

A SUMMARY OF THE PROVISIONS OF REVISED UCC ARTICLE 9

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By January 1, 2002, the revision to Article 9 of the Uniform Commercial Code (the “UCC”) became effective in all states and the District of Columbia, completing a study, drafting and enactment process that took over a decade. This paper will summarize the provisions of revised Article 9 as contained in the 2003 Official Text of the UCC. The 2003 Official Text includes the 2002 revision of Article 1 of the UCC and the 2003 revision of Article 7 of the UCC, with conforming amendments to Article 9. Unless otherwise indicated, references in this paper to “*Article 9*” or to sections of Article 9 are to the revised Article 9 or to sections of the revised Article 9. References in this paper to “*former Article 9*” are to Article 9 as contained in the 1995 Official Text of the UCC, and references to “*former Article 1*” are to Article 1 as contained in the 2001 Official Text of the UCC.

This paper will first discuss in Part I the scope of Article 9. It will then discuss in Part II collateral categories under Article 9, in Part III the concept of attachment of a security interest, in Part IV methods of perfection of a security interest, in Part V issues of priority among competing security interests and other interests in the collateral, in Part VI the impact of Article 9 on certain third party rights, in Part VII a description of certain duties imposed by Article 9 on secured parties, in Part VIII the rules for choice of law, in Part IX actions that may need to be taken by secured parties in respect of post-closing changes affecting the debtor, and in Part X the rules for enforcement of security interests. This paper will conclude in Part XI with a comment on Article 9’s definition of “good faith”. The last part of this paper, Part XII, discusses transition issues for transactions completed under former Article 9 or other law before Article 9’s effective date.

I. SCOPE OF ARTICLE 9

Article 9 is entitled “Secured Transactions.” It generally applies to any interest (regardless of its form) created by contract in personal property and fixtures and which secures payment or other performance of an obligation. §9-109(a)(1). That interest is referred

to as a security interest (see §1-201(35) defining “security interest”), and the property subject to the security interest is referred to as collateral (see §9-102(a)(12) defining “collateral”). Article 9 also generally applies to sales of accounts, chattel paper, promissory notes and payment intangibles (the definitions for these terms being discussed below). §9-109(a)(3). Moreover, Article 9 includes agricultural liens (see §9-102(a)(5) defining “agricultural lien”) and all consignments (see §9-102(a)(20) defining “consignment”), even true consignments, within its scope. §§9-109(a)(2) and (4).

Parties.

Debtor and Obligor. Article 9 refers to the debtor as the person who has a property interest in the collateral other than a security interest or other lien. §9-102(a)(28)(A). The term "debtor" also includes a seller of accounts, chattel paper, promissory notes or payment intangibles (§9-102(a)(28)(B)), a person who has a property interest in collateral subject to an agricultural lien (§9-102(a)(28)(A); see §9-102(a)(5) defining “agricultural lien”), and a consignee (§9-102(a)(28)(C); see §9-102(a)(20) defining “consignment”). Article 9 refers to the person who owes the secured obligation as the obligor. §9-102(a)(59).

Secured Party. The person in whose favor a security interest is granted is referred to in Article 9 as the secured party. §9-102(a)(72)(A). The term "secured party" also includes a buyer of accounts, chattel paper, promissory notes or payment intangibles (§9-102(a)(72)(D)), the person who holds an agricultural lien (§9-102(a)(72)(B)) and a consignor (§9-102(a)(72)(C)). A secured party may be a “representative” for holders of secured obligations, such as an indenture trustee or collateral agent, where the security interest is granted to the secured party as representative. §9-102(a)(72)(E); see *Official Comment 3.b to §9-102*.

Form of Transaction is Irrelevant. The form of the transaction or the label which the parties put on the transaction is irrelevant for purposes of determining whether Article 9 applies. Rather, the determination as to whether Article 9 applies is based on the economic reality of the transaction. For example, a transaction may be characterized by the parties as a sale or a lease of goods, but, if in economic reality a security interest is being created, Article 9 will nevertheless apply. §§1-201(35) and 9-109(a)(1). It is also not required that the parties refer in their documents to a "security interest" being created under a "security agreement." Even if the parties use other terms, such as

"assignment," "hypothecation," "conditional sale," "trust deed" or the like, Article 9 still applies whenever a security interest in personal property is being created. §9-109(a)(1) (“regardless of its form”). Similarly, it is generally irrelevant, for purposes of Article 9, whether title to the collateral is in the name of the debtor or the secured party. §9-202.

Exclusions.

Generally. Although Article 9 covers most security interests in personal property and fixtures, certain interests in personal property collateral are outside of the scope of Article 9. These interests include common law bailments and true leases, the latter being governed by UCC Article 2A.

