Reporters Prefatory Note


In 2008 the ULC and the ALI formed an Article 9 Review Committee (“Review Committee”). The Review Committee was asked to review the operation of the 1998 revisions to Article 9 of the Uniform Commercial Code in practice and to consider whether there were select issues arising that would merit the formation of a drafting committee to address them. The Review Committee issued its report to the ULC Scope and Program Committee and Executive Committee on June 24, 2008. The report recommended that a drafting committee consider the issues specified on a list that the Review Committee had formulated in telephone conferences held on April 14, April 23, May 12, May 27, June 9, and June 16, 2008.

After deciding to proceed with the drafting of amendments to Revised Article 9, the ULC and the ALI organized the Joint Review Committee (“JRC”). The JRC has met five times (October, 2008; February, 2009; March 2009; September 2009; March 2010). It also has held ten conference calls (April, 2009; May, 2009; October 2009; November 2009; December 2009; January 2010; February 2010; two in March 2010; April 2010) in which the members of a task force organized by the American Bankers Association were invited to participate.

The Chair of the Joint Review Committee recommended that the JRC use the following standards in proposing revisions of the official text of Article 9:

- We should not recommend changes that would alter policy decisions made during the 1998 revision unless the current provisions appear to be creating significant problems in practice.

- Recommendations for statutory change should focus on issues as to which ambiguities have been discovered in existing statutory language, where there are substantial problems in practice under the current provisions, or as to which there have been significant non-uniform amendments that suggest the need to consider revisions.

- We should recommend that an issue be handled by a revision to the Official Comments rather than to the statutory text whenever we believe that the statutory language is sufficiently clear and produces the desired result, but that judicial decisions or experience in practice indicates that some clarification might be desirable.
The JRC’s discussions focused almost exclusively on the issues listed by the Review Committee. Some additional issues were raised. With the consent of the Scope and Program Committee and Executive Committee, the JRC addressed these issues as well.

2. **Organization of the Draft.** This draft contains amendments to the Official Text of, and Official Comments to, Uniform Commercial Code Article 9. Part One of the draft contains amendments to the statutory text, together with any related changes to the comments. Not all of the statutory amendments will require that the comments be changed. Some of the statutory amendments that will require changes to the comments are not yet accompanied by draft amendments to the comments. Part Two of the draft contains modifications to the comments for which no change in statutory text is recommended.

3. **Content of the Draft.** The changes proposed in this draft are largely unremarkable. Most clarify the existing text and comments or conform them to recent amendments to other Articles of the Uniform Commercial Code. A few others correct errors. The following two sets of changes are noteworthy.

**Name of an individual debtor on a financing statement.** The statutory requirement for providing the name of an individual debtor on a financing statement has consumed much more of the JRC’s time and attention than any other issue. During its deliberations, the JRC considered a variety of approaches toward this issue, including the possibility of recommending no change to the statute. In evaluating the approaches, the JRC took into account a number of considerations, including (1) the benefits of predictability as to perfection; (2) the benefits of predictability as to priority; (3) the likely costs that would be imposed on filers; (4) the likely costs that would be imposed on searchers; (5) the costs of transition to a new rule; and (6) the likely legislative outcome if a particular approach were to be adopted. The participants in the drafting project assessed and weighed these factors differently, with the result that the JRC was unable to agree on a single approach. Rather, the JRC decided to offer alternatives to each State. These alternatives appear in Section 9-503(a)(4) and are explained in the Reporter’s Note to that Section.

**Collateral acquired by a debtor following relocation; collateral acquired by a new debtor.** Also worthy of particular note are new Sections 9-316(h) and (i), which increase the likelihood that (1) a security interest will be perfected in collateral acquired by a debtor after the debtor relocates to another jurisdiction and (2) a security interest in collateral acquired by a new debtor (i.e., a successor) will be perfected by a secured party who filed a financing statement against the original debtor.
AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9

PART ONE

AMENDMENTS TO THE OFFICIAL TEXT AND RELATED COMMENTS

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

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

* * *

(7) “Authenticate” means:

(A) to sign; or

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

Reporter’s Note

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

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

* * *

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

Official Comment

* * *


Statutes often require applicants for a certificate of title to identify all security interests on the application and require the issuing agency to indicate the identified security interests on the certificate. Some of these statutes provide that priority over the rights of a lien creditor (i.e., perfection of a security interest) in goods covered by the certificate occurs upon indication of the security interest on the certificate; that is, they provide for the indication of the security interest on the certificate as a “condition” of perfection. Other statutes contemplate that perfection is achieved upon the occurrence of another act, e.g., delivery of the application to the issuing agency, that “results” in the indication of the security interest on the certificate. A certificate governed by either type of statute can qualify as a “certificate of title” under this Article. The statute need not expressly state the connection between the indication and perfection. For example, a certificate issued pursuant to a statute that requires applications to identify security interests, requires the issuing agency to indicate the identified security interests on the certificate, but is silent concerning the legal consequences of the indication would be a “certificate of title” if, under a judicial interpretation of the statute, perfection of a security interest is a legal consequence of the indication.

The first sentence of the definition of “certificate of title” includes certificates consisting of tangible records, of electronic records, and of combinations of tangible and electronic records.

In many States, a certificate of title covering goods that are encumbered by a security interest is delivered to the secured party by the issuing authority. To eliminate the need for the issuance of a paper certificate under these circumstances, several States have revised their certificate-of-title statutes to permit or require a State agency to maintain an electronic record that evidences ownership of the goods and in which a security interest in the goods may be noted. The second sentence of the definition provides that such a record is a “certificate of title” if it is in fact maintained as an alternative to the issuance of a paper certificate of title, regardless of whether the certificate-of-title statute provides that the record is a certificate of title and even if the statute does not expressly state that the record is maintained instead of issuing a paper certificate.
The proposed amendment to the definition of “certificate of title” addresses the increasingly common practice of electronic notations of liens on goods subject to certificate-of-title statutes.

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

* * *

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

* * *

(67A) “Public organic record” means:

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

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

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

* * *

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

* * *

Reporter’s Note

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

2. The amendments to the definition of “registered organization” also are meant to
clarify that the term includes an organization that is created without the need for a public record
but that is “formed” only when a public filing has been made. For example, under Delaware
law, a statutory trust is “created by a governing instrument,” Del. Code Ann. tit. 12, §
3801(g)(1), but is “formed at the time of the filing of the initial certificate of trust in the office of
the Secretary of State or at any later date or time specified in the certificate of trust.” Del. Code
Ann. § 3810(a)(2).

3. A comment will explain how the revised definition of “registered organization”
applies to common-law trusts and statutory trusts.
4. Comments will explain that a certificate of good standing is not a “public organic record” and that the definition can satisfied if a copy of the relevant record is available for public inspection.

SECTION 9-105. CONTROL OF ELECTRONIC CHATTEL PAPER.

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

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

1. a single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
2. the authoritative copy identifies the secured party as the assignee of the record or records;
3. the authoritative copy is communicated to and maintained by the secured party or its designated custodian;
4. copies or revisions amendments that add or change an identified assignee of the authoritative copy can be made only with the participation consent of the secured party;
5. each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
6. any revision amendment of the authoritative copy is readily identifiable as an authorized or unauthorized revision.
Official Comment

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

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

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

This section and the concept of control of electronic chattel paper are not based on the same concepts as are control of deposit accounts (Section 9-104), security entitlements, a type of investment property (Section 9-106), and letter-of-credit rights (Section 9-107). The rules for control of that collateral are based on existing market practices and legal and regulatory regimes for institutions such as banks and securities intermediaries. Analogous practices for electronic chattel paper are developing nonetheless. The flexible approach adopted by this section, moreover, should not impede the development of these practices and, eventually, legal and regulatory regimes, which may become analogous to those for, e.g., investment property.
34. “Authoritative Copy” of Electronic Chattel Paper. One requirement for establishing control under subsection (b) is that a particular copy be an “authoritative copy.” Although other copies may exist, they must be distinguished from the authoritative copy. This may be achieved, for example, through the methods of authentication that are used or by business practices involving the marking of any additional copies. When tangible chattel paper is converted to electronic chattel paper, in order to establish that a copy of the electronic chattel paper is the authoritative copy it may be necessary to show that the tangible chattel paper no longer exists or has been permanently marked to indicate that it is not the authoritative copy.

