.e., it might not be seriously misleading) and,  
39 under Alternative B, it might satisfy Indiana’s Section 9-503(a)(4) (i.e., it might be the  
40 individual name of the debtor).  
41

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

1 the name provided in the financing statement, if the new document indicates a name different  
2 from the one provided on the financing statement. An individual whose name is determined  
3 under Section 9-503(a)(4)(D) would change his name as under current law.  
4

5 Even if the debtor's name changes, the filed financing statement does not become  
6 seriously misleading if it can be found by searching under the debtor's "correct" name, using the  
7 filing office's standard search logic. Draft Section 9-506(e) explains what is meant by the  
8 debtor's "correct name" when the debtor's name changes under Section 9-507(d). If the name  
9 change results from the expiration of the identity document, the correct name is the name that  
10 Section 9-503(a)(4) would yield after the expiration. If the name change results from the  
11 issuance of a new identity document, the correct name is the name that is indicated on the new  
12 document (which, of course, is the name that Section 9-503(a)(4) would yield after the issuance  
13 of the new document).  
14

15 4. To satisfy Section 9-503(a)(4), the name provided on the financing statement must be  
16 the same as the name indicated on the license. For example, a filing against "Joseph A. Jones"  
17 or "Joseph Jones" would not satisfy either of those sections if Jones's driver's license shows his  
18 name to be "Joseph Allan Jones." Determining whether the name provided on the financing  
19 statement is the same as the name indicated on the license must not be done mindlessly. For  
20 example, the order in which the components of an individual's name appear on a driver's license  
21 differs among the States. Some States, such as Illinois, put the individual's "last name" (as the  
22 term is used on the financing statement form in Section 9-521) last, e.g., "Joseph Allan Jones."  
23 But even where the driver's license puts the individual's "last name" first, the driver's license  
24 may indicate that the name appearing first is the debtor's "last name" for the purpose of the  
25 financing statement. This would be the case, for example, with a driver's license on which the  
26 debtor's name appears as "Jones, Joseph Allan."  
27

28 5. Still to be decided by the Joint Review Committee are whether, and, if so, how to deal  
29 with the situations in which the filing office refuses to accept a financing statement because it  
30 cannot index the name specified by Section 9-503(a)(4) (e.g., because its character set does not  
31 include a character appearing in the identity document and provided in the name), refuses to  
32 allow searches under the name specified by Section 9-503(a)(4), or indexes the financing  
33 statement providing the name specified by Section 9-503(a)(4) under a name other than the name  
34 provided (e.g., by truncating the name) so that the financing statement cannot be found by a  
35 search under the name specified.  
36

37 6. If the debtor is a trust whose organic documents do not specify a name for the trust,  
38 Section 9-503(a)(3) requires a financing statement to provide the name of an individual as  
39 debtor. If the draft's "driver's license/identification card" approach is acceptable, the Joint  
40 Review Committee should consider whether the same approach should be taken with respect to  
41 the name of an individual shown as debtor under Section 9-503(a)(3). Any such expansion  
42 would likely require additional changes to the filing provisions.  
43

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

1 the name of an individual debtor.

2  
3  
4 *[Alternative B: Name for Individual Debtor— “Safe Harbor” Approach]*  
5 *[Alternative B1—Name on official document]*  
6

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

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

10 \* \* \*

11 (4) in other cases:

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

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

16 \* \* \*

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

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

26  
27 **SECTION 9-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF**

1       **FINANCING STATEMENT.**

2               \* \* \*

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

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

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

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

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

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

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

21               \* \* \*

22               (b) **[Financing statement seriously misleading.]** Except as otherwise provided in  
23 subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in  
24

1 accordance with Section 9-503(a) or (g) is seriously misleading.

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

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

9 (e) **[Individual “debtor’s correct name.”]** If a debtor who is an individual changes the  
10 debtor’s name by virtue of Section 9-507(d), the “debtor’s correct name” in subsection (c) means  
11 the name of the debtor which, immediately after the change, would be sufficient under Section 9-  
12 504(a)(4) or (g).

13 *[End of Alternative B1]*

14 *[Alternative B2—Form of Name]*

15  
16 **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.**

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

19 \* \* \*

20 (4) in other cases:

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

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



1 \* \* \*

2 (46A) “High-priority filing” means the filing of a financing statement providing  
3 the name of the debtor that is sufficient under Section 9-503(a)(4).

4 \* \* \*

5 (52A) “Low-priority filing” means the filing of a financing statement providing a  
6 name of the debtor that is insufficient under Section 9-503(a)(4) but sufficient under Section 9-  
7 503(h).

8 \* \* \*

9 \* \* \*

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

11 (a) **[Sufficiency of debtor’s name.]** A financing statement sufficiently provides the  
12 name of the debtor:  
13

14 \* \* \*

15 (3) \* \* \*

16 \* \* \*

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

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

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

24 (B) as to whom paragraph (A) does not apply, and to whom this State has

1 issued an [identification card] that, at the time the financing statement is filed, appears on its face  
2 not to have expired, only if it provides the name of the individual which is indicated on the  
3 [identification card];

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

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

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

15 ~~(4)~~(5) in other cases:

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

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

20 \* \* \*

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

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

5  
6           **SECTION 9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE**  
7 **OF SECURITY INTEREST OR AGRICULTURAL LIEN.**

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

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

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

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

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

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

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

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

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

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

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

15           **SECTION 9-320. BUYER OF GOODS.**

16           \* \* \*

17           (b) **[Buyer of consumer goods.]** Except as otherwise provided in subsection (e), a  
18 buyer of goods from a person who used or bought the goods for use primarily for personal,  
19 family, or household purposes takes free of a security interest, even if perfected, if the buyer  
20 buys:  
21

22           (1) without knowledge of the security interest;

23           (2) for value;

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

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

3 \* \* \*

4  
5 **SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY**  
6 **INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.**

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

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

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

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

20 \* \* \*

21  
22 **SECTION 9-324. PRIORITY OF PURCHASE-MONEY SECURITY INTERESTS.**

23 (a) [**General rule: purchase-money priority.**] Except as otherwise provided in  
24 ~~subsection~~ subsections (g) and (h), a perfected purchase-money security interest in goods other  
25 than inventory or livestock has priority over a conflicting security interest in the same goods,

1 and, except as otherwise provided in Section 9-327, a perfected security interest in its  
2 identifiable proceeds also has priority, if the purchase-money security interest is perfected when  
3 the debtor receives possession of the collateral or within 20 days thereafter.

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

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

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

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

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

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

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

1 of the filing; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (a) **[Seller retains no interest.]** A debtor that has sold an account, chattel paper,  
22 payment intangible, or promissory note does not retain a legal or equitable interest in the  
23 collateral sold.  
24



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

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

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

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

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

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

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

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

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

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

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 or another country issues to the debtor a passport, that indicates a  
6 name different from the name provided.