Specific Exclusions. In §§9-109(c) and (d), Article 9 expressly excludes certain transactions and types of personal property collateral from Article 9's scope. These specific exclusions encompass transactions preempted by federal law, landlords' liens, and certain of the following transactions or liens: statutory and common law liens, wage claims, security interests created by governments and governmental subdivisions and agencies, sales of accounts and chattel paper, insurance claims, judgment claims, rights of set-off, real estate interests, tort claims, and deposit accounts. The extent of some of these specific exclusions is further discussed below:

- *Non-Possessory Liens other than Agricultural Liens.* Article 9 excludes from its scope landlords' liens and, generally, other nonpossessory liens arising by statute or common law. But agricultural liens are included within Article 9's scope. “Agricultural liens” are generally nonpossessory statutory liens on a debtor's farm products in favor of a landlord or supplier of goods or services to the debtor in connection with the debtor's farming operations. §§9-102(a)(5)(defining “agricultural lien”), 9-109(a)(2) and 9-109(d)(2).
- *Security Interest Granted by a State, Foreign Government or State or Foreign Governmental Unit under Another Statute.* A security interest created by a state government, foreign government or state or foreign governmental unit is not included within Article 9's scope to the extent that another state or foreign governmental statute governs security interests created by that state government, foreign government or state or foreign governmental unit. §§9-109(c)(2) and (3); see also §§9-

102(a)(45)(defining “governmental unit”) and (76)(defining “State”).

- *Certain Sales of Accounts, Chattel Paper, Promissory Notes and Payment Intangibles.* There are limited exclusions from Article 9’s scope for sales of accounts, chattel paper, promissory notes and payment intangibles arising out of the sale of the business out of which they arose. This is also true for assignments of accounts, chattel paper, promissory notes and payment intangibles for collection only. Similarly, there are limited exclusions for an assignment of a right to payment under a contract to an assignee that is obligated to perform under the contract, and an assignment of a single account, promissory note or payment intangible in full or partial satisfaction of pre-existing indebtedness. §§9-109(d)(4), (5), (6) and (7).
- *Insurance Claims other than Health-Care-Insurance Receivables.* While Article 9 generally excludes assignments of insurance claims as original collateral, Article 9 does include within its scope assignments of insurance claims, as original collateral, relating to the provision of health-care goods and services. §§9-102(a)(46)(defining “health-care-insurance receivable”) and 9-109(d)(8). Assignments of insurance claims may also be within Article 9’s scope if they are proceeds of Article 9 collateral. See §§9-102(a)(64)(E), 9-315 and 9-312 and discussion of “Claimants as to Proceeds” under “Priority” below.
- *Tort Claims other than Commercial Tort Claims.* Article 9 includes within its scope commercial tort claims. §§9-102(a)(13)(defining “commercial tort claim”) and 9-109(d)(12). Other tort claims, such as tort claims by an individual arising out of personal injury, are excluded.
- *Consumer Deposit Accounts.* Assignments of deposit accounts in *commercial* transactions are included within the scope of Article 9. Assignments of deposit accounts in consumer transactions are excluded. §§9-102(a)(26)(defining “consumer transaction”), 9-102(a)(29)(defining “deposit account”) and 9-109(d)(13).
- *Real Estate Interests.* Article 9 does not generally apply to security interests in real estate interests as such, including rents under real estate leases. §9-109(d)(11). Even so, Article 9 does apply to transactions affected by real estate in a number of circumstances:

- If the secured party is granted a security interest in a promissory note (*see “Article 9 Collateral Categories” below*) or other right to payment within the scope of Article 9, secured by a real estate mortgage or other real estate interest, Article 9 applies to the promissory note or other right to payment. §9-109(d)(11)(A); *see §§9-203(g) and 9-308(e) and Comment 6 to UCC § 9-308.*
- If the debtor has an interest in a contract relating to real estate, such as a purchase and sale agreement, option agreement or the like, the debtor’s rights to payment under the contract are likely to be considered accounts under Article 9 rather than real estate interests excluded from the scope of Article 9. *See §9-102(a)(2)(defining “accounts” to include rights to payment arising from real property sold or otherwise disposed of).*
- If a secured party is taking a security interest in goods which are or are to become fixtures, both Article 9 and real estate law may apply to the fixtures. *See “Article 9 Collateral Categories” and discussion of “Fixtures” under “Priority” below.*
- Article 9 addresses the priority conflict between a secured party claiming a security interest in fixtures, crops or a manufactured home (*see §9-102(a)(53) defining “manufactured home”*) and the interest of an owner or a mortgagee or other encumbrancer claiming an interest in that collateral under real estate law. *See discussion of “Priority” below.*

Effect of Exclusion. Of course, even though a type of assignment or a type of property may be excluded from Article 9’s scope, it is still often possible for a secured party to obtain a security interest in that type of property under other federal or state statutes or under common law.

II. ARTICLE 9 COLLATERAL CATEGORIES

Article 9 categorizes collateral into different types, primarily based upon the debtor’s use of the collateral. It is important for the secured party to determine the type of collateral in which the secured party is taking a security interest, since that determination will in turn guide the

secured party in, among other things, deciding how to perfect the security interest. Collateral types under Article 9 may be discussed broadly as comprising personal property consisting of goods, investment property, semi-intangible property, and other intangible property.

Goods. “Goods” are all things which are movable at the time the security interest attaches and include fixtures. §9-102(a)(44). But goods do not include money, documents, instruments, investment property, accounts, chattel paper, general intangibles or minerals before extraction. Nor do goods include deposit accounts or letter-of-credit rights (discussed below). Software embedded in goods is considered as part of the goods if the software is customarily viewed as a part of the goods (e.g., the computer chip in the automatic brakes on an automobile) or if, by becoming the owner of the goods, a person acquires a right to use the software with the goods. Goods themselves are divided into four subcategories: consumer goods, inventory, farm products and equipment.