4. Development of Control Systems. This Article leaves to the marketplace the development of systems and procedures, through a combination of suitable technologies and business practices, for dealing with control of electronic chattel paper in a commercial context. However, achieving control under this section requires more than the agreement of interested persons that the elements of control are satisfied. For example, paragraph (4) contemplates that control requires that it be a physical impossibility (or sufficiently unlikely or implausible so as to approach practical impossibility) to add or change an identified assignee without the participation of the secured party (or its authorized representative). It would not be enough for the assignor merely to agree that it will not change the identified assignee without the assignee-secured party’s consent. However, the standards applied to determine whether a party is in control of electronic chattel paper should not be more stringent than the standards now applied to determine whether a party is in possession of tangible chattel paper. Control of electronic chattel paper contemplates systems or procedures such that the secured party must take some action (either directly or through its designated custodian) to effect a change or addition to the authoritative copy. But just as a secured party does not lose possession of tangible chattel paper merely by virtue of the possibility that a person acting on its behalf could wrongfully redeliver the chattel paper to the debtor, so control of electronic chattel paper would not be defeated by the possibility that the secured-party’s interest could be subverted by the wrongful conduct of a person (such as a custodian) acting on its behalf.

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

Reporter’s Note

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

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

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

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

3. Comment 3 may be further revised to emphasize the importance of the reliability of a system through which a secured party has control.

SECTION 9-307. LOCATION OF DEBTOR.

* * *

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

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

(2) in the State that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its State of location, including by designating its main office, home office, or other comparable office; or
(3) in the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

* * *

Official Comment

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

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

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

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

Reporter’s Note

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

2. The amendment to the comment would correct a typographical error.
SECTION 9-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY

SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES.

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

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

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

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

* * *

Reporter's Note

This amendment reflects the proposed amendment to the definition of “certificate of title” in Section 9-102.

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

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

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

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

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

(1) The financing statement is effective to perfect a security interest in collateral in which the new debtor has or acquires rights before or within four months after the new debtor becomes bound under Section 9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral if it had been acquired by the original debtor.
(2) A security interest that is perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the expiration of the four-month period or the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Reporter’s Note

1. When a debtor changes its location, the law governing perfection generally changes also. See Section 9-301(1). Current Section 9-316 addresses security interests that are perfected (i.e., that have attached and as to which any required perfection step has been taken) before the debtor changes its location. It does not apply to security interests that have not attached before the debtor’s location changes. Suppose, for example, that Debtor is an individual who resides in Pennsylvania. Lender perfects a security interest in Debtor’s inventory by filing in Pennsylvania. Then Debtor’s principal residence is relocated to New Jersey. Under Section 9-316, Lender’s security interest in inventory on hand as of the relocation date remains perfected for four months thereafter (or, if earlier, until perfection would have ceased under Pennsylvania law). However, although Lender’s security interest attaches to inventory that Debtor acquires after relocating to New Jersey, the security interest is unperfected because Lender has not filed in New Jersey.

2. Under current law, a filing against Debtor in Pennsylvania would be ineffective to perfect a security interest in collateral acquired after Debtor’s relocation to New Jersey. The security interest of a secured party in the position of Lender would be unperfected as to that collateral, and a purchaser of the collateral, including a buyer, lessee, and competing secured
party, would be able to rely on the public record in New Jersey to determine whether the
collateral may be encumbered. A search of the Pennsylvania filings would be unnecessary. As a
consequence of the amendment, a purchaser of collateral acquired by Debtor during the four
months immediately following the relocation to New Jersey may need to determine whether a
filing has been made against the collateral in Pennsylvania.

As a practical matter, new subsection (h) is likely to impose a significant risk on
purchasers in only few cases. Although new subsection (h) would apply to all kinds of
collateral, it is likely to be most useful to pre-relocation creditors having a security interest in
inventory and receivables. A post-relocation secured party who takes a security interest in
Debtor’s existing and after-acquired inventory and accounts would likely check the Pennsylvania
filings even under current law. See Section 9-316(b). And, a buyer in ordinary course of
inventory will take free of the security interest, regardless of whether Lender has perfected by
filing in Pennsylvania or in New Jersey. See Section 9-320(a).

Given the risks faced by an existing secured party whose security interest in property
acquired by the debtor after relocation is unperfected and the likelihood that a later purchaser
would in any event investigate the pedigree of the affected property and search for filings in the
original state, the JRC decided that the benefits to the existing secured party in not having to
monitor the debtor more frequently than every four months for a change of location outweigh the
burden placed on purchasers of the affected property.

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

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

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

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

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

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

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

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

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

5. The cases described in the immediately preceding Note also may give rise to a “double-debtor” problem, in which Debtor’s and Survivor’s secured parties hold competing security interests in the same inventory. Section 9-326 contains the priority rules addressing this problem. They have been amended to take account of new subsection (i).
6. By increasing the likelihood that a security interest in certain collateral will be perfected, new subsection (i) may increase the risk to purchasers of the collateral. As with subsection (h), the situations in which this risk is likely to materialize are expected to be few. Once again, the JRC concluded that the benefits to the secured party of the original debtor, who under subsection (i) would not need not to monitor the original debtor more frequently than every four months to discover that a new debtor has become bound by the original debtor’s security agreement, outweigh the burden placed on certain purchasers of the affected property from the new debtor.

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

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

* * *

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

* * *

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

* * *
Official Comment

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6. Purchasers Other Than Secured Parties.

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

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

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Reporter’s Note

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

2. This draft adds the word “tangible” before “documents” to conform to the amendments to Article 9 that accompany Revised Article 7.
SECTION 9-326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW DEBTOR.

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

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

Reporter’s Note

Section 9-326 addresses the priority contests that may arise when a new debtor (successor) becomes bound by the security agreement of an original debtor and each debtor has a secured creditor. With respect to collateral in which the original debtor never held an interest, it subordinates a security interest perfected by filing against the original debtor to a security interest perfected by filing against the new debtor. The amendments preserve this subordination in the face of the proposed addition of Section 9-316(i).

SECTION 9-406. DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, AND PROMISSORY NOTES INEFFECTIVE.
(d) [Term restricting assignment generally ineffective.] Except as otherwise provided in subsection (e) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

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

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

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

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

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

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

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

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

* * *

Reporter’s Note

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

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

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

Consider this example:

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

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

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

Section 9-406 is clear that a contractual restriction would not be effective to restrict the
assignee’s right qua assignee to enforce the account debtor’s obligation under Section 9-607.
The proposed amendment would eliminate any doubt that the restriction would not be effective
to restrict the assignee’s right to enforce if the assignee became the owner of the payment
intangible or promissory note by accepting it in a “strict foreclosure” under Section 9-620.
(c) [Record of mortgage as financing statement.] A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

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

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

   (3) the record satisfies the requirements for a financing statement in this section, except that:

       (A) it need not indicate other than an indication that it is to be filed in the real property records; and

       (B) it sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual as to whom Section 9-503(a)(4) applies; and

   (4) the record is [duly] recorded.

* * *

Legislative Note: Only a State that enacts Alternative A of the amendments to Section 9-503 should enact the amendments to Section 9-502. As to the bracketed term “driver’s license,” see Legislative Note 3 to Section 9-502.

Reporter’s Note

Under Alternative A of the proposed amendments to Section 9-503, the name required to be provided in a financing statement may be the name indicated on the debtor’s driver’s license. The proposed amendment to Section 9-502 would provide greater latitude with respect to the name that would be sufficient on a mortgage filed as a fixture filing or as a financing statement covering as-extracted collateral.
SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.