7  
8                   **SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.**

9                   \* \* \*

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

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

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

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

23                         (1) in the case of a change under Section 9-507(d)(1)(A), 9-507(d)(2)(A), 9-  
24 507(d)(3)(A), or 9-507(d)(4)(A), the name of the debtor that would be sufficient under Section

1 9-504(a)(4) immediately after the apparent expiration; and

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

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

7 \* \* \*

8  
9 (b) **[Notification of disposition required.]** Except as otherwise provided in subsection  
10 (d), a secured party that disposes of collateral under Section 9-610 shall send to the persons  
11 specified in subsection (c) a reasonable authenticated notification of disposition.

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

14 (1) the debtor;

15 (2) any secondary obligor; and

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

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

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

22 (i) identified the collateral;

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

24 (iii) was filed in the office in which to file a financing statement

1 against the debtor covering the collateral as of that date; and

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

5 \* \* \*

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

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

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

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

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

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

18 **SECTION 9-621. NOTIFICATION OF PROPOSAL TO ACCEPT**  
19 **COLLATERAL.**

20 (a) [**Persons to which proposal to be sent.**] A secured party that desires to accept  
21 collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:  
22

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

1 collateral;

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

5 (A) identified the collateral;

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

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

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

12 \* \* \*

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

#### 15 **Reporter's Note**

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

19 *[End of Alternative C: "Priority Approach"]*

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

21  
22 1. **Classes of Security Interests Perfected by Filing.** Alternative C divides security  
23 interests perfected by filing into two classes. A financing statement that provides the name  
24 determined under the cascade, or waterfall, in Section 9-503(a)(4) would afford to the secured  
25 party all the benefits that current law affords to a security interest perfected by filing. The draft  
26 uses the term "high-priority filing" for a filing of this kind.

27  
28 Section 9-503(h) would give effect to a financing statement that does not provide the

1 name specified in subsection (a)(4) but instead provides the debtor’s individual name. The draft  
2 uses the term “low-priority filing” for a filing of this kind. Although a low-priority financing  
3 would be sufficient to perfect a security interest, a security interest perfected by a low-priority  
4 filing would be subordinate to the rights of most third parties other than a lien creditor and a  
5 competing security interest perfected by a low-priority filing.  
6

7 A name that would be disclosed by a search described in Section 9-506(b) under the  
8 name specified in subsection (a)(4) would be “sufficient under Section 9-503(a)(4)” within the  
9 meaning of the definition of “high-priority filing” and would “sufficiently provide the name of a  
10 debtor who is an individual pursuant to subsection (a)(4)” within the meaning of Section 9-  
11 503(h). The Joint Review Committee may wish to consider whether this point is clear from the  
12 text.  
13

14 The fact that the steps of the cascade in Alternative C’s version of Section 9-503(a)(4)  
15 differ from those of the cascade in Alternative A results from the fact that the particular steps in  
16 the cascade remain under discussion. The discussion of issues concerning the cascade that  
17 appears in Reporter’s Notes 1, 2, 4, and 5 to Alternative A are relevant to the cascade in  
18 Alternative C.  
19

20 **2. Competing Security Interests under Section 9-322.** As between competing security  
21 interests perfected by filing, the amendment to subsection (a)(1) states the basic rule of the  
22 “priority” approach, i.e., that a security interest perfected by a low-priority filing is subordinate  
23 to a security interest perfected by a high-priority filing. As drafted, the first-to-file-or-perfect  
24 rule would continue to apply as between competing low-priority filings and as between  
25 competing security interests, one of which is perfected by filing and the other of which is  
26 perfected by another method (subject, of course, to the “superpriority” rules elsewhere in part 3).  
27

28 The amendment to subsection (a)(1) can result in a circular priority. Suppose, for  
29 example, that after SP-1 perfects by a low-priority filing, SP-2 perfects by taking possession.  
30 Under the first-to-file-or-perfect rule, SP-1’s perfected security interest has priority over SP-2’s.  
31 Thereafter, SP-3 perfects by a high-priority filing. Under the first-to-file-or-perfect rule, SP-2’s  
32 security interest is senior to SP-3’s; however, under the new exception in subsection (a)(1), SP-  
33 3’s security interest would be senior to SP-1’s, which is senior to SP-2’s, which is senior to SP-  
34 3’s, etc. One way in which to prevent this circular priority from arising would be to provide that  
35 a security interest perfected by a low-priority filing is subordinate to a security interest perfected  
36 by possession.  
37

38 **3. Purchase-money Priority.** New Section 9-324(h) would implement the “priority”  
39 rule as it affects purchase-money security interests. This subsection does not affirmatively state  
40 that a security interest perfected by a high-priority filing is senior to a security interest perfected  
41 by a low-priority filing (which would be the case under the general rule in amended Section 9-  
42 322(a)(1)). Rather, subsection (h) prevents Section 9-324 from giving a “superpriority” to a  
43 PMSI perfected by a low-priority filing as against a security interest perfected by a high-priority  
44 filing. Under these circumstances, subsection (h) disapplies the PMSI “superpriority” rules with  
45 respect to both the purchase-money collateral itself and the proceeds of the purchase-money  
46 collateral.  
47

1 Current Section 9-324(g) deals with the relatively unusual case in which a debtor creates  
2 two purchase-money security interests in the same collateral and both security interests qualify  
3 for special priority under one of the other subsections. It gives priority to a seller-retained PMSI  
4 over a PMSI that secures an enabling loan. As amended, it would be subject to new subsection  
5 (h), which would deny priority to a seller-retained PMSI that is perfected by a low-priority filing  
6 as against an enabling lender's PMSI that is perfected by a high-priority filing.  
7

8 **4. Competing Lien Creditor.** As against a lien creditor, a security interest perfected by  
9 a low-priority filing has the same rights as any other perfected security interest.  
10

11 **5. Competing Buyer, Lessee, or Licensee.** The draft assumes that non-secured party  
12 buyers, lessees, and licensees generally would take their interests free of such a security interest.  
13 To implement these results, Sections 9-317(b) (buyers of tangible collateral), (c) (lessees), and  
14 (d) (licensees and buyers of intangible collateral) have been amended to distinguish between  
15 security interests perfected by a low-priority filing and security interests perfected by other  
16 methods. To implement the same distinction, PMSIs perfected by a low-priority filing are  
17 treated separately in new Section 9-317(e)(2), and Section 9-320(b) (concerning consumer  
18 buyers of consumer-goods collateral) has been amended to distinguish between security interests  
19 perfected by a high-priority filing and security interests perfected by other methods.  
20