Consumer Goods. “Consumer goods” are goods used or bought for use primarily for personal, family or household purposes. §9-102(a)(23).

Inventory. “Inventory” consists of goods, other than farm products, held by a person for sale or lease, or consisting of raw materials, work in process, or materials consumed in business. §9-102(a)(48).

Farm Products. “Farm products” are crops, livestock or other supplies produced or used in farming operations. Farm products include products of crops or livestock in their unmanufactured state. For the goods to be farm products, the debtor must be engaged in a farming operation with respect to the goods. §9-102(a)(34). A farming operation includes aquatic farming operations, and farm products include aquatic goods produced in aquacultural operations. §9-102(a)(35); see also §9-102(a)(34).

Equipment. “Equipment” is a residual subcategory of goods. It consists of goods which are not consumer goods, inventory or farm products. §9-102(a)(33).

Investment Property. “Investment property” comprises certificated and uncertificated securities, securities accounts and security entitlements, all of which are defined in UCC Article 8. §9-102(a)(49); see §§8-102(a)(15)(defining “security”), 8-501(a)(defining “securities account”) and 8-102(a)(17)(defining “security entitlement”). Investment property also

includes commodity contracts (§9-102(a)(15)) and commodity accounts (§9-102(a)(14)). See §9-102(a)(49).

Semi-intangibles. There are certain movables which are conventional tangible embodiments of intangible rights of the debtor. These are defined in Article 9 as instruments, chattel paper, documents and letter-of-credit rights.

Instrument. An “instrument” is a negotiable instrument governed by UCC Article 3 or another writing evidencing a right to the payment of money which, in the ordinary course of business, is transferred by delivery with any necessary indorsement or assignment. However, a negotiable instrument or other writing will not qualify as an instrument if it is security agreement or lease or is included in the definition of investment property. §9-102(a)(47). An “instrument” does not include a credit card slip. §9-102(a)(47)(iii). Within the category of instrument, Article 9 provides a subcategory of promissory note.

Promissory Note. A “promissory note” is an instrument evidencing a promise to pay (rather than an order to pay, such as a check). The term “promissory note” does not, however, include an instrument, such as a certificate of deposit, containing an acknowledgement of receipt of funds by a bank. §9-102(a)(65).

Chattel Paper. “Chattel paper” refers to any writing or writings or other records which evidence both a monetary obligation and a security interest in or a lease of specific goods. §§9-102(a)(11) and 9-102(a)(69)(defining “record”). But a charter for the lease or hire of a vessel is not chattel paper. §9-102(a)(11). If the chattel paper writings or other records also include a monetary obligation secured by a security interest in or lease or license of software used in the chattel paper specific goods, those writings or other records relating to the software are included in the chattel paper relating to the goods. Article 9 further divides chattel paper into two subcategories: tangible chattel paper and electronic chattel paper.

Tangible Chattel Paper. If the chattel paper is evidenced by a record consisting of information inscribed on a tangible medium, such as a writing, then the chattel paper is “tangible chattel paper.” §9-102(a)(78).

Electronic Chattel Paper. If the chattel paper is evidenced by records stored in an electronic medium, the chattel paper is “electronic chattel paper.” §9-102(a)(31).

Document. A “document” is a document of title, such as a bill of lading or warehouse receipt. §§9-102(a)(30) and 1-201(b)(16). Article 1 provides for two subcategories of documents: tangible documents and electronic documents. This distinction is relevant for purposes of Article 9.

Tangible Document. If the document is evidenced by a record consisting of information inscribed on a tangible medium, such as a writing, then the document is a “tangible document.” §1-201(b)(16)(last sentence).

Electronic Document. If the document is evidenced by a record stored in an electronic medium, the document is an “electronic document.” §1-201(a)(16)(penultimate sentence).

Letter-of-Credit Right. A “letter-of-credit right” is a right to payment or performance under a letter of credit, whether the letter of credit is written or is evidenced electronically. The term does not include the debtor’s drawing rights as beneficiary under the letter of credit. §9-102(a)(51).

Other Intangibles. Under Article 9 pure intangibles that are not investment property are accounts, deposit accounts, commercial tort claims or general intangibles.

Accounts. An “account” is any right to payment, whether or not it has been earned by performance, for goods or other property sold or leased or for services rendered and which is not evidenced by an instrument or chattel paper. A charter for the lease or hire of a vessel is an account. The term also includes a right to payment, whether not earned by performance, for real property sold, intellectual property licensed, the incurrence of a suretyship obligation, a policy of insurance, use of a credit card, and government sponsored or licensed lottery winnings. In addition, a health-care-insurance receivable is a subcategory of account. §9-102(a)(2).

Health-Care-Insurance Receivable. A “health-care-insurance receivable” is an interest in or claim under a policy of insurance which is a right to payment of a monetary

obligation for health-care goods or services provided. §9-102(a)(46). See also §9-102(a)(2).

Deposit Account. A “deposit account” is a demand, time savings, passbook or similar account maintained with a bank (§9-102(a)(8)(defining “bank”)), but does not include investment property or an account evidenced by an instrument. §9-102(a)(29). Accordingly, a deposit account would include an uncertificated certificate of deposit, where there is no separate writing evidencing the bank’s obligation to pay, as well as a nonnegotiable certificate of deposit, if the certificate does not qualify as an instrument. See *Official Comment 12 to §9-102*.