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

(1) except as otherwise provided in paragraph (3) and subject to subsection (f), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name of the debtor registered organization indicated on the public organic record of filed with or issued or enacted by the debtor’s registered organization’s jurisdiction of organization which shows the debtor to have been organized;

(2) subject to subsection (g), if the debtor is a decedent’s estate collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the debtor is an estate collateral is being administered by a personal representative;

(3) if the debtor is a trust or a trustee acting with respect to property held in trust; only if the financing statement:

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

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

or is a trustee acting with respect to property held in trust;

(A) provides, as the name of the debtor:
(i) if the organic record of the trust specifies the name of the trust, the name so specified; or

(ii) if the organic record of the trust does not specify a name for the trust, the name of the settlor or testator under subsection (h); and

(B) in a separate part of the financing statement:

(i) if the name is provided in accordance with subparagraph (A)(i), indicates that the collateral is held in a trust; or

(ii) if the name is provided in accordance with subparagraph (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

[Subsection (a)(4), (5) & (6)—Alternative A]

(4) subject to subsection (i), if the debtor is an individual to whom this State has issued a [driver’s license] that has not expired, only if it provides the name of the individual which is indicated on the [driver’s license];

(5) if the debtor is an individual as to whom paragraph (4) does not apply, only if it provides the individual name of the debtor or the surname and first personal name of the debtor; and

(4)(6) in other cases:

(A) if the debtor has a name, only if it provides the individual or organizational name of the debtor; and
(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner such that each name provided would be sufficient if the person named were the debtor.

[Subsection (a)(4) & (5)—Alternative B]

(4) if the debtor is an individual, only if:

(A) it provides the individual name of the debtor;

(B) it provides the surname and first personal name of the debtor; or

(C) subject to subsection (i), it provides the name of the individual which is indicated on a [driver’s license] that this State has issued to the individual and which has not expired; and

(45) in other cases:

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

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner such that each name provided would be sufficient if the person named were the debtor.

[End of Alternatives]

(f) [Name of registered organization.] For purposes of subsection (a)(1), “the name of the debtor indicated on the public organic record” means the name that is stated to be the debtor’s name on the most recently filed or issued organic public record that purports to state, amend, or restate the debtor’s name.
(g) [Name of decedent.] The name of the decedent indicated on the order appointing
the personal representative of the decedent issued by the court having jurisdiction over the
collateral is sufficient as the “name of the decedent” under subsection (a)(2).

(h) The “name of the settlor or testator” in subsection (a)(3) means:

(1) if the settlor is a registered organization, the name of the registered
organization indicated on the public organic record filed with or issued or enacted by the
registered organization’s jurisdiction of organization; and

(2) in other cases, the name of the settlor or testator indicated in the trust’s
organic record.

[Subsection (h)—Alternative A]

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

[Subsection (h)—Alternative B]

(i) [Multiple licenses.] If this State has issued to an individual more than one [driver’s
license] of a kind described in subsection (a)(4)(C), the one that was issued most recently is the
one to which the subsection refers.

[End of Alternatives]

Legislative Notes:

1. This Act contains two alternative sets of amendments relating to the names of
individual debtors. A State should enact the same Alternative, A or B, for both subsections (a)
and (i) of Section 9-503. A State that enacts Alternative A of the amendments to this section
should also enact the amendments to Section 9-502.
2. Both Alternatives refer, in part, to the name as shown on a debtor’s driver’s license. The Legislature should be aware that, in some States, certain characters that may be used by the State’s department of motor vehicles (or similar agency) in the name on a driver’s license may not be accepted by the State’s central or local UCC filing offices under current regulations or internal protocols. This may occur because of technological limitations of the filing offices or merely as a result of inconsistent procedures. Similar issues may exist for field sizes as well. In these situations, perfection of a security interest granted by a debtor with such a driver’s license may be impossible under Alternative A of the amendments and the utility of Alternative B, under which the name on the driver’s license is one of the names that is sufficient, may be reduced. Accordingly, the Legislature may wish to determine if one or more of these issues exist in this State and, if so, to make certain that such issues have been resolved. A successful resolution might be accomplished by statute, agency regulation, or technological change effectuated before or as part of the enactment of this Act.

3. Regardless of which Alternative is enacted, in States in which a single agency issues driver’s licenses and non-driver identification cards as an alternative to a driver’s license, such that at any given time an individual may hold either a driver’s license or an identification card but not both, the Legislature should replace each use of the term “driver’s license” with a phrase meaning “driver’s license or identification card” but containing the analogous terms used in the enacting State. In other States, the Legislature should replace the term “driver’s license” with the analogous term used in the enacting State.

Reporter’s Note

1. To be sufficient under Section 9-502(a)(1), a financing statement must provide the name of the debtor. The revisions to Section 9-503(a) give additional guidance for satisfying this requirement.

2. The provisions governing the name required to be provided with respect to a debtor who is an individual were the most contentious and perhaps the most difficult issues addressed by the Joint Review Committee. Recognizing the diversity of views, the Joint Review Committee recommends that each State be asked to choose between two alternatives.

Alternative A. Under Alternative A, the name of an individual debtor which is sufficient for a financing statement is the name that appears on the most recent unexpired driver’s license issued to the debtor by the State in which the debtor maintains the principal residence. Because States use different terms for the driver’s licenses that they issue, the words “driver’s license” appear in brackets.

The debtor’s name requirement for an individual debtor who does not hold an unexpired driver’s license issued by the State of principal residence can be met in either of two ways. As under existing law, a financing statement would be sufficient if it provides the “individual name of the debtor.” Alternatively, the financing statement would be sufficient if it provides the debtor’s surname and first personal name. The term “surname” refers to the family name. The
term “first personal name” refers to the first name other than the surname. In some cases, determining the “individual name” of debtor may be difficult, as may determining the debtor’s surname. An Official Comment will give guidance for making these determinations.

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

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

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

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

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

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

Under Section 9-503(a)(4), if the debtor has a current (i.e., unexpired) driver’s license, the debtor’s name would be the name on the license that was issued most recently. If the debtor does not have a current driver’s license, the debtor’s name would be determined under subsection (a)(5). It follows that a financing statement providing the name on the debtor’s then-current driver’s license may become seriously misleading if the license expires without being renewed and the debtor’s name under subsection (a)(5) is different. Of course, even if the name change were to cause the financing statement to become seriously misleading, adverse consequences would follow only with respect to collateral that the debtor acquires more than four months after the name change. Despite the name change, the financing statement would remain effective with respect to collateral acquired by the debtor before the name change and within four months thereafter. See § 9-507.

Even if the debtor’s name changes, the filed financing statement does not become seriously misleading if it can be found by searching under the debtor’s “correct” name, using the filing office’s standard search logic. See Section 9-506. Any name that satisfies the then-applicable subsection of Section 9-503(a) is a “correct name” for these purposes.

In some States, a single agency issues both driver’s licenses and non-driver identification cards as an alternative to a driver’s license, such that at any given time an individual may hold either a driver’s license or an identification card but not both. As the Legislative Note suggests, those States should replace each use of the term “driver’s license” with a phrase meaning “driver’s license or identification card” but containing the analogous terms used in the enacting State, e.g., “Operator’s License and Identity Card.”

*Alternative B.* This alternative provides three ways in which a financing statement may sufficiently provide the name of an individual who is a debtor: As under current law, the “individual name of the debtor would be sufficient. See Section 9-503(a)(4)(A). In addition, the debtor’s-name requirement would be satisfied by providing the debtor’s surname and first personal name. See Section 9-503(a)(4)(B). If the individual holds a current driver’s license issued by the principal residence, the name on the driver’s license also would be sufficient. See Section 9-503(a)(4)(C). Subparagraphs (B) and (C) are explained in connection with Alternative A.