21 Consider the case in which the first buyer of accounts or chattel paper (B-1) perfects its  
22 security interest by a low-priority filing and the second buyer (B-2) perfects by a high-priority  
23 filing. Section 9-318(a) would prevent B-2 from acquiring any interest in the sold receivables,  
24 and subsection (b) would not apply because B-1's security interest is perfected. But the policy  
25 underlying the "priority" approach dictates that B-2 should become the owner of the collateral  
26 free of B-1's security interest. New Section 9-318(c) would enable B-2's interest to attach  
27 notwithstanding subsection (a), and amended Section 9-322(a)(1) would give priority to B-2's  
28 interest.  
29

30 Section 9-318(c) also would come into play when intangible collateral is sold to a buyer,  
31 other than a secured party, who would take free of B-1's perfected-by-low-priority-filing  
32 security interest under amended Section 9-317(d)(1).  
33

34 **6. Other Priority Rules.** The draft does not distinguish between security interests  
35 perfected by a high-priority filing and those perfected by a low-priority filing in the following  
36 circumstances:  
37

38 a. Section 9-334, which deals with the priority of a security interest in fixtures as against  
39 a conflicting interest of an encumbrancer or owner of the related real property other than the  
40 debtor.  
41

42 b. Section 9-336, which deals with conflicting security interests in a product or mass that  
43 results when goods become commingled goods.  
44

45 c. Sections 9-326 and 9-325, which address "double-debtor" problems.  
46

47 Section 9-326 addresses the priority contests that may arise when a new debtor becomes

1 bound by the security agreement of an original debtor and each debtor has a different secured  
2 creditor. It subordinates the original debtor's secured party's security interest when it is  
3 perfected against the new debtor solely under Section 9-508. The security interest is  
4 subordinated to security interests in the same collateral perfected by another method, e.g., by  
5 filing against the new debtor.  
6

7 **Example 1:** SP-X holds a perfected-by-filing security interest in X Corp's existing and  
8 after-acquired inventory, and SP-Z holds a perfected-by-filing security interest in Z  
9 Corp's existing and after-acquired inventory. Z Corp becomes bound as debtor by X  
10 Corp's security agreement. Subsequently, Z Corp acquires a new item of inventory.  
11 Under Section 9-508, SP-X's financing statement is effective to perfect a security interest  
12 in the new item of inventory in which Z Corp has rights. However, because SP-Z's  
13 security interest was perfected by another method, Section 9-326(a) provides that SP-X's  
14 security interest is subordinate to SP-Z's, regardless of which financing statement was  
15 filed first. This would be the case even if SP-Z filed after Z Corp became bound by X  
16 Corp's security agreement.  
17

18 It may be the case that SP-X's security interest is perfected by a high-priority filing and SP-  
19 Z's is perfected by a low-priority filing. Under this draft, SP-Z would nevertheless enjoy  
20 priority.  
21

22 Section 9-325 addresses the problem that arises when a debtor acquires property that is  
23 subject to a security interest created by another debtor. Currently, this section provides that a  
24 security interest created by the transferor has priority over a security interest created by the  
25 transferee, if the security interest created by the transferor was perfected when the transferee  
26 acquired the collateral.  
27

28 **Example 2:** A owns an item of equipment subject to a perfected security interest in  
29 favor of SP-A. A sells the equipment to B, not in the ordinary course of business. B  
30 acquires its interest subject to SP-A's security interest. Under current Section 9-325, if B  
31 creates a security interest in the equipment in favor of SP-B, SP-B's security interest is  
32 subordinate to SP-A's security interest, even if SP-B filed against B before SP-A filed  
33 against A, and even if SP-B took a purchase-money security interest. Normally, SP-B  
34 could have investigated the source of the equipment and discovered SP-A's filing before  
35 making an advance against the equipment, whereas SP-A had no reason to search the  
36 filings against someone other than its debtor, A.  
37

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

1           **7. Change of Debtor’s Name.** New Section 9-507(d) would specify the events that  
2 constitute a change of the debtor’s name when the security interest is perfected by a high-priority  
3 filing. There are two such events. First, the apparent expiration of the source document  
4 indicating the name provided in the financing statement constitutes a change of name, if, after  
5 the apparent expiration, the name specified by Section 9-503(a)(4) would be different from the  
6 name provided in the financing statement. Second, the issuance of a source document that is on  
7 the same level or on a higher level in the Section 9-503(a)(4) cascade constitutes a change of  
8 name, if the new document indicates a different name from the name provided in the financing  
9 statement. An individual whose name is determined under Section 9-503(a)(4)(E) would change  
10 his name as under current law.  
11

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

22           The Joint Review Committee has yet to consider whether priority should be affected by a  
23 change of the debtor’s name and, if so, whether the statute needs to be amended to reflect the  
24 desired outcome.  
25

26           **Example 3:** Financing statements covering an item of equipment are filed in this order:  
27

- 28           C-1: Low priority
  - 29           C-2: High priority
  - 30           C-3: High priority
- 31

32           Priority would rank as follows: C-2 > C-3 > C-1.  
33

34           D changes his name, such that C-1’s filing becomes high-priority and C-2’s and C-3’s  
35 filings remain high-priority. Would this change result in C-1’s security interest having priority  
36 over the other two? (Compare the case in which D’s name doesn’t change but C-1 amends its  
37 financing statement to become a high-priority filing.)  
38

39           **Example 4:** Under the facts of Example 3, D changes his name, such that C-2’s and  
40 C-3’s filings become low-priority and C-1’s filing remains low-priority. Would the first-to-file-  
41 or-perfect rule apply, giving C-1’s security interest priority over the other two? (Compare 9-  
42 316(b) and 9-515(c).)  
43

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

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

3  
4           **Example 5:** Debtor’s principal residence is in Kansas. SP-1 and SP-2 each files a  
5 financing statement against Debtor in the Kansas filing office. Some of Debtor’s equipment is  
6 located in Kansas, and some is across the border in Missouri. Although the law of the State of  
7 Debtor’s principal residence (Kansas) governs perfection, the law of the State in which the  
8 collateral is located governs priority. Thus, Kansas law governs the priority of the security  
9 interests in the equipment located in Kansas, whereas Missouri law governs the priority of the  
10 security interests in the equipment located in Missouri. Assume Missouri has enacted  
11 Alternative C, and Kansas has not. If SP-1 made a “low-priority” filing and SP-2 made a “high-  
12 priority” filing, then SP-1 will be senior as to the Kansas equipment under Kansas’s first-to-file-  
13 or-perfect rule, but junior as to the Missouri equipment under Missouri’s “priority” approach.  
14 Moreover, movement of equipment between Kansas and Missouri will change the relative  
15 priority of the two secured parties.

