

## Purchasing Leases and other Chattel Paper: Obtaining (and Preventing) Super-Priority

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9-102(a)(11)--- Expanded Scope of Chattel Paper to Include Software Leases, Disguised Security Interests (“dirty leases”), e.g. Conditional Sales Contracts and Loan Agreements covering specific goods and software used in the goods:  
Lessor or Secured Party is *licensor* of software  
Lessor or Secured Party is *sub-licensor* of software  
Lessor or Secured Party has no property rights in Software but is *financer* of Debtor’s acquisition of *licensee* rights

9-102(a)(31) &-Electronic Chattel Paper  
9-105

9-407

9-406(d)(e)---- Effectiveness of Anti-Assignment Terms in Chattel Paper\*

9-408(d) *Ineffective* to prevent creation, attachment, perfection or enforcement of security interests in *Leases*, (whether purchased or as collateral for loans), **except for:**  
transfer of lessee’s right of possession or use; and  
delegation of material performance by lessor or lessee. See Official Comments 3 and 4 to 2A-303.  
*Ineffective* to prevent creation, attachment, perfection or enforcement of *Conditional Sales Contracts* (whether purchased or as collateral for loans).  
*Ineffective* to prevent creation, attachment, perfection or enforcement of security interests in *Loan Agreements* that are collateral for loans.  
*Ineffective* to prevent creation, attachment, perfection or enforcement of security interests that are purchases of *Loan Agreements* **which are chattel paper**, i.e. not payment intangibles.  
[*Ineffective* to prevent creation, attachment or perfection of security interests that are purchases of *Loan Agreements* **which are not chattel paper** but are payment intangibles or evidenced by promissory notes (that are not part of chattel paper), **but may be effective** to prevent enforcement of such *Loan Agreements* by the purchaser.]

\*Except than anti-assignment terms in any of the above *may be effective* to

**the extent that the security interest is in non-embedded software.**

- 9-109----- Sales of Rights in Chattel Paper, Including Participation Interests  
Treated as sale of chattel paper that must be perfected; see  
Official Comment 5 to 9-109.
- 9-312(a)-----Perfection by Filing  
9-313(a)-----Perfection by Possession  
9-314(a) &
- 9-105-----Perfection by Control
- 9-330-----Super-Priority of Purchaser of Chattel Paper; Conditions and Obstacles  
Must be in ordinary course of purchaser's business, in good  
faith, for new value---and possession taken of tangible chattel  
paper or control obtained of electronic chattel paper, and:
- 9-330(a)-----If conflicting secured party's claim to chattel paper is "merely as  
proceeds of inventory subject to a security interest", e.g. "floor plan"  
financing and "does not indicate that it has been assigned to an  
identified assignee other than the purchaser", e.g. a legend on a  
Lease stating "Assigned to \_\_\_\_\_", then purchaser gets super-priority.  
But what if legend read "This Lease is subject to a security held by  
[conflicting secured party's name]." ?
- 9-330(b)-----If conflicting secured party's claim to chattel paper is "other than  
merely as proceeds of inventory subject to a security interest", e.g.  
a commercial financing revolving credit agreement, and if purchaser is  
"without knowledge that the purchase violates the rights of the  
[conflicting] secured party", then purchaser gets super-priority. A legend  
that "indicates that it has been assigned to an identified assignee other  
than the purchaser" constitutes such knowledge. 9-330(f).
- 9-330(e)-----If chattel paper purchaser had a PMSI in the inventory covered by  
the chattel paper and sets off against its chattel paper purchase price  
the amount due on the inventory financing, it, nevertheless, gives "new  
value" for purposes of 9-330.
- 9-331-----"Emasculating" Super-Priority with Collections by Holder in Due Course
- 9-327 &  
9-332-----Deposits of Collections in Deposit Account and Payments therefrom

**References:** Donald J. Rapson, 'Receivables' Financing Under Revised Article 9, 73  
Am. Bankr. L. J. 133 (1999), updated version printed in 55 The Secured Lender 8  
(Sept/Oct. 1999); and Robert W. Ihne, Chattel Paper Financing and Revised Article 9:  
What's New and What's Not, 2 UCC L.J. 371 (2000)