Commercial Tort Claim. A “commercial tort claim” is a claim of an organization (see §1-201(25) defining “organization”) arising in tort. It is also a claim of an individual arising in tort if the claim arises out of the individual’s business and does not include damages for death or personal injury. §9-102(a)(13)(B). However, if a commercial tort claim is contractually settled, it may cease to be a claim arising in tort and may become a payment intangible as described below. See *Official Comment 15 to §9-109*.

General Intangibles. “General intangibles” is a residual category for intangible property. The term comprises any personal property other than goods, accounts, chattel paper, documents, instruments, investment property, letter-of-credit rights, commercial tort claims, deposit accounts and money. §9-102(a)(42). Within the category of general intangibles are two special subcategories: payment intangibles and software.

Payment Intangible. A “payment intangible” is a general intangible under which the principal obligation of the account debtor (see §9-102(a)(3) defining “account debtor”) is to pay money, such as in the case of a loan not evidenced by an instrument or chattel paper. §9-102(a)(61).

Software. “Software” is a computer program and includes related supporting information. However, software embedded in goods and customarily viewed as a part of the goods is considered as part of the goods and not as software. §9-102(a)(75).

Other Terms relating to Article 9 Types of Collateral. Certain other terms are important to know as they relate to Article 9 types of collateral:

As-extracted Collateral. “As-extracted collateral” are oil, gas or other minerals that are subject to a security interest that is created by a debtor having an interest in the minerals before extraction and that attaches to the minerals as extracted. It also includes accounts arising out of the sale at the wellhead or minehead of oil, gas or minerals in which the debtor had an interest before extraction. §9-102(a)(6).

Fixtures. “Fixtures” are goods that have become so related to particular property that an interest in them arises under real property law. §9-102(a)(41).

Supporting Obligation. A “supporting obligation” is a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument or investment property. §9-102(a)(77). Suretyship law, as explained by the Restatement (3d), Suretyship and Guaranty § 1 (1996), determines whether an obligation is secondary. *See Official Comment 2.a to §9-102.* The most typical secondary obligation is a guaranty by one party of the obligations to be performed by another.

III. ATTACHMENT

Article 9 uses the term attachment to describe the moment at which a security interest becomes enforceable against the debtor. §9-203(a). For a security interest to attach, a number of events must have occurred: (1) value must have been given; (2) the debtor must have rights in the collateral; and (3) either (i) the collateral must be in possession of the secured party by agreement of the debtor or, if the collateral is investment property, a deposit account, electronic chattel paper or a letter-of-credit right, the secured party must have “control” of the collateral; or (ii) the debtor must have authenticated a security agreement that contains a description of the collateral. §9-203(b). A security agreement is the agreement under which a security interest is granted or provided for. §9-102(a)(73). The following discussion provides a fuller description of these elements of attachment.

Value. In general, value is given for any consideration sufficient to support a simple contract. Some examples of value include a loan of money, a binding commitment to lend money, the issuance of a guarantee or acting as an accommodation party. Value also includes whole or partial satisfaction of a pre-existing claim. §1-204.

Rights in the Collateral. As a general matter, the debtor can only grant a security interest in whatever ownership or other rights it has. Similarly, the secured party can generally enjoy no greater rights in the collateral than the debtor itself holds unless the UCC provides otherwise. §9-203(b); see *Official Comment 6 to §9-203*. Note, however, that a mere power of the debtor to transfer collateral is sufficient to satisfy the “rights in the collateral” requirement. §9-203(b)(2). Thus, a seller of accounts may have the power to transfer, yet again, rights in the sold accounts where the interest of the buyer in the accounts is unperfected, and a consignee may have the power to transfer rights in consigned goods where the consignor’s interest in the consigned goods is unperfected. §§9-318 and 9-319.

Possession of or Control by the Secured Party or Security Agreement. The secured party must either possess the collateral, or, in case of investment property, a deposit account, electronic chattel paper, an electronic document or a letter-of-credit right, the secured party must have “control” of the collateral; or the debtor must have authenticated a security agreement describing the collateral. §9-203. The description of the collateral in the security agreement must be sufficient reasonably to identify the collateral. §9-108. These requirements are further discussed below.

Possession. A secured party may satisfy the possession requirement by using a third party who possesses the collateral, if the collateral is in possession of the third party by agreement of the debtor and the third party acknowledges in a signed writing or other authenticated (see §9-102(a)(7) defining “authenticate”) record (see §9-102(a)(69) defining “record”) that it holds for the secured party’s benefit. §§9-203(b)(3)(B) and 9-313(c)(1). If the collateral is a certificated security in registered form, there needs to be delivery to the secured party under §8-301. §9-203(b)(3)(C).

Control. The concept of “control” applies to investment property, deposit accounts, electronic chattel paper, electronic documents and letter-of-credit rights. §9-203(b)(3)(D). The requirements for control are further discussed below under “Perfection.”

Security Agreement. A security agreement must be “authenticated” by the debtor. §9-203(b)(3)(A). The term authenticated includes a normal signature on a written document but it also encompasses an electronic transmission. §9-102(a)(7).