16  
17                                   *[End of Alternative Approaches to Name of Individual Debtor]*  
18

19  
20           **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.**

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

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

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

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

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

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

3 (4) in other cases:

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

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

8 \* \* \*

9 **Official Comment**

10 \* \* \*

11  
12  
13 2. **Debtor’s Name.** The requirement that a financing statement provide the debtor’s  
14 name is particularly important. Financing statements are indexed under the name of the debtor,  
15 and those who wish to find financing statements search for them under the debtor’s name.  
16 Subsection (a) explains what the debtor’s name is for purposes of a financing statement. If the  
17 debtor is a “registered organization” (defined in Section 9-102 so as to ordinarily include  
18 corporations, limited partnerships, and limited liability companies), then the debtor’s name is the  
19 name shown on the public records of the debtor’s “jurisdiction of organization” (also defined in  
20 Section 9-102). Subsections (a)(2) and (a)(3) contain special rules for decedent’s estates and  
21 common-law trusts. (Subsection (a)(1) applies to business trusts that are registered  
22 organizations; however it does not apply to a trustee acting with respect to property held in trust,  
23 even if the trustee is a registered organization.)

24 \* \* \*

25  
26  
27 **Reporter’s Note**

28  
29 The amendments are meant to clarify current law. The Joint Review Committee did not  
30 discuss the proposed change to subsection (a)(3)(A).  
31

32  
33 **SECTION 9-307. LOCATION OF DEBTOR.**

34 \* \* \*

35 (f) [Location of registered organization organized under federal law; bank  
36 branches and agencies.] Except as otherwise provided in subsection (i), a registered

1 organization that is organized under the law of the United States and a branch or agency of a  
2 bank that is not organized under the law of the United States or a State are located:

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

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

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

10 \* \* \*

### 11 Official Comment

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

23  
24 In some cases, the law of the United States authorizes the registered organization to  
25 designate a main office, home office, or other comparable office. See, e.g., 12 U.S.C. Sections  
26 22 and 1464(a); 12 C.F.R. Section 552.3. Designation of such an office constitutes the  
27 designation of the State of location for purposes of Section 9-307 (f)(2).

28  
29 Subsection (f) also specifies the location of a branch or agency in the United States of a  
30 foreign bank that has one or more branches or agencies in the United States. The law of the  
31 United States ~~authorized~~ authorizes a foreign bank (or, on behalf of the bank, a federal agency)  
32 to designate a single home state for all of the foreign bank's branches and agencies in the United  
33 States. See 12 U.S.C. Section 3103(c) and 12 C.F.R. Section 211.22. As authorized, the  
34 designation constitutes the State of location for the branch or agency for purposes of Section 9-  
35 307(f), unless all of a foreign bank's branches or agencies that are in the United States are  
36 licensed in only one State, in which case the branches and agencies are located in that State. See  
37 subsection (i).

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

3  
4 **Reporter's Note**  
5

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

10  
11 2. The amendment to the comment would correct a typographical error.  
12

13  
14 **SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF**  
15 **FILING.**

16 \* \* \*

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

19 \* \* \*

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

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

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

25 or

26 ~~(C) if the financing statement indicates that the debtor is an~~  
27 ~~organization, provide:~~

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

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

1 (iii) ~~an organizational identification number for the debtor~~  
2 or indicate that the debtor has none;

3 \* \* \*

4 **Reporter's Note**

5  
6 A financing statement is legally sufficient if it provides the information required by  
7 Section 9-502(a), even if it does provide the additional information specified in Section 9-  
8 516(b)(5). However, the filing office is required to reject a financing statement that does not  
9 provide this additional information. The additional information is meant to assist searchers in  
10 weeding out "false positives," i.e., records that a search reveals but which do not pertain to the  
11 debtor in question, and to assist filers by helping to ensure that the financing statement is filed in  
12 the proper jurisdiction. Experience has shown that the benefits afforded by requiring the filer to  
13 provide the information specified in paragraph (C) are less than the costs that the paragraph  
14 imposes.

15  
16  
17 **SECTION 9-518. CLAIM CONCERNING INACCURATE OR WRONGFULLY**  
18 **FILED RECORD.**

19 (a) ~~[Who may file]~~ **Statement with respect to record indexed under person's name.**

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

23 **[Alternative A]**

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

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

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

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

4 **[Alternative B]**

5 (b) **[Sufficiency of ~~correction~~ statement under subsection (a).** A ~~correction~~  
6 statement of a claim under subsection (a) must:

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

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

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

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

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

17 **[End of Alternatives]**

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

22 **[Subsection (d)—Alternative A]**

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



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

3                   \* \* \*

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

6                   \* \* \*

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

8                   \* \* \*

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

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

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

15                   \* \* \*

16                   \* \* \*

17   **Reporter's Note**

18  
19  
20                   1. Current Section 9-519 provides a mechanism whereby an aggrieved debtor may use  
21 the filing office to make a public declaration concerning the debtor's belief that a filed financing  
22 statement naming the debtor is inaccurate or was wrongfully filed. New subsections (c) and (d)  
23 would provide a similar mechanism to a secured party of record for a financing statement to  
24 express its belief that a person who filed a record relating to the financing statement was not  
25 entitled to do so. As the current text does with respect to subsection (b), the amendments would  
26 provide alternative versions of subsection (d). Each State would choose the alternative that is  
27 better suited to the method by which searches are conducted in the real-estate records maintained  
28 in the State.

29  
30                   2. Because this section currently refers to the statement as a "correction statement,"  
31 some debtors have filed one under the misapprehension that the filing has legal effect. It does  
32 not. See subsection (c) (as amended, subsection (e)). To prevent future confusion, the

1 amendment would refer to the statement as a “statement of a claim.” The comments will be  
2 amended to reflect this change in terminology.  
3

4  
5 **SECTION 9-607. COLLECTION AND ENFORCEMENT BY SECURED PARTY.**

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

8 \* \* \*

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

14 \* \* \*

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

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

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

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

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

24 **Reporter’s Note**

25  
26 The amendment to paragraph (b)(2)(A) is for clarification only; it does not reflect a  
27 change in meaning. Accordingly, the amendment should apply to all transactions governed by  
28 Article 9, including those that were entered into before the effective date of the amendment.



1 PART TWO

2  
3 AMENDMENTS TO THE COMMENTS  
4 UNACCOMPANIED BY AMENDMENTS  
5 TO THE OFFICIAL TEXT  
6

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

8  
9 Official Comment

10  
11 5. Receivables-related Definitions.