As under Alternative A, any name that satisfies one of the subparagraphs of Section 9-503(a)(4) is a “correct name” for purposes of Section 9-506(c).

*Choosing Between the Alternatives.* Legislative Note 2, above, explains some of the considerations that a legislature should consider when deciding which alternative to enact.
3. Subsection (a)(2) deals with collateral that is being administered by an executor, administrator, or other personal representative of a decedent. Regardless of who the debtor may be, the name that must be provided on the financing statement is the name of the decedent.

Subsection (g) provides a safe harbor, under which the name of the decedent indicated on the order appointing the personal representative issued by the court having jurisdiction over the collateral is sufficient. A comment will indicate that, if the order indicates more than one name for the decedent, the first name in the list qualifies under subsection (g), though other names in the list also may qualify as the “name of the decedent.” In addition, the financing statement must indicate that the collateral is being administered by a personal representative. For an example, see line 5 of the form in Section 9-521(a). Although required for the sufficiency of the financing statement, this indication is not part of the debtor’s name.

4. The revisions contain several rules, described below, to address the variety of situations that may arise when the collateral is the res of a trust.

**Collateral that is held in a trust that is not a registered organization.** If the collateral is held in a trust and the trust is not a registered organization, subsection (a)(3) applies, regardless of whether, as typically is the case with common-law trusts, the debtor is a trustee acting with respect to the collateral, or the trust itself is the debtor.

In these situations, if the trust’s organic record specifies a name for the trust, the financing statement must provide, as the name of the debtor, the name specified in the organic record. In addition, the financing statement must indicate that the collateral is held in a trust. This indication must be provided in a field separate from the debtor-name field. For an example, see line 5 of the form in Section 9-521(a). Although required for the sufficiency of the financing statement, this indication is not part of the debtor’s name.

If the organic record of the trust does not specify a name for the trust, the name required is the name of the settlor or, in the case of a testamentary trust, the testator. Subsection (h) explains how to determine the name of the settlor or testator for these purposes. In addition, the financing statement must provide sufficient additional information to distinguish the trust from other trusts having one or more of the same settlors or the same testator. In many cases an indication of the date on which the trust was settled will satisfy this requirement. Although required for the sufficiency of the financing statement, this additional information is not part of the debtor’s name. If neither the name nor the additional information indicates that the collateral is held in a trust, the financing statement must indicate that fact, but not as part of the debtor’s name.

**Collateral that is held in a trust that is a registered organization.** If the collateral is held in a trust that is a registered organization, subsection (a)(1) applies, regardless of whether the trust or the trustee is the debtor. The name that is sufficient is the name that appears on the trust’s “public organic record,” as that term is defined in Section 9-102.

An Official Comment might explain the following points, both of which would appear to be clarifications of current law:
(a) A financing statement that fails to provide an indication that the collateral is held in a trust does not “substantially satisfy[ ] the requirements” of Part 5 within the meaning of Section 9-506(a) and so is ineffective.

(b) A financing statement that fails to provide additional information that is sufficient to distinguish the trust from other trusts having the same settlor or testator does not “substantially satisfy[ ] the requirements” of Part 5 within the meaning of Section 9-506(a) and so is ineffective.

5. In addition to dealing with collateral that is held in a trust that is a registered organization, subsection (a)(1) generally applies to debtors that are registered organizations. Because subsection (a)(3) is an exception to subsection (a)(1), the latter does not apply to financing statements covering collateral held in a trust that is not a registered organization, even if the debtor is a registered organization. For example, if the debtor is registered organization that is acting as trustee with respect to collateral held in a common-law trust, subsection (a)(3) would determine the name for the financing statement and subsection (a)(1) would not.

The public organic record may indicate more than one name for a registered organization. New Section 9-503(f) explains that the name that must be provided in the financing statement is the name that is indicated on the most recently filed public record that purports to state, amend, or restate the debtor’s name.

The references to the “public organic record” in Section 9-503(a) and “the most recently filed or issued public organic record” in Section 9-503(f) are not meant to refer to any randomly filed or issued record. Rather, they are meant to refer to the public organic record filed or issued with respect to the debtor and most recently filed or issued record that constitutes part of that public organic record.

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

* * *

(c) [Change in debtor’s name.] If a name of a debtor which is sufficient under Section 9-503 changes its name such that a filed financing statement becomes seriously misleading under Section 9-506:

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

Reporter’s Note

Section 9-507(c) is designed to limit the search burden for secured parties. It addresses cases where a filed financing statement provides a name that, at the time of filing, satisfies the requirements of Section 9-503 but, at a later time, no longer does so. The existing emphasis on the debtor’s behavior (“If a debtor so changes its name”) might lead a court to read the statute, erroneously, as applying only to cases where the debtor actively changes his name and not to cases where the debtor passively permits an event to occur that results in a change of the debtor’s name for purposes of Article 9. Accordingly, a proposed amendment would change the emphasis of the chapeau to Section 9-507(c) from the debtor’s having made a name change (“If a debtor so changes its name”) to the fact that a name required for an effective financing statement has changed (“If a name of a debtor . . . changes”). The reference to “a name” rather than “the name” is meant to reflect the fact that, more than one name may satisfy the requirements of Section 9-503 for a given individual.

For more on name changes of debtors who are individuals, see Reporter’s Note 2 to Section 9-503.

SECTION 9-515. DURATION AND EFFECTIVENESS OF FINANCING STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT.

***

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

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

* * *

Reporter’s Note

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

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

* * *

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

* * *

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

* * *

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

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

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

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

(A) provide a mailing address for the debtor; or
(B) indicate whether the debtor is an individual or an organization; or
(C) if the financing statement indicates that the debtor is an organization,
provide:

(i) a type of organization for the debtor;
(ii) a jurisdiction of organization for the debtor; or
(iii) an organizational identification number for the debtor or
indicate that the debtor has none;

* * *

Reporter’s Note

1. Subsection (b)(3)(B) has been conformed to the amendments Section 9-518

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

SECTION 9-518. CLAIM CONCERNING INACCURATE OR WRONGFULLY
FILED RECORD.
(a) **[Who may file Statement with respect to record indexed under person’s name.]**

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

**[Alternative A]**

(b) **[Sufficiency Contents of correction statement under subsection (a).]**

A **correction** statement under subsection (a) must:

1. identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;
2. indicate that it is a **correction** statement; and
3. provide the basis for the person’s belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person’s belief that the record was wrongfully filed.

**[Alternative B]**

(b) **[Sufficiency Contents of correction statement under subsection (a).]**

A **correction** statement under subsection (a) must:

1. identify the record to which it relates by:
   
   (A) the file number assigned to the initial financing statement to which the record relates; and
   
   (B) if the correction statement relates to a record filed [or recorded] in a filing office described in Section 9-501(a)(1), the date [and time] that the initial financing statement was filed [or recorded] and the information specified in Section 9-502(b);
2. indicate that it is a **correction** statement; and
(3) provide the basis for the person’s belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person’s belief that the record was wrongfully filed.

[End of Alternatives]

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

[Subsection (d)—Alternative A]

(d) [Contents of statement under subsection (c).] An information statement under subsection (c) must:

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

(2) indicate that it is an information statement; and

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

[Subsection (d)—Alternative B]

(d) [Contents of statement under subsection (c).] An information statement under subsection (c) must:

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

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

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

(2) indicate that it is an information statement; and

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

[End of Alternatives]

(c)(e) [Record not affected by correction-information statement.] The filing of a correction-information statement does not affect the effectiveness of an initial financing statement or other filed record.

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

Official Comment

* * *

2. Correction-Information Statements. Former Article 9 did not afford a nonjudicial means for a debtor to indicate that a financing statement or other record that was inaccurate or wrongfully filed. Subsection (a) affords the debtor the right to file a correction-information statement. Among other requirements, the correction-information statement must provide the basis for the debtor’s belief that the public record should be corrected. See subsection (b). These provisions, which resemble the analogous remedy in the Fair Credit Reporting Act, 15 U.S.C. § 1681i, afford an aggrieved person the opportunity to state its position on the public record. They do not permit an aggrieved person to change the legal effect of the public record. Thus, although a filed correction-information statement becomes part of the “financing statement,” as defined in Section 9-102, the filing does not affect the effectiveness of the initial financing statement or any other filed record. See subsection (c).