Reasonable Identification of the Collateral. The security agreement must reasonably identify the collateral. §§9-108(a) and 9-203(b)(3)(A). The concept of reasonable identification is a flexible one, permitting identification in a variety of ways: a specific listing, a reference to a category, collateral type or quantity, or use of a computational formula. However, an “all asset” description in a security agreement is insufficient. §9-108(c). And a description by collateral type alone is insufficient if the collateral is a commercial tort claim or, in a consumer transaction, if the collateral is consumer goods, a security entitlement, a securities account or a commodity account. §9-108(e). If the collateral is timber to be cut, a real estate description in the security agreement is required. §9-203(b)(3)(A).

After-acquired Property. Article 9 permits a security agreement to contain an after-acquired property clause. §9-204(a). But the secured party generally may not obtain a security interest in after-acquired consumer goods as original collateral unless the debtor acquires rights in the consumer goods within 10 days after the secured party gives value. §9-204(b)(1). Moreover, a security interest in a commercial tort claim will attach only to a tort claim existing at the time that the security agreement is signed or otherwise authenticated. The security interest will not attach as original collateral to an *after-acquired* commercial tort claim. §9-204(b)(2).

Future Advances and Cross-Collateralization. A security interest under Article 9 may secure future advances and provide for cross-collateralization of various obligations. §9-204(c). Official Comment 5 to §9-204 expressly rejects the holdings of cases under former Article 9 which require that future advances be of the same type or otherwise related to the original advance for the future advances to be secured by the collateral securing the original advance.

Agricultural Liens. The concept of attachment is not applicable to an agricultural lien. Article 9 merely refers to the agricultural lien becoming “effective” under the statute giving rise to it. §9-308(b).

IV. PERFECTION

An attached security interest which will prevail over a creditor using judicial process to obtain a lien on the collateral, including a trustee in bankruptcy having the status of a lien creditor under §544(a) of the Bankruptcy Code on the commencement of the debtor’s bankruptcy, is a perfected security interest under Article 9. But it should be emphasized

that only an attached security interest can become a perfected security interest. §9-308(a). There are three primary ways in which an attached security interest may be perfected. First, the secured party may file a properly completed financing statement (*see* §9-102(a)(39) *defining* “*financing statement*”) in the appropriate filing office (*see* §9-102(a)(37) *defining* “*filing office*”). Second, the secured party may take possession of the collateral or, in the case of investment property, a deposit account, electronic chattel paper or a letter-of-credit right, may obtain control of the collateral. Third, in a few cases, the security interest may be perfected automatically upon attachment. Depending upon the category of collateral, there may be only one method of perfection or several.

Perfection by Filing. Generally, most types of security interests either may or must be perfected by filing a properly completed financing statement in the appropriate filing office. §9-310(a).

Contents of Financing Statement. A financing statement, to be sufficient, must provide the debtor’s name (the legal name; *see* §9-503) and the name of the secured party or its representative and indicate the collateral covered by the financing statement. §9-502(a). Where the collateral is timber to be cut, as-extracted collateral or fixtures (in the case of a fixture filing), additional information is required for the financing statement to be sufficient. §§9-502(b) and (c). Moreover, while an “all-asset” collateral description is insufficient in a security agreement, it is sufficient in a financing statement. §9-504(2). A financing statement may still be effective even though it contains errors, so long as the errors are minor and are not seriously misleading. §9-506(a). A debtor’s name on a financing statement that varies from the debtor’s legal name is not seriously misleading if a search of the records of the filing office under the debtor’s legal name would disclose the financing statement. §9-506(c).

Authorization by the Debtor. In order to accommodate electronic filing, there is no requirement in Article 9 that a financing statement be signed by the debtor. But the secured party may not file a financing statement against the debtor unless the filing is authorized by the debtor. §9-509(a)(1). That authorization is automatic in the case of a filing describing the collateral no more broadly than the collateral description contained in a security agreement authenticated by the debtor. §9-509(b). However, a secured party will need an authorization authenticated by the debtor to pre-file a financing statement in advance of a security agreement being authenticated by the debtor, or to file a financing statement with a collateral description broader than that contained

in the debtor's authenticated security agreement. A secured party that files a financing statement without the debtor's authorization may be liable to the debtor for actual or statutory damages. See §§9-625(b) and (e)(3).

Office in Which Filing Should be Made. Article 9 contains choice of law rules to determine in which jurisdiction a filing must be made. These choice of law rules are discussed in further detail below. Once the jurisdiction in which the filing must be made is determined, the financing statement must be filed in the central filing office in that jurisdiction, typically the Secretary of State's office. However, rather than a filing in the central filing office, a local filing in the applicable real estate recording office is required for as-extracted collateral, timber to be cut or a fixture filing. §9-501.