12 \* \* \*

13  
14  
15 b. “Chattel Paper”; “Electronic Chattel Paper”; “Tangible Chattel Paper.”  
16 “Chattel paper” consists of a monetary obligation together with a security interest in or a lease of  
17 specific goods if the obligation and security interest or lease are evidenced by “a record or  
18 records.” The definition has been expanded from that found in former Article 9 to include  
19 records that evidence a monetary obligation and a security interest in specific goods and  
20 software used in the goods, a security interest in specific goods and license of software used in  
21 the goods, or a lease of specific goods and license of software used in the goods. The expanded  
22 definition covers transactions in which the debtor’s or lessee’s monetary obligation includes  
23 amounts owed with respect to software used in the goods. The monetary obligation with respect  
24 to the software need not be owed under a license from the secured party or lessor, and the  
25 secured party or lessor need not be a party to the license transaction itself. Among the types of  
26 monetary obligations that are included in “chattel paper” are amounts that have been advanced  
27 by the secured party or lessor to enable the debtor or lessee to acquire or obtain financing for a  
28 license of the software used in the goods. The definition also makes clear that rights to payment  
29 arising out of credit-card transactions are not chattel paper.  
30

31 Charters of vessels are expressly excluded from the definition of chattel paper; they are  
32 accounts. The term “charter” as used in this section includes bareboat charters, time charters,  
33 successive voyage charters, contracts of affreightment, contracts of carriage, and all other  
34 arrangements for the use of vessels.  
35

36 Under former Section 9-105, only if the evidence of an obligation consisted of “a writing  
37 or writings” could an obligation qualify as chattel paper. In this Article, traditional, written  
38 chattel paper is included in the definition of “tangible chattel paper.” “Electronic chattel paper”  
39 is chattel paper that is stored in an electronic medium instead of in tangible form. The concept  
40 of an electronic medium should be construed liberally to include electrical, digital, magnetic,  
41 optical, electromagnetic, or any other current or similar emerging technologies.  
42

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

1 electronic chattel paper. Likewise, tangible chattel paper results when chattel paper in electronic  
2 form is converted to tangible form.

3  
4 \* \* \*

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

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

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

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

1 a lease constitute chattel paper, an assignment of the lessor’s right to payment under the lease  
2 also would be chattel paper, even if the assignment excludes other rights.

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

8  
9 \* \* \*

10  
11 **Reporter’s Note**

- 12  
13 1. The point made in the sentence added to paragraph 5.b. will be further amplified.  
14  
15 2. The amendment to paragraph 5.d. resolves the uncertainty created by the holding in a  
16 recent case.

17  
18  
19 **SECTION 9-109. SCOPE.**

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

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

24 \* \* \*

25 \* \* \*

26  
27 **Official Comment**

28 \* \* \*

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

1 \* \* \*

2  
3 **Reporter's Note**

4  
5 The amendment would clarify that Article 9 applies when a security interest is created,  
6 even if the parties subjectively intend otherwise.

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

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

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

15 \* \* \*

16 \* \* \*

17 **Official Comment**

18  
19 \* \* \*  
20  
21 **5. Law Governing Perfection: Exceptions.** The general rule is subject to several  
22 exceptions. It does not apply to goods covered by a certificate of title (see Section 9-303),  
23 deposit accounts (see Section 9-304), investment property (see Section 9-305), or letter-of-credit  
24 rights (see Section 9-306). Nor does it apply to possessory security interests, i.e., security  
25 interests that the secured party has perfected by taking possession of the collateral (see paragraph  
26 (2)), security interests perfected by filing a fixture filing (see subparagraph (3)(A)), security  
27 interests in timber to be cut (subparagraph (3)(B)), or security interests in as-extracted collateral  
28 (see paragraph (4)).

29 \* \* \*

30  
31  
32 **b. ~~Fixtures~~Fixture Filings.** ~~Application of~~ Under the general rule in paragraph  
33 (1), a security interest in fixtures may be perfected by filing in the office specified by Section 9-  
34 501(a) as enacted in the jurisdiction in which the debtor is located. However, application of this  
35 rule to perfection of a security interest in fixtures by filing a fixture filing would yield strange  
36 results. For example, perfection of a security interest in fixtures located in Arizona and owned  
37 by a Delaware corporation would be governed by the law of Delaware. Although Delaware law  
38 would send one to a filing office in Arizona for the place to file a financing statement as a fixture  
39 filing, see Section 9-501, Delaware law would not take account of local, nonuniform, real-

1 property filing and recording requirements that Arizona law might impose. For this reason,  
2 paragraph (3)(A) contains a special rule for security interests perfected by a fixture filing; the  
3 law of the jurisdiction in which the fixtures are located governs perfection, including the formal  
4 requisites of a fixture filing. Under paragraph (3)(C), the same law governs priority. Fixtures  
5 are “goods” as defined in Section 9-102.  
6

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

19 \* \* \*

20  
21  
22  
23 **SECTION 9-501. FILING OFFICE.**

24 \* \* \*

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

29 \* \* \*

30 **Official Comment**

31 \* \* \*

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

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

### 8 **Reporter’s Note**

9  
10  
11 The amendments to the comments to Sections 9-301 and 9-502 clarify where a financing  
12 statement should be filed when the debtor is a transmitting utility.  
13

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

15  
16 (a) [**“Place of business.”**] In this section, “place of business” means a place where a  
17 debtor conducts its affairs.

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

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

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

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

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

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

3 **Official Comment**

4  
5 \* \* \*

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

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

25  
26 \* \* \*

27  
28 **Reporter’s Note**

29  
30 The proposed revision to the Comment clarifies that subsection (c) does not apply if one  
31 of the special rules in subsections (e), (f), (i), and (j) applies.

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

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

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

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

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

5 \* \* \*

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

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

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

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

18 or

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

20 \* \* \*

## 21 Official Comment

22 \* \* \*

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

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

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

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

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



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

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

13  
14 \* \* \*

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

32  
33 **Example 2:** SP-1, having authority to do so, files a financing statement against Debtor  
34 covering accounts. Debtor then sells to SP-2 a particular account, with requisites for  
35 attachment satisfied, and SP-2 files a financing statement against Debtor covering the  
36 account. Debtor later grants to SP-1 a security interest (either by sale or by security  
37 transfer) in the account, authenticating an appropriate security agreement and with value  
38 being given. SP-2 cannot invoke *nemo dat* to claim priority over SP-1 in the account.  
39 Rather, the priority dispute is resolved under the relevant priority rule of Article 9. In  
40 this case, SP-1 has priority over SP-2 as first to file, under Section 9-322(a)(1). SP-1's  
41 security interest in the account attached because Debtor had "power to transfer rights in  
42 the collateral" within the meaning of 9-203(b)(3). If the grant to SP-1 was a sale, SP-2  
43 has no interest in the account; if the grant to SP 1 was a security transfer, SP-2 owns the  
44 account subject to SP-1's security interest.