Sometimes a person files a termination statement or other record relating to a financing statement without being entitled to do so. A secured party of record with respect to the financing statement who believes that such a record has been filed may, but need not, file an information statement indicating that the amendment was unauthorized. See subsection (c). An information
statement has no legal effect. Its sole purpose is to provide some limited public notice that the
efficacy of the amendment is disputed. If the person filing the record was not entitled to do so, the
filed record is ineffective, regardless of whether the secured party of record files an
information statement. Likewise, if the person filing the record was entitled to do so, the filed
record is effective, even if the secured party of record files an information statement. See
Section 9-510(a), 9-518(e). Because an information statement filed under subsection (c) has no
legal effect, a secured party of record—even one who is aware of the filing of an unauthorized
amendment—has no duty to file one. Searchers bear the burden of determining whether an
amendment is authorized, just as they bear the burden of determining whether a filed initial
financing statement is authorized.

This section does not displace other provisions of this Article that impose liability for
making unauthorized filings or failing to file or send a termination statement (see Section 9-
625(e)), nor does it displace any available judicial remedies.

3. Resort to Other Law. This Article cannot provide a satisfactory or complete solution
to problems caused by misuse of the public records. The problem of “bogus” filings is not
limited to the UCC filing system but extends to the real-property records, as well. A summary
judicial procedure for correcting the public record and criminal penalties for those who misuse
the filing and recording systems are likely to be more effective and put less strain on the filing
system than provisions authorizing or requiring action by filing and recording offices.

Reporter’s Note

1. Current Section 9-518 provides a mechanism whereby an aggrieved debtor may use
the filing office to make a public declaration concerning the debtor’s belief that a filed financing
statement naming the debtor is inaccurate or was wrongfully filed. New subsections (c) and (d)
would provide a similar mechanism to a secured party of record for a financing statement to
express its belief that a person who filed a record relating to the financing statement was not
entitled to do so. As the current text does with respect to subsection (b), the amendments would
provide alternative versions of subsection (d). Each State would choose the alternative that is
better suited to the method by which searches are conducted in the real-estate records maintained
in the State.

2. Because this section currently refers to the statement as a “correction statement,”
some debtors have filed one under the misapprehension that the filing has legal effect. It does
not. See subsection (c) (as amended), subsection (e). To prevent future confusion, the
amendment would refer to the statement as an “information statement.” The comments
throughout Article 9 will be amended to reflect this change in terminology.

SECTION 9-521. UNIFORM FORM OF WRITTEN FINANCING STATEMENT
AND AMENDMENT.
(a) **[Initial financing statement form.]** A filing office that accepts written

records may not refuse to accept a written initial financing statement in the following form and

format except for a reason set forth in Section 9-516(b):
UCC FINANCING STATEMENT
FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. EMAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME - insert only [debtor name (1a or 1b)]
   1a. ORGANIZATION'S NAME

   OR

   1b. INDIVIDUAL'S SURNAME
       FIRST PERSONAL NAME
       ADDITIONAL NAME/INITIAL(S)
       SUFFIX

   1c. MAILING ADDRESS
       CITY
       STATE
       POSTAL CODE
       COUNTRY

2. DEBTOR'S NAME - insert only [debtor name (2a or 2b)]
   2a. ORGANIZATION'S NAME

   OR

   2b. INDIVIDUAL'S SURNAME
       FIRST PERSONAL NAME
       ADDITIONAL NAME/INITIAL(S)
       SUFFIX

   2c. MAILING ADDRESS
       CITY
       STATE
       POSTAL CODE
       COUNTRY

3. SECURED PARTY'S NAME - insert only [name of TOTAL Assignee (ASSIGNEE SECURED PARTY). Insert only [Secured party name (3a or 3b)]
   3a. ORGANIZATION'S NAME

   OR

   3b. INDIVIDUAL'S SURNAME
       FIRST PERSONAL NAME
       ADDITIONAL NAME/INITIAL(S)
       SUFFIX

   3c. MAILING ADDRESS
       CITY
       STATE
       POSTAL CODE
       COUNTRY

4. This FINANCING STATEMENT covers the following collateral:
   - [specific collateral details]

5. Check only if applicable and check only one box: [check applicable]
   - [specific applicable fields]

6. Alternate designations (if applicable):
   - [specific alternate designations]

7. Optional filer reference data:
   - [specific filer reference data]

UCC FINANCING STATEMENT (FORM UCC1) (REV. DRAFT 04/09/10)

-41-
9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT
   OR

   9a. ORGANIZATION’S NAME

   OR

   9b. INDIVIDUAL’S SURNAME
       FIRST PERSONAL NAME
       ADDITIONAL NAME/INITIAL(S), SUFFIX

   THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. MISCELLANEOUS:

11. DEBTOR’S NAME - Insert only one debtor name (11a or 11b)
   OR

   11a. ORGANIZATION’S NAME

   OR

   11b. INDIVIDUAL’S SURNAME
       FIRST PERSONAL NAME
       ADDITIONAL NAME/INITIAL(S)
       SUFFIX

   11c. MAILING ADDRESS
       CITY
       STATE
       POSTAL CODE
       COUNTRY

12. ADDITIONAL SECURED PARTY’S NAME - Insert only one name (12a or 12b)
   OR

   12a. ORGANIZATION’S NAME

   OR

   12b. INDIVIDUAL’S SURNAME
       FIRST PERSONAL NAME
       ADDITIONAL NAME/INITIAL(S)
       SUFFIX

   12c. MAILING ADDRESS
       CITY
       STATE
       POSTAL CODE
       COUNTRY

13. This FINANCING STATEMENT is to be filed (for record)
   (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT covers (check box to be cut, or)
    all described collateral, or is filed as a (delayed filing)

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):
(b) [Amendment form.] A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in Section 9-516(b):
## UCC FINANCING STATEMENT AMENDMENT

**FOLLOW INSTRUCTIONS (front and back) CAREFULLY**

<table>
<thead>
<tr>
<th>Section</th>
<th>Information</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. NAME &amp; PHONE OF CONTACT AT FILER</td>
<td>Optional</td>
<td></td>
</tr>
<tr>
<td>B. EMAIL CONTACT AT FILER</td>
<td>Optional</td>
<td></td>
</tr>
<tr>
<td>C. SEND ACKNOWLEDGMENT TO</td>
<td>(Name and Address)</td>
<td></td>
</tr>
</tbody>
</table>

**THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY**

1. **INITIAL FINANCING STATEMENT FILE NUMBER**
2. **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.
3. **ASSIGNMENT:** (Full or partial). Give names of assignor in item 7a or 7b and address of assignor in item 7c; and give name of assignee in item 9. For partial Assignments, complete items 7 and 9 as stated, and indicate affected collateral in item 8.
4. **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.
5. **PARTY INFORMATION CHANGE:** Change of party information. Complete for Party Information Change. This Change affects: 
   - Debtor 
   - Secured Party of record 

6. **CURRENT RECORD INFORMATION:** Complete for Party Information Change.

7. **CHANGED OR ADDED INFORMATION:** Complete for Assignment or Party Information Change.

8. **COLLATERAL CHANGE:** Check only one box: Delete, Add, Replace entire collateral description, or Assigned collateral. Describe collateral.

9. **NAME OR SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT** (name of assignor, if this is an Assignment)
   - ORGANIZATION NAME
   - INDIVIDUAL’S SURNAME
   - FIRST PERSONAL NAME
   - ADDITIONAL NAMES/INITIAL(S)
   - SUFFIX

10. **OPTIONAL FILER REFERENCE DATA**

**UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. DRAFT 04/08/10)**
UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY.