What Constitutes Filing. Communication (see §9-102(a)(18) defining "communicate") of the financing statement to the filing office, together with payment of the correct filing fee, constitutes filing. §9-516(a). Article 9 sets forth reasons for which a filing office may refuse to accept a financing statement for filing, thereby rendering the filing ineffective even if it is otherwise sufficient. These reasons include the communication of the financing statement by a means not authorized by the filing office and the failure to tender a payment at least equal to the filing fee. They also include the failure to provide in the financing statement other information, such as the debtor's mailing address, whether the debtor is an individual or an organization (see §1-201(25) defining "organization"), and, if the debtor is an organization, the debtor's type and jurisdiction of organization and the debtor's state organizational identification number or a statement that the debtor has none. §9-516(b); see especially §9-516(b)(5). The reasons set forth in §9-516(b) are the only grounds for filing office rejection. §9-520(a). If there are such grounds for the filing office to reject the filing but the filing office nevertheless accepts the filing, the filing is still effective so long as the financing statement meets the requirements for sufficiency of the financing statement under §9-502.

How Filings are Indexed. Filings are to be indexed in the name of the debtor so as to be capable of being found by subsequent searchers. §§9-519(c)(1) and (f)(1). Once an initial filing is made, any amendment, including an assignment, continuation statement or termination statement, relating to the initial filing must be

placed on the records of the filing office in such a way as to be linked to the initial filing. §§9-519(c)(1) and (f)(2). Moreover, the filing office may not delete its records pertaining to any financing statement until at least one year after the financing statement has lapsed. §9-522(a).

Lapse; Continuation; Termination. Filings generally expire after five years and must be continued, within six months prior to the end of the five-year period, by the filing of a continuation statement. §9-515. Article 9 does permit an initial financing statement filed in connection with a public-finance transaction (see §9-102(a)(67) defining “public-finance transaction”) or a manufactured-home transaction (see §9-102(a)(54) defining “manufactured-home transaction”) to have a 30-year duration. §9-515(b). And a financing statement that indicates that the debtor is a transmitting utility (see §9-102(a)(80) defining “transmitting utility”) has a duration that lapses only on the filing of a termination statement relating to that financing statement. §9-515(f). If a financing statement lapses, the security interest perfected by the filing becomes unperfected and is deemed never to have been perfected as against a purchaser (but not a lien creditor). §9-515(c). When the secured obligations have been satisfied and the secured party has no further obligation to extend credit, the secured party is obligated to file a termination statement or, in a commercial transaction, to provide to the debtor a termination statement. §9-513. The debtor is permitted to file a termination statement if the secured party was required to file or provide the termination statement and has failed to do so. §9-509(d)(2). The termination statement filed by the debtor must indicate on it that the debtor authorized the filing of the termination statement. §9-509(d)(2). In addition, a secured party that fails to file or provide a termination statement when required to do so may be liable to the debtor for actual or statutory damages. §§9-625(b) and (e)(4).

“Bogus” Filings. Article 9 permits a debtor, who believes that a filing record concerning the debtor is inaccurate or has been wrongfully filed, to file a corrective statement setting forth the basis of the debtor’s belief that the record is inaccurate or has been wrongfully filed. The corrective statement becomes part of the filing record but does not impair the effectiveness of an initial financing statement or other filed record. §9-518. Article 9 leaves to other law the availability of civil remedies, or the imposition of criminal penalties, against those who misuse the filing system.

Other Provisions. Additional details concerning financing statements and the UCC filing system are contained in part 5 of Article 9.

Perfection by Possession. Certain types of collateral may or must be perfected by possession.

Money. A secured party's security interest in money (*see* §1-201(24) defining “money”) must be perfected by possession by the secured party. §9-312(b)(3).

Instruments. A secured party may perfect a security interest in an instrument by either filing or possession. §§9-312(a) and 9-313(a).

Certificated Securities. A security interest in a certificated security may be perfected by filing, possession or control. §§9-312(a), 9-313(a) and 9-314(a). A secured party's perfection of a security interest in a certificated security by possession is accomplished by the secured party taking delivery of the certificated security under §8-301. §9-313(a). Delivery generally means that the secured party obtains possession of the security certificate even if a necessary indorsement is lacking. *See* §8-301.

Tangible Chattel Paper. As an alternative to perfection by filing, a security interest in tangible chattel paper may be perfected by the secured party taking possession of the tangible chattel paper. §§9-312(a) and 9-313(a).

Tangible Documents. As an alternative to perfection by filing, a security interest in a tangible negotiable document may be perfected by the secured party taking possession of the tangible negotiable document. §§9-312(a) and 9-313(a).

Goods. A security interest in goods may be perfected by filing or by the secured party's taking possession of the goods. §§9-310(a), 9-312(a) and 9-313(a).

Possession by Third Parties. Where the secured party wishes to perfect a security interest in collateral by possession but the collateral is in the possession of a third party “bailee,” Article 9 requires the third party in possession of collateral, other than goods covered by a document of title, to authenticate a record acknowledging that it is holding the collateral for the secured party.

§9-313(c)(1); cf. §§8-106(a) and (b) and §8-301(a)(2) for certificated securities. For perfection by such possession and authentication to be effective, the third party may not be the debtor or a lessee in the ordinary course from the debtor. §9-313(c). A secured party in possession of collateral does not relinquish possession if the secured party delivers the collateral to a possible purchaser of the collateral (other than the debtor or an ordinary course lessee of the collateral) for inspection and return. §9-313(h).

Perfection by Control. The concept of control applies to perfection of a security interest in investment property, deposit accounts, electronic chattel paper, electronic documents and letter-of-credit rights. §§9-106, 9-104, 9-105, 9-107 and 9-314(a).