45  
46 **Reporter's Note**

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

3  
4  
5 **SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY**  
6 **INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.**

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

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

14 \* \* \*

15 **Official Comment**

16 \* \* \*

17  
18  
19 **4. Competing Perfected Security Interests.** When there is more than one perfected  
20 security interest, the security interests rank according to priority in time of filing or perfection.  
21 “Filing,” of course, refers to the filing of an effective financing statement. “Perfection” refers to  
22 the acquisition of a perfected security interest, i.e., one that has attached and as to which any  
23 required perfection step has been taken. See Sections 9-308 and 9-309.

24  
25 **Example 1:** On February 1, A files a financing statement covering a certain item of  
26 Debtor’s equipment. On March 1, B files a financing statement covering the same  
27 equipment. On April 1, B makes a loan to Debtor and obtains a security interest in the  
28 equipment. On May 1, A makes a loan to Debtor and obtains a security interest in the  
29 same collateral. A has priority even though B’s loan was made earlier and was perfected  
30 when made. It makes no difference whether A knew of B’s security interest when A  
31 made its advance.

32  
33 The problem stated in Example 1 is peculiar to a notice-filing system under which filing  
34 may occur before the security interest attaches (see Section 9-502). The justification for  
35 determining priority by order of filing lies in the necessity of protecting the filing system—that is,  
36 of allowing the first secured party who has filed to make subsequent advances without each time  
37 having to check for subsequent filings as a condition of protection. Note, however, that this

1 first-to-file protection is not absolute. For example, Section 9-324 affords priority to certain  
2 purchase-money security interests, even if a competing secured party was the first to file or  
3 perfect.  
4

5 Under a notice-filing system, a filed financing statement indicates to third parties that a  
6 person may have a security interest in the collateral indicated. With further inquiry, they may  
7 discover the complete state of affairs. When a financing statement that is ineffective when filed  
8 becomes effective thereafter, the policy underlying the notice-filing system determines the “time  
9 of filing” for purposes of subsection (a)(1). For example, the unauthorized filing of an otherwise  
10 sufficient initial financing statement becomes authorized, and the financing statement becomes  
11 effective, upon the debtor’s post-filing authorization or ratification of the filing. See Section 9-  
12 509, Comment 3. Because the authorization or ratification does not increase the notice value of  
13 the financing statement, the time of the unauthorized filing is the “time of filing” for purposes of  
14 subsection (a)(1). The same policy applies to the other priority rules in this part.  
15

16 **Example 2:** A and B make non-purchase-money advances secured by the same  
17 collateral. The collateral is in Debtor’s possession, and neither security interest is  
18 perfected when the second advance is made. Whichever secured party first perfects its  
19 security interest (by taking possession of the collateral or by filing) takes priority. It  
20 makes no difference whether that secured party knows of the other security interest at the  
21 time it perfects its own.  
22

23 The rule of subsection (a)(1), affording priority to the first to file or perfect, applies to  
24 security interests that are perfected by any method, including temporarily (Section 9-312) or  
25 upon attachment (Section 9-309), even though there may be no notice to creditors or subsequent  
26 purchasers and notwithstanding any common-law rule to the contrary. The form of the claim to  
27 priority, i.e., filing or perfection, may shift from time to time, and the rank will be based on the  
28 first filing or perfection as long as there is no intervening period without filing or perfection.  
29 See Section 9-308(c).  
30

31 **Example 3:** On October 1, A acquires a temporarily perfected (20-day) security interest,  
32 unfiled, in a negotiable document in the debtor’s possession under Section 9-312(e). On  
33 October 5, B files and thereby perfects a security interest that previously had attached to  
34 the same document. On October 10, A files. A has priority, even after the 20-day period  
35 expires, regardless of whether A knows of B’s security interest when A files. A was the  
36 first to perfect and maintained continuous perfection or filing since the start of the 20-day  
37 period. However, the perfection of A’s security interest extends only “to the extent it  
38 arises for new value given.” To the extent A’s security interest secures advances made  
39 by A beyond the 20-day period, its security interest would be subordinate to B’s,  
40 inasmuch as B was the first to file.  
41

42 In general, the rule in subsection (a)(1) does not distinguish among various advances  
43 made by a secured party. The priority of every advance dates from the earlier of filing or  
44 perfection. However, in rare instances, the priority of an advance dates from the time the  
45 advance is made. See Example 3 and Section 9-323.  
46  
47



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

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

3 and

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

7 \* \* \*

8 **Official Comment**

9 \* \* \*

10  
11  
12 **8. Proceeds of Non-Filing Collateral: Non-Temporal Priority.** Subsection (c)(2)  
13 provides a baseline priority rule for proceeds of non-filing collateral which applies if the secured  
14 party has taken the steps required for non-temporal priority over a conflicting security interest in  
15 non-filing collateral (e.g., control, in the case of deposit accounts, letter-of-credit rights, and  
16 investment property). This rule determines priority in proceeds of non-filing collateral whether  
17 or not there exists an actual conflicting security interest in the original non-filing collateral.  
18 Under subsection (c)(2), the priority in the original collateral continues in proceeds if the  
19 security interest in proceeds is perfected and the proceeds are cash proceeds or non-filing  
20 proceeds “of the same type” as the original collateral. As used in subsection (c)(2), “type”  
21 means a type of collateral defined in the Uniform Commercial Code and should be read broadly.  
22 For example, a security is “of the same type” as a security entitlement (i.e., investment property),  
23 and a promissory note is “of the same type” as a draft (i.e., an instrument).

24 \* \* \*

25  
26  
27 The proceeds of proceeds are themselves proceeds. See Section 9-102 (defining  
28 “proceeds” and “collateral”). Sometimes competing security interests arise in proceeds that are  
29 several generations removed from the original collateral. As the following example explains, the  
30 applicability of subsection (c) may turn on the nature of the intervening proceeds.

31  
32 **Example 11:** SP-1 perfects its security interest in Debtor’s deposit account by obtaining  
33 control. Thereafter, SP-2 files against inventory, (presumably) searches, finds no  
34 indication of a conflicting security interest, and advances against Debtor’s existing and  
35 after-acquired inventory. Debtor uses funds from the deposit account to purchase  
36 inventory, which SP-1 can trace as identifiable proceeds of its security interest in  
37 Debtor’s deposit account, and which SP-2 claims as original collateral. The inventory is  
38 sold and the proceeds deposited into *another* deposit account, as to which SP-1 has not  
39 obtained control. Subsection (c) does not govern priority in this other deposit account.  
40 This deposit account is cash proceeds and is also the same type of collateral as SP-1's