11. INITIAL FINANCING STATEMENT FILE NUMBER (same as Item 1a on Amendment Form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as Item 9 on Amendment Form)

OR

13. Name of DEBTOR on related Financing Statement (Name of a current Debtor required for indexing purposes only in some filing offices - see Instruction Item 13 - Insert only DEBTOR name) (use Debtor name 1(a) or 1(b))

OR

14. This FINANCING STATEMENT covers  □ to be out, or □ as-extracted collateral, or is filed as a  □ future filing.

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest)

16. Use this space for additional information (if applicable, description of real estate).

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY.

UCC FINANCING STATEMENT AMENDMENT ADDENDUM (FORM UCC3A4) (REV. DRAFT 04/08/10)
Reporter’s Note

This section provides sample written forms that must be accepted in every filing office in the country, as long as the filing office’s rules permit it to accept written communications. By completing one of the forms in this section, a secured party can be certain that the filing office is obligated to accept it. The forms have been revised to reflect the experience of filing offices with the existing forms and because the amendments to Section 9-503 would change some of the requirements for an effective financing statement. The details of the forms appearing here are still under consideration.

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

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

* * *

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

* * *

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

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

(2) the secured party’s sworn affidavit in recordable form stating that:
(A) a default has occurred with respect to the obligation secured by the mortgage; and

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

**Reporter’s Note**

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

**PART 8**

**TRANSITION PROVISIONS FOR 2010 AMENDMENTS**

**SECTION 9-801. EFFECTIVE DATE.** This [Act] takes effect on July 1, 2013.

**SECTION 9-802. SAVINGS CLAUSE.**

(a) [Pre-effective-date transactions or liens.] Except as otherwise provided in this part, this [Act] applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this [Act] takes effect.

(b) [Pre-effective-date proceedings.] This [Act] does not affect an action, case, or proceeding commenced before this [Act] takes effect.

**SECTION 9-803. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE.**

(a) [Continuing perfection: perfection requirements satisfied.] A security interest that is a perfected security interest immediately before this [Act] takes effect is a perfected security interest under [Article 9 as amended by this [Act]] if, when this [Act] takes effect, the
applicable requirements for attachment and perfection under [Article 9 as amended by this [Act]] are satisfied without further action.

(b) [Continuing perfection: perfection requirements not satisfied.] Except as otherwise provided in Section 9-805, if, immediately before this [Act] takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under [Article 9 as amended by this [Act]] are not satisfied when this [Act] takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under [Article 9 as amended by this [Act]] are satisfied within one year after this [Act] takes effect.

SECTION 9-804. SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE. A security interest that is an unperfected security interest immediately before this [Act] takes effect becomes a perfected security interest:

(1) without further action, when this [Act] takes effect if the applicable requirements for perfection under [Article 9 as amended by this [Act]] are satisfied before or at that time; or

(2) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

SECTION 9-805. EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE.

(a) [Pre-effective-date filing effective.] The filing of a financing statement before this [Act] takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under [Article 9 as amended by this [Act]].

(b) [When pre-effective-date filing becomes ineffective.] This [Act] does not render ineffective an effective financing statement that, before this [Act] takes effect, is filed and
satisfies the applicable requirements for perfection under the law of the jurisdiction governing
perfection as provided in [pre-amendment Article 9]. However, except as otherwise provided in
subsections (c) and (d) and Section 9-806, the financing statement ceases to be effective:

(1) if the financing statement is filed in this State, at the time the financing
statement would have ceased to be effective had this [Act] not taken effect; or

(2) if the financing statement is filed in another jurisdiction, at the earlier of:

(A) the time the financing statement would have ceased to be effective
under the law of that jurisdiction; or

(B) June 30, 2018.

(c) [Continuation statement.] The filing of a continuation statement after this [Act]
takes effect does not continue the effectiveness of the financing statement filed before this [Act]
takes effect. However, upon the timely filing of a continuation statement after this [Act] takes
effect and in accordance with the law of the jurisdiction governing perfection as provided in
[Article 9 as amended by this [Act]], the effectiveness of a financing statement filed in the same
office in that jurisdiction before this [Act] takes effect continues for the period provided by the
law of that jurisdiction.

(d) [Application of subsection (b)(2)(B) to transmitting utility financing statement.] Subsection (b)(2)(B) applies to a financing statement that, before this [Act] takes effect, is filed
against a transmitting utility and satisfies the applicable requirements for perfection under the
law of the jurisdiction governing perfection as provided in [pre-amendment Article 9], only to
the extent that [Article 9 as amended by this [Act]] provides that the law of a jurisdiction other
than the jurisdiction in which the financing statement is filed governs perfection of a security
interest in collateral covered by the financing statement.
(e) [Application of Part 5.] A financing statement that includes a financing statement filed before this [Act] takes effect and a continuation statement filed after this [Act] takes effect is effective only to the extent that it satisfies the requirements of [Part 5 as amended by this [Act]] for an initial financing statement.

SECTION 9-806. WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.

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

(1) the filing of an initial financing statement in that office would be effective to perfect a security interest under [Article 9 as amended by this [Act]];

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

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

(b) [Period of continued effectiveness.] The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

(1) if the initial financing statement is filed before this [Act] takes effect, for the period provided in [unamended Section 9-515] with respect to an initial financing statement; and

(2) if the initial financing statement is filed after this [Act] takes effect, for the period provided in Section 9-515 as amended by this [Act] with respect to an initial financing statement.
(c) [Requirements for initial financing statement under subsection (a).] To be effective for purposes of subsection (a), an initial financing statement must:

(1) satisfy the requirements of [Part 5 as amended by this [Act]] for an initial financing statement;

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

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

SECTION 9-807. AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING STATEMENT.

(a) [“Pre-effective-date financing statement”.] In this section, “pre-effective-date financing statement” means a financing statement filed before this [Act] takes effect.

(b) [Applicable law.] After this [Act] takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in [Article 9 as amended by this [Act]]. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) [Method of amending: general rule.] Except as otherwise provided in subsection (d), if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this [Act] takes effect only if:
(1) the pre-effective-date financing statement and an amendment are filed in the
office specified in Section 9-501;

(2) an amendment is filed in the office specified in Section 9-501 concurrently
with, or after the filing in that office of, an initial financing statement that satisfies Section 9-
806(c); or

(3) an initial financing statement that provides the information as amended and
satisfies Section 9-806(c) is filed in the office specified in Section 9-501.

(d) [Method of amending: continuation.] If the law of this State governs perfection of
a security interest, the effectiveness of a pre-effective-date financing statement may be continued
only under Section 9-805(c) and (e) or 9-806.

(e) [Method of amending: additional termination rule.] Whether or not the law of
this State governs perfection of a security interest, the effectiveness of a pre-effective-date
financing statement filed in this State may be terminated after this [Act] takes effect by filing a
termination statement in the office in which the pre-effective-date financing statement is filed,
unless an initial financing statement that satisfies Section 9-806(c) has been filed in the office
specified by the law of the jurisdiction governing perfection as provided in [Article 9 as
amended by this [Act]] as the office in which to file a financing statement.

SECTION 9-808. PERSONS ENTITLED TO FILE INITIAL FINANCING
STATEMENT OR CONTINUATION STATEMENT. A person may file an initial financing
statement or a continuation statement under this part if:

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

(2) the filing is necessary under this part:
(A) to continue the effectiveness of a financing statement filed before this [Act] takes effect; or

(B) to perfect or continue the perfection of a security interest.

SECTION 9-809. PRIORITY. This [Act] determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this [Act] takes effect, [pre-amendment Article 9] determines priority.

Reporter’s Note

These transition provisions are based on the provisions of Article 9, Part 7, which govern the transition to Revised Article 9. As under Part 7, these provisions contemplate a uniform effective date that is roughly three years after the anticipated approval of the draft by the sponsors and a five-year transition period after the Act takes effect, during which filings made before the effective date must be conformed to the amendments to remain effective.