Investment Property. A security interest in investment property may be perfected by control as well as by filing. §§9-312(a) and 9-314(a). The concept of control is the same under Article 9 as it is under UCC Article 8 and includes delivery, with indorsements, of certificated securities to the secured party, an agreement by the issuer of uncertificated securities that the issuer will honor instructions from the secured party without further consent of the debtor, and an agreement by a bank, broker or other securities intermediary holding a securities account, or by a commodity intermediary, that it will honor instructions from the secured party without further consent of the debtor. Control also includes registering the securities, the securities account or the commodity account in the name of the secured party. Where the secured party is the debtor's securities intermediary or commodity intermediary, the securities intermediary or commodity intermediary automatically has control. §§8-106 and 9-106.

Deposit Accounts. A security interest in a deposit account as original collateral may be perfected *only* by the secured party obtaining control over the deposit account. §§9-312(b)(1) and 9-314(a). A secured party obtains control over a deposit account if it is the depository bank or if the deposit account is in the secured party's name. A secured party also has control if the depository bank enters into an agreement with the secured party that the depository bank will comply with instructions from the secured party as to the funds in the deposit account, without further consent from the debtor. §9-104(a).

Electronic Chattel Paper. A security interest in electronic chattel paper may be perfected by control or by filing. §§9-312(a)

and 9-314(a). A secured party obtains control over electronic chattel paper if there is only one authoritative or identifiable copy of the electronic record of the chattel paper, the copy of the record identifies the secured party and its interest, the copy is communicated to and maintained by the secured party or its designated custodian, the copy is readily identifiable as the authoritative copy and any revision of the authoritative copy is readily identifiable as authorized or unauthorized. §9-105.

Electronic Documents. A security interest in an electronic document may be perfected by control or, if the electronic document is negotiable, by filing. §§9-312(a) and 9-314(a). A secured party obtains control over electronic document if a system employed for evidencing the transfer of interests in the electronic document establishes that person as the person to which the electronic document was issued or transferred. §§ 9-102(b) and 7-106(a). That criteria is satisfied if there is only one authoritative or identifiable copy of the electronic record of the document, the copy of the record identifies the secured party and its interest, the copy is communicated to and maintained by the secured party or its designated custodian, the copy is readily identifiable as the authoritative copy and any revision of the authoritative copy is readily identifiable as authorized or unauthorized. §§ 9-102(b) and 7-106(b).

Letter-of-Credit Rights. A security interest in a letter-of-credit right may be perfected by the secured party obtaining control over the letter-of-credit right. Control is the sole method of perfection of a security interest in a letter-of-credit right unless the security interest in the letter-of-credit right is perfected as a supporting obligation. §§9-312(b)(2) and 9-314(a). A secured party has control over a letter-of-credit right if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under §5-114(c) or other applicable law. §9-107.

Automatic Perfection. In some situations, no additional steps beyond attachment are necessary to perfect a security interest.

Generally. The following security interests under §9-309 are automatically perfected upon attachment: a purchase-money security interest in consumer goods, a sale of promissory notes or payment intangibles, an assignment of accounts or payment intangibles which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the

outstanding accounts or payment intangibles of the assignor, a security interest arising under UCC Article 2, 2A or 4 or by delivery of a financial asset under 9-206(c), a security interest in investment property created by a securities intermediary or commodity intermediary, an assignment of a health-care-insurance receivable to the health-care provider, a security interest in favor of an issuer or nominated person in documents presented to the issuer or nominated person for draw under a letter of credit (*see* §5-118), an assignment for the benefit of creditors, a security interest created by an assignment of a beneficial interest in a decedent's estate and a sale by an individual of an account that is a right to payment of lottery winnings.

Supporting Obligations. In addition, Article 9 provides for automatic attachment of a security interest in a supporting obligation if the security interest in the supported collateral has attached and for automatic perfection of a security interest in a supporting obligation if the security interest in the supported collateral is perfected. §§9-203(f) and 9-308(d).

Temporary Automatic Perfection. A security interest in instruments, certificated securities and negotiable documents is temporarily perfected for a period of 20 days to the extent that it arises for new value given under an authenticated security agreement. §9-312(e). A security interest in proceeds is temporarily perfected for a period of 20 days, §9-315(d); *see discussion below of "Claimants as to Proceeds" under "Priority."*

Other Methods of Perfection. Federal and state statutes may, of course, provide for methods of perfection of security interests in vessels, aircraft, intellectual property and titled goods (such as motor vehicles that are not inventory of a dealer). Compliance with these methods of perfection constitutes the equivalent of perfection by filing under Article 9. §9-311(b). A security interest in titled goods that are inventory held for sale or lease by a person in the business of selling goods of that kind is perfected by filing, rather than by notation of the secured party's security interest on the certificates of title. §9-311(d). A security interest in goods covered by a nonnegotiable document may be perfected by filing as to the goods, by issuance of the document in the name of the secured party or by notification to the bailee of the secured party's interest. §9-312(d).

V. PRIORITY

Even though a security interest has attached and become perfected, it may not prevail over other creditors and other interested parties. The

ranking of various interests in the same collateral among the secured party and other claimants raises the question of whether a secured party's security interest has priority over the interests of these other parties.