1 original collateral, as required by subsections (c)(2)(A) and (B). However, SP-1's  
2 security interest does not satisfy subsection (c)(2)(C) because the inventory proceeds,  
3 which intervened between the original deposit account and the deposit account  
4 constituting the proceeds at issue, are not cash proceeds, proceeds of the same type as the  
5 collateral (original deposit account), or an account relating to the collateral. Stated  
6 otherwise, once proceeds other than cash proceeds, proceeds of the same type as the  
7 original collateral, or an account relating to the original collateral intervene in the chain  
8 of proceeds, priority under subsection (c) is thereafter unavailable. The special priority  
9 rule in subsection (d) also is inapplicable to this case. See Comment 9, Example 13,  
10 below. Instead, the general first-to-file-or-perfect rule of subsections (a) and (b) apply.  
11 Under that rule, SP-1 has priority unless its security interest in the inventory proceeds  
12 became unperfected under Section 9-315(d). Had SP-2 filed against inventory before SP-  
13 1 obtained control of the original deposit account, the SP-2 would have had priority even  
14 if SP-1's security interest in the inventory proceeds remained perfected.  
15

16 If two security interests in the same original collateral are entitled to priority in an item of  
17 proceeds under subsection (c)(2), the security interest having priority in the original collateral  
18 has priority in the proceeds.  
19

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

21  
22 The added language would complete the explanation of the complicated priority rules  
23 applicable to proceeds.  
24

#### 25 **SECTION 9-326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW** 26 27 **DEBTOR.**

28 \* \* \*

#### 29 **Official Comment**

30  
31 \* \* \*

32  
33 **2. Subordination of Security Interests Created by New Debtor.** This section  
34 addresses the priority contests that may arise when a new debtor becomes bound by the security  
35 agreement of an original debtor and each debtor has a secured creditor.  
36

37 Subsection (a) subordinates the original debtor's secured party's security interest  
38 perfected against the new debtor solely under Section 9-508. The security interest is  
39 subordinated to security interests in the same collateral perfected by another method, e.g., by  
40 filing against the new debtor. As used in this section, "a filed financing statement that is  
41 effective solely under Section 9-508" refers to a financing statement filed against the *original*  
42 *debtor* that ~~continues to be~~ is effective under Section 9-508 to perfect a security interest in the  
43 collateral in question. It does not encompass a new initial financing statement providing the  
44 name of the new debtor, even if the initial financing statement is filed to maintain the

1 effectiveness of a financing statement under the circumstances described in Section 9-508(b).  
2 Nor does it encompass a financing statement filed against the original debtor which remains  
3 effective against collateral transferred by the original debtor to the new debtor. See Section 9-  
4 508(c). Concerning priority contests involving transferred collateral, see Sections 9-325 and 9-  
5 507.

6  
7 **Reporter's Note**  
8

9 Under the rules in Section 9-326, the priority of a security interest depends in part on  
10 whether a financing statement "is effective solely under Section 9 508." The amendment would  
11 clarify that one must look only at the collateral in question when making this determination.  
12

13  
14 **SECTION 9-330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR**  
15 **INSTRUMENT.**

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

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

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

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

30 \* \* \*

1 **Official Comment**

2  
3 \* \* \*

4  
5 3. **Chattel Paper.** Subsections (a) and (b) follow former Section 9-308 in distinguishing  
6 between earlier-perfected security interests in chattel paper that is claimed merely as proceeds of  
7 inventory subject to a security interest and chattel paper that is claimed other than merely as  
8 proceeds. Like former Section 9-308, this section does not elaborate upon the phrase “merely as  
9 proceeds.” For an elaboration, see PEB Commentary No. 8.

10  
11 For a security interest to qualify for priority under subsection (a) or (b), the secured party  
12 must “take[] possession of the chattel paper or obtain[] control of the chattel paper under Section  
13 9-105.” When chattel paper comprises one or more tangible records and one or more electronic  
14 records, a secured party satisfies this requirement if it has possession of the tangible records and  
15 control of the electronic records.

16  
17 This section makes explicit the “good faith” requirement and retains the requirements of  
18 “the ordinary course of the purchaser’s business” and the giving of “new value” as conditions for  
19 priority. Concerning the last, this Article deletes former Section 9-108 and adds to Section 9-  
20 102 a completely different definition of the term “new value.” Under subsection (e), the holder  
21 of a purchase-money security interest in inventory is deemed to give “new value” for chattel  
22 paper constituting the proceeds of the inventory. Accordingly, the purchase-money secured  
23 party may qualify for priority in the chattel paper under subsection (a) or (b), whichever is  
24 applicable, even if it does not make an additional advance against the chattel paper.

25  
26 If a possessory security interest in tangible chattel paper or a perfected-by-control  
27 security interest in electronic chattel paper does not qualify for priority under this section, it may  
28 be subordinate to a perfected-by-filing security interest under Section 9-322(a)(1).

29  
30 **Reporter’s Note**

31  
32 There are occasions when “hybrid” chattel paper may arise, e.g., when an amendment to  
33 electronic chattel paper is evidenced by a tangible record. The new paragraph in the comment  
34 would make clear what is implicit in the statute, i.e., that a secured party may achieve priority  
35 with respect to the “hybrid” chattel paper under Section 9-330(a) or (b).

36  
37  
38 **SECTION 9-509. PERSONS ENTITLED TO FILE A RECORD.**

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

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

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

6 \* \* \*

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

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

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

15 \* \* \*

### 16 Official Comment

17 \* \* \*

18  
19  
20 **6. Amendments; Termination Statements Authorized by Debtor.** Most amendments  
21 may not be filed unless the secured party of record, as determined under Section 9-511,  
22 authorizes the filing. See subsection (d)(1). However, under subsection (d)(2), the authorization  
23 of the secured party of record is not required for the filing of a termination statement if the  
24 secured party of record failed to send or file a termination statement as required by Section 9-  
25 513, the debtor authorizes it to be filed, and the termination statement so indicates. An  
26 authorization to file a record under subsection (d) is effective even if the authorization is not in  
27 an authenticated record. Compare subsection (a)(1). However, the person filing the record  
28 would be prudent to obtain and retain an authenticated record authorizing the filing.

29 \* \* \*



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

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

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

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

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

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

31 \* \* \*

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

33 (1) at a public disposition; or

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

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

### 36 **Official Comment**

37 \* \* \*

38  
39  
40 **7. Public vs. Private Dispositions.** This Part maintains two distinctions between  
41 “public” and other dispositions: (i) the secured party may buy at the former, but normally not at

1 the latter (Section 9-610(c)), and (ii) the debtor is entitled to notification of “the time and place  
2 of a public disposition” and notification of “the time after which” a private disposition or other  
3 intended disposition is to be made (Section 9-613(1)(E)). It does not retain the distinction under  
4 former Section 9-504(4), under which transferees in a noncomplying public disposition could  
5 lose protection more easily than transferees in other noncomplying dispositions. Instead, Section  
6 9-617(b) adopts a unitary standard. Although the term is not defined, as used in this Article, a  
7 “public disposition” is one at which the price is determined after the public has had a meaningful  
8 opportunity for competitive bidding. “Meaningful opportunity” is meant to imply that some  
9 form of advertisement or public notice must precede the sale (or other disposition) and that the  
10 public must have access to the sale (disposition).