Because the current amendments will change fewer aspects of Article than the complete revision did, not all of the provisions of Part 7 are relevant to the current amendments. For example, unlike Revised Article 9, these amendments do not change the scope of the Article. The Joint Review Committee decided not to include Part 7 provisions that clearly would have no application to the amendments. When in doubt, the Joint Review Committee decided to retain a transition provision rather than delete it.

The most significant transition problem raised by the current amendments arises from changes to Section 9-503(a), concerning the name of the debtor that must be provided for a financing statement to be sufficient. In contrast, the most significant transition problem addressed by the complete revision arose from the change in the choice-of-law rules governing where to file a financing statement. The current amendments do not change the choice-of-law rules. Even so, the amendments will change the place to file in a few cases, because certain entities that are not currently classified as “registered organizations” would fall within that category under the amendments. (A filing against a registered organization must be made in the jurisdiction of organization, whereas a filing against a nonregistered organization must be made where the organization’s chief executive office is located, which may not be the jurisdiction of organization.)
PART TWO

MODIFICATIONS TO THE COMMENTS UNACCOMPANIED BY AMENDMENTS TO THE OFFICIAL TEXT

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

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Official Comment

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5. Receivables-related Definitions.

a. “Account”; “Health-Care-Insurance Receivable”; “As-Extracted Collateral.” The definition of “account” has been expanded and reformulated. It is no longer limited to rights to payment relating to goods or services. Many categories of rights to payment that were classified as general intangibles under former Article 9 are accounts under this Article. Thus, if they are sold, a financing statement must be filed to perfect the buyer’s interest in them. Among the types of property that are expressly excluded from the definition is “a right to payment for money or funds advanced or sold.” As defined in Section 1-201, “money” is limited essentially to currency. As used in the exclusion from the definition of “account,” however, “funds” is a broader concept (although the term is not defined). For example, when a bank-lender credits a borrower’s deposit account for the amount of a loan, the bank’s advance of funds is not a transaction giving rise to an account.

The definition of “health-care-insurance receivable” is new. It is a subset of the definition of “account.” However, the rules generally applicable to account debtors on accounts do not apply to insurers obligated on health-care-insurance receivables. See Sections 9-404(e), 9-405(d), 9-406(i).

Note that certain accounts also are “as-extracted collateral.” See Comment 4.c., Examples 6 and 7.

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

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

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

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

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d. “General Intangible”; “Payment Intangible.” “General intangible” is the residual category of personal property, including things in action, that is not included in the other defined types of collateral. Examples are various categories of intellectual property and the right to payment of a loan of funds that is not evidenced by chattel paper or an instrument. As used in the definition of “general intangible,” “things in action” includes rights that arise under a license of intellectual property, including the right to exploit the intellectual property without liability for infringement. The definition has been revised to exclude commercial tort claims, deposit accounts, and letter-of-credit rights. Each of the three is a separate type of collateral. One important consequence of this exclusion is that tortfeasors (commercial tort claims), banks (deposit accounts), and persons obligated on letters of credit (letter-of-credit rights) are not “account debtors” having the rights and obligations set forth in Sections 9-404, 9-405, and 9-406. In particular, tortfeasors, banks, and persons obligated on letters of credit are not obligated to pay an assignee (secured party) upon receipt of the notification described in Section 9-404(a). See Comment 5.h. Another important consequence relates to the adequacy of the description in the security agreement. See Section 9-108.
“Payment intangible” is a subset of the definition of “general intangible.” The sale of a payment intangible is subject to this Article. See Section 9-109(a)(3). Virtually any intangible right could give rise to a right to payment of money once one hypothesizes, for example, that the account debtor is in breach of its obligation. The term “payment intangible,” however, embraces only those general intangibles “under which the account debtor’s principal obligation is a monetary obligation.” (Emphasis added.)

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

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

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

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**Reporter’s Note**

1. An additional sentence or two will explain that a right to payment “arising out of the use of a credit or charge card” is the right of a card issuer to receive payment from its cardholder, and that rights to payment arising out of the collection of a credit-card slip, such as the contractual obligation of a merchant’s bank to pay the merchant for settlement of the card transaction, are not within the quoted phrase.

2. The point made in the sentence added to paragraph 5.b. may be further amplified.
3. The addition to paragraph 5.d. illustrates the correct application of the Article 9 classification system in the context of an assignment of the lessor’s right to payment under a lease that is chattel paper.

SECTION 9-104. CONTROL OF DEPOSIT ACCOUNT.

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

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

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

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

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Official Comment

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

Example: D maintains a deposit account with Bank A. To secure a loan from Banks X, Y, and Z, D creates a security interest in the deposit account in favor of Bank A, as agent for Banks X, Y, and Z. Because Bank A is a “secured party” as defined in Section 9-102, the security interest is perfected by control under subsection (a)(1).

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

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

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**Reporter’s Note**

A brief explanation of control by an agent or other representative will be added.

**SECTION 9-109. SCOPE.**

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

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

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**Official Comment**

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

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Reporter’s Note

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

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

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

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

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Official Comment

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

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

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

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SECTION 9-501. FILING OFFICE.

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

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Official Comment

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

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

Reporter’s Note

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

SECTION 9-307. LOCATION OF DEBTOR.

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

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

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

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

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

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

Official Comment

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

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

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Reporter’s Note

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

SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY
INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.
(a) [General priority rules.] Except as otherwise provided in this section, priority
among conflicting security interests and agricultural liens in the same collateral is determined
according to the following rules:

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

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Official Comment

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

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

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

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

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

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

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

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

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

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3. Unauthorized Filings. Records filed in the filing office do not require signatures for their effectiveness. Subsection (a)(1) substitutes for the debtor’s signature on a financing statement the requirement that the debtor authorize in an authenticated record the filing of an initial financing statement or an amendment that adds collateral. Also, under subsection (a)(1), if an amendment adds a debtor, the debtor who is added must authorize the amendment. A person who files an unauthorized record in violation of subsection (a)(1) is liable under Section 9-625(b) and (e) for actual and statutory damages. Of course, a filed financing statement is ineffective to perfect a security interest if the filing is not authorized. See Section 9-510(a). Law other than this Article, including the law with respect to ratification of past acts, generally determines whether a person has the requisite authority to file a record under this section. See Sections 1-103, 9-502, Comment 3. This Article applies to other issues, such as the priority of a security interest perfected by the filing of a financing statement. See Section 9-322, Comment 4.

Reporter’s Note

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

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

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

(1) any supporting obligation for the collateral; and

(2) proceeds of the collateral if:

(A) the security interest in proceeds is perfected;
(B) the proceeds are cash proceeds or of the same type as the collateral;

and

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

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Official Comment

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

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

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

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

**Reporter’s Note**

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

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

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**Official Comment**

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

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

**Reporter’s Note**

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

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

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

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

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

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

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**Official Comment**

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

For a security interest to qualify for priority under subsection (a) or (b), the secured party
must “take[] possession of the chattel paper or obtain[] control of the chattel paper under Section
9-105.” When chattel paper comprises one or more tangible records and one or more electronic
records, a secured party may satisfy this requirement by taking possession of the tangible records
under Section 9-313 and having control of the electronic records under Section 9-105.

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

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

**Reporter’s Note**

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

2. An additional comment will explain how a secured party can retain its priority under
this Section when tangible chattel paper is converted to electronic chattel paper and vice versa.
SECTION 9-509. PERSONS ENTITLED TO FILE A RECORD.

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

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

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

* * *

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

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

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

* * *

Official Comment

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

* * *

SECTION 9-512. AMENDMENT OF FINANCING STATEMENT.