General Creditors. A secured party will prevail over unsecured creditors with respect to collateral in which the secured party has a perfected security interest. §§9-201(a) and 9-317(a). Even if the secured party fails to perfect its security interest, the secured party will still prevail over unsecured creditors with respect to collateral in which the secured party has an unperfected security interest, at least outside of the debtor's bankruptcy. §9-201(a).

Lien Creditors.

Definition. A lien creditor is a creditor who has acquired a lien on the debtor's property by judicial process and includes a trustee in bankruptcy. §9-102(a)(52).

Secured Party vs. Lien Creditor Generally. A perfected secured party will prevail over a lien creditor holding a lien on the secured party's collateral so long as the secured party's security interest in the collateral is perfected at or before the time when the lien arises. §9-317(a)(2)(A). Even if the security interest is not perfected, the secured party will prevail over the lien creditor so long as, before the lien arises, the secured party has filed a financing statement covering the collateral and, as set forth in §9-203(b)(3), the debtor has authenticated a security agreement describing the collateral or the secured party has possession or control of the collateral. §9-317(a)(2)(B).

Future Advances. Future advances by the secured party on collateral in which the secured party's security interest is superior to the lien of the lien creditor on the original advance will likewise be secured by the collateral in priority to the lien creditor's lien, so long as the future advances are made within the later of 45 days after the lien arose and the time that the secured party obtained knowledge of the lien, or are made pursuant to a commitment (see §9-102(a)(68) defining "pursuant to commitment") incurred without knowledge of the lien. §9-323(b).

Purchase-money Security Interests. A secured party taking a purchase-money security interest (see "Purchase-money Secured Parties" discussed below) will also have priority over a lien creditor holding a lien on the purchase-money collateral so long as the secured party perfected its security interest by filing before the

expiration of a period of 20 days after the debtor received possession of the collateral. §9-317(e).

Other Non-Purchase Secured Parties. Absent another Article 9 priority rule to the contrary, in cases in which there is more than one secured party claiming a security interest in the same collateral, the first secured party to file a financing statement or perfect its security interest has priority. This is the so-called "first-to-file-or-perfect" priority rule. §9-322(a)(1). It follows that a perfected security interest in collateral prevails over an unperfected security interest in the collateral. §9-322(a)(2). If both security interests are unperfected, the first security interest to attach has priority. §9-322(a)(3).

Purchase-money Secured Parties. A purchase-money security interest is a security interest in collateral which is either taken by a supplier of that collateral to finance its purchase price or a security interest given to a third party lender in the collateral purchased with the proceeds of the lender's loan. §9-103. The purchase-money collateral must generally be goods. But it may also be software sold or licensed with goods which are themselves purchase-money collateral, if the software is acquired principally for use with the goods. §9-103(b)(3) and (c). A holder of a perfected purchase-money security interest, who has taken certain applicable steps, achieves super priority, *i.e.*, its security interest in the purchase-money collateral will rank ahead of any security interest which would otherwise be entitled to priority under the first-to-file-or-perfect priority rule. To achieve super priority, the purchase-money secured party must take the following steps:

Inventory Collateral. If the collateral is inventory, the purchase-money secured party must perfect its security interest before the debtor receives possession of the inventory. In addition, the purchase-money secured party must notify existing holders of a security interest of record in the same type of inventory of the purchase-money lender's intention to take a purchase-money interest in the inventory in advance of the debtor receiving possession of the inventory. The notice is effective for a period of five years. §9-324(b). Purchase-money inventory advances may be cross-collateralized so that the total of the purchase-money inventory advances from the same supplier or lender may be secured by successive shipments of the purchase-money inventory collateral from the same supplier or financed by the same lender. §9-103(b)(2).

Farm Products Livestock Collateral. Article 9 contains analogous purchase-money priority rules for purchase-money security interest in farm products livestock. §§9-324(d) and (e). The purchase-money priority also extends to products of the livestock in their unmanufactured state.

Other Collateral. If the security interest is in collateral other than inventory or farm products livestock, the purchase-money secured party must perfect its security interest before the expiration of a period of 20 days after the debtor obtains possession of the collateral. §9-324(a).

If two secured parties, one being a supplier and the other being a lender, each claim purchase-money priority over the same collateral, the supplier's purchase-money security interest prevails over that of the lender. §9-324(g)(1). In addition, a purchase-money security interest in a commercial transaction does not lose its status as a purchase-money security interest merely because it also secures non-purchase-money obligations, the purchase-money obligations are also secured by non-purchase-money collateral, or the purchase-money obligations have been renewed or refinanced. §9-103(f).

Consignors. Article 9 treats all consignments, as defined in §9-102(a)(20), whether "true" consignments or security consignments, as purchase-money security interests and requires consignors to comply with Article 9 rules applicable to purchase-money secured parties in order to obtain priority. See §§1-201(35)(defining a consignment as a security interest) and 9-103(d).

Buyers, Lessees and Non-exclusive Licensees in Ordinary Course. Customers of the debtor who buy the debtor's goods in the debtor's ordinary course of business take free of the security interest of the debtor's secured party even if they know of the security interest. §§1-201(9)(definition of "buyer in ordinary course of business") and 9-320(a). But only a customer of the debtor that takes possession of the goods or has a right to recover the goods from the debtor