11  
12 A secured party’s purchase of collateral at its own private disposition is equivalent to a  
13 “strict foreclosure” and is governed by Sections 9-620, 9-621, and 9-622. The provisions of  
14 these sections can be waived only as provided in Section 9-624(b).

15 \* \* \*

16  
17  
18  
19 **SECTION 9-624. WAIVER.**

20  
21 (a) **[Waiver of disposition notification.]** A debtor or secondary obligor may waive the  
22 right to notification of disposition of collateral under Section 9-611 only by an agreement to that  
23 effect entered into and authenticated after default.

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

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

30 **Official Comment**

31  
32 1. **Source.** Former Sections 9-504(3), 9-505, 9-506.

33  
34 2. **Waiver.** This section is a limited exception to Section 9-602, which generally  
35 prohibits waiver by debtors and obligors. It makes no provision for waiver of the rule  
36 prohibiting a secured party from buying at its own private disposition. Transactions of this kind  
37 are equivalent to “strict foreclosures” and are governed by Sections 9-620, 9-621, and 9-622.

1 **Reporter’s Note**

2  
3 The thought that currently appears in the comment to Section 9-624 would be added to  
4 the comments to Sections 9-602 and 9-610, where it may be more likely to be discovered.  
5

6  
7 **SECTION 9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT.**

8 \* \* \*

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

14 \* \* \*

15 **Official Comment**

16  
17 \* \* \*

18  
19 2. **Commercially Reasonable Dispositions.** Subsection (a) follows former Section 9-  
20 504 by permitting a secured party to dispose of collateral in a commercially reasonable manner  
21 following a default. Although subsection (b) permits both public and private dispositions,  
22 including public and private dispositions conducted over the Internet, “every aspect of a  
23 disposition . . . must be commercially reasonable.” This section encourages private dispositions  
24 on the assumption that they frequently will result in higher realization on collateral for the  
25 benefit of all concerned. Subsection (a) does not restrict dispositions to sales; collateral may be  
26 sold, leased, licensed, or otherwise disposed. Section 9-627 provides guidance for determining  
27 the circumstances under which a disposition is “commercially reasonable.”  
28

29 \* \* \*

30  
31  
32 **SECTION 9-613. CONTENTS AND FORM OF NOTIFICATION BEFORE**

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

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

- 1 (A) describes the debtor and the secured party;
- 2 (B) describes the collateral that is the subject of the intended disposition;
- 3 (C) states the method of intended disposition;
- 4 (D) states that the debtor is entitled to an accounting of the unpaid indebtedness
- 5 and states the charge, if any, for an accounting; and
- 6 (E) states the time and place of a public disposition or the time after which any
- 7 other disposition is to be made.

8 \* \* \*

9 **Official Comment**

10 \* \* \*

11

12

13 **2. Contents of Notification.** To comply with the “reasonable authenticated notification”

14 requirement of Section 9-611(b), the contents of a notification must be reasonable. Except in a

15 consumer-goods transaction, the contents of a notification that includes the information set forth

16 in paragraph (1) are sufficient as a matter of law, unless the parties agree otherwise. (The

17 reference to “time” of disposition means here, as it did in former Section 9-504(3), not only the

18 hour of the day but also the date.) Although a secured party may choose to include additional

19 information concerning the transaction or the debtor’s rights and obligations, no additional

20 information is required unless the parties agree otherwise. A notification that lacks some of the

21 information set forth in paragraph (1) nevertheless may be sufficient if found to be reasonable by

22 the trier of fact, under paragraph (2). A properly completed sample form of notification in

23 paragraph (5) or in Section 9-614(a)(3) is an example of a notification that would contain the

24 information set forth in paragraph (1). Under paragraph (4), however, no particular phrasing of

25 the notification is required.

26

27 This section applies to a notification of a public disposition conducted electronically. A

28 notification of an electronic disposition satisfies paragraph (1)(E) if it states the time when the

29 disposition is scheduled to begin and states the electronic location. For example, under the

30 technology current in 2009, the Uniform Resource Locator (URL) or other Internet address

31 where the site of the public disposition can be accessed suffices as an electronic location.

32

33 **Reporter’s Note**

34

35 The amendments to the comments to Sections 9-610 and 9-613 would explain how these

36 sections are to be applied to electronic dispositions.

37

38





1 (2) the pre-effective-date financing statement was filed in an office in another  
2 State or another office in this State; and

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

4 \* \* \*

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

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

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

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

13 **Official Comment**

14 \* \* \*

15  
16  
17 **2. Requirements of Initial Financing Statement Filed in Lieu of Continuation**  
18 **Statement.** Subsection (c) sets forth the requirements for the initial financing statement under  
19 subsection (a). These requirements are needed to inform searchers that the initial financing  
20 statement operates to continue a financing statement filed elsewhere and to enable searchers to  
21 locate and discover the attributes of the other financing statement. The notice-filing policy of  
22 this Article applies to the initial financing statements described in this section. Accordingly, an  
23 initial financing statement that substantially satisfies the requirements of subsection (c) is  
24 effective, even if it has minor errors or omissions, unless the errors or omissions make the  
25 financing statement seriously misleading. See Section 9-506.  
26

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

1 then subsection (c) requires that the initial financing statement indicate the type under this  
2 Article.

3  
4 **Reporter’s Note**

5  
6 The amendment would remove any doubt that the “minor error” rule in Section 9-506(a)  
7 applies to an initial financing statement that is filed to continue the effectiveness of a financing  
8 statement that was filed before revised Article 9 took effect.  
9

10  
11 **ARTICLE 11 – EFFECTIVE DATE AND TRANSITION PROVISIONS**

12 \* \* \*

13 *Legislative Note: Article 11 affects transactions that were entered into before the effective date*  
14 *of the 1972 amendments to Article 9, which were supplanted by the version of Article 9 that has*  
15 *been in effect in all States since at least January 1, 2002. Inasmuch as very few, if any, of these*  
16 *transactions remain outstanding, States may wish to repeal Article 11.*  
17

18 **Reporter’s Note**

19  
20 When Article 9 was revised in 1972, it was accompanied by an Article 11, which  
21 provides the effective date of the revisions as well as transition rules for transactions entered into  
22 before the effective date of the revisions. It is now 36 years since the promulgation of the 1972  
23 amendments and over a quarter-century since their widespread enactment. As such, it is quite  
24 unlikely that there are more than a trivial number of outstanding transactions (if any) that were  
25 entered into before the effective date of the 1972 amendments and for which transition rules to  
26 the 1972 text of Article 9 (now supplanted by revised Article 9) remain relevant.