[Alternative A]

(a) [Amendment of information in financing statement.] Subject to Section 9-509, a
person may add or delete collateral covered by, continue or terminate the effectiveness of, or,
subject to subsection (e), otherwise amend the information provided in, a financing statement by
filing an amendment that:

(1) identifies, by its file number, the initial financing statement to which the
amendment relates; and

(2) if the amendment relates to an initial financing statement filed [or recorded] in
a filing office described in Section 9-501(a)(1), provides the information specified in Section 9-
502(b).

[Alternative B]

(a) [Amendment of information in financing statement.] Subject to Section 9-509, a
person may add or delete collateral covered by, continue or terminate the effectiveness of, or,
subject to subsection (e), otherwise amend the information provided in, a financing statement by
filing an amendment that:
(1) identifies, by its file number, the initial financing statement to which the
amendment relates; and

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

[End of Alternatives]

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Official Comment

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4. Amendment Adding Debtor. An amendment that adds a debtor is effective,
provided that the added debtor authorizes the filing. See Section 9-509(a). However, filing an
amendment adding a debtor to a previously filed financing statement affords no advantage over
filing an initial financing statement against that debtor and may be disadvantageous. With
respect to the added debtor, for purposes of determining the priority of the security interest, the
time of filing is the time of the filing of the amendment, not the time of the filing of the initial
financing statement. See subsection (d). However, the effectiveness of the financing statement
lapses with respect to added debtor at the time it lapses with respect to the original debtor. See
subsection (b).

5. Amendment Adding Debtor Name. Many states have enacted statutes governing
the “conversion” of one organization, e.g., a corporation, into another, e.g., a limited liability
company. This Article defers to those statutes to determine whether the resulting organization is
the same legal person as the initial, converting organization (albeit with a different name) or
whether the resulting organization is a different legal person. When the governing statute does
not clearly resolve the question, a secured party whose debtor is the converting organization may
wish to proceed as if the statute provides for both results. In these circumstances, an amendment
adding to the initial financing statement the name of the resulting organization may be preferable
to an amendment substituting that name for the name of the debtor appearing on the initial
financing statement. In the event the governing statute is construed as providing that the
resulting organization is the same person as the converting organization but with a different
name, the timely filing of such an amendment would satisfy the requirement of Section 9-
507(c)(2). If, however, the governing statute is construed as providing that the resulting
organization is a different legal person, such an amendment would have the effect of adding the
resulting organization as a debtor. See Comment 4. Regardless of how the governing statute is
construed, the converting and resulting organizations may be organized under the law of
different jurisdictions and so may be located in different jurisdictions under Section 9-307. In that case, a filing in the location of the resulting organization may be advisable.

56. Deletion of All Debtors or Secured Parties of Record. Subsection (e) assures that there will be a debtor and secured party of record for every financing statement.

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

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

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

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Official Comment

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

2. Waiver: In General. Section 1-102(3) addresses which provisions of the UCC are mandatory and which may be varied by agreement. With exceptions relating to good faith, diligence, reasonableness, and care, immediate parties, as between themselves, may vary its provisions by agreement. However, in the context of rights and duties after default, our legal system traditionally has looked with suspicion on agreements that limit the debtor’s rights and free the secured party of its duties. As stated in former Section 9-501, Comment 4, “no mortgage clause has ever been allowed to clog the equity of redemption.” The context of default offers great opportunity for overreaching. The suspicious attitudes of the courts have been grounded in common sense. This section, like former Section 9-501(3), codifies this long-standing and deeply rooted attitude. The specified rights of the debtor and duties of the secured party may not be waived or varied except as stated. Provisions that are not specified in this section are subject to the general rules in Section 1-102(3).
3. Nonwaivable Rights and Duties. This section revises former Section 9-501(3) by restricting the ability to waive or modify additional specified rights and duties: (i) duties under Section 9-207(b)(4)(C), which deals with the use and operation of consumer goods, (ii) the right to a response to a request for an accounting, concerning a list of collateral, or concerning a statement of account (Section 9-210), (iii) the duty to collect collateral in a commercially reasonable manner (Section 9-607), (iv) the implicit duty to refrain from a breach of the peace in taking possession of collateral under Section 9-609, (v) the duty to apply noncash proceeds of collection or disposition in a commercially reasonable manner (Sections 9-608 and 9-615), (vi) the right to a special method of calculating a surplus or deficiency in certain dispositions to a secured party, a person related to secured party, or a secondary obligor (Section 9-615), (vii) the duty to give an explanation of the calculation of a surplus or deficiency (Section 9-616), (viii) the right to limitations on the effectiveness of certain waivers (Section 9-624), and (ix) the right to hold a secured party liable for failure to comply with this Article (Sections 9-625 and 9-626).

For clarity and consistency, this Article uses the term “waive or vary” instead of “renounc[e] or modify[,” which appeared in former Section 9-504(3).

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

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

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

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

SECTION 9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT.

* * *

(c) [Purchase by secured party.] A secured party may purchase collateral:
(1) at a public disposition; or

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

Official Comment

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

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

* * *

SECTION 9-624. WAIVER.

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

(b) [Waiver of mandatory disposition.] A debtor may waive the right to require
disposition of collateral under Section 9-620(e) only by an agreement to that effect entered into
and authenticated after default.
(c) **[Waiver of redemption right.]** Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 9-623 only by an agreement to that effect entered into and authenticated after default.

**Official Comment**

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

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

**Reporter’s Note**

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

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

* * *

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

* * *

**Official Comment**

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

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SECTION 9-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL.

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Official Comment

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10. Other Law. Other State or federal law may contain requirements concerning notification of a disposition of property by a secured party. For example, federal law imposes notification requirements with respect to the enforcement of mortgages on federally documented vessels. Principles of statutory interpretation and, in the context of federal law, supremacy and preemption determine whether and to what extent law other than this Article supplements, displaces, or is displaced by this Article. See Sections 1-103(b), 1-104, 9-109(c)(1).

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

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

(A) describes the debtor and the secured party;

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

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and
(E) states the time and place of a public disposition or the time after which any
other disposition is to be made.

* * *

Official Comment

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

This section applies to a notification of a public disposition conducted electronically. A
notification of an electronic disposition satisfies paragraph (1)(E) if it states the time when the
disposition is scheduled to begin and states the electronic location. For example, under the
technology current in 2010, the Uniform Resource Locator (URL) or other Internet address
where the site of the public disposition can be accessed suffices as an electronic location.

Reporter’s Note

The additions to the comments to Sections 9-610 and 9-613 would illustrate how these
sections are to be applied to electronic dispositions.

SECTION 9-616. EXPLANATION OF CALCULATION OF SURPLUS OR
DEFICIENCY.

* * *
(b) **Explanation of calculation.** In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 9-615, the secured party shall:

(1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) within 14 days after receipt of a request; or

(2) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party’s right to a deficiency.

**Official Comment**

* * *

2. **Duty to Send Information Concerning Surplus or Deficiency.** * * *

A debtor or secondary obligor need not wait until the secured party commences written collection efforts in order to receive an explanation of how a deficiency or surplus was calculated. Subsection (b)(2)(b)(1)(B) obliges the secured party to send an explanation within 14 days after it receives a “request” (defined in subsection (a)(2)).

**Reporter’s Note**

This change would correct an erroneous cross-reference.
SECTION 9-621. NOTIFICATION OF PROPOSAL TO ACCEPT COLLATERAL.

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

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Official Comment

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

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

Reporter’s Note

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

* * *

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

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

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

* * *

Reporter’s Note

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

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

(a) [Initial financing statement in lieu of continuation statement.] The filing of an initial financing statement in the office specified in Section 9-501 continues the effectiveness of a financing statement filed before this [Act] takes effect if:
(1) the filing of an initial financing statement in that office would be effective to perfect a security interest under this [Act];

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

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

***

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

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

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

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

Official Comment

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

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

Reporter’s Note

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

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

Official Comment

* * *

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

Reporter’s Note

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

ARTICLE 11

EFFECTIVE DATE AND TRANSITION PROVISIONS

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

**Reporter’s Note**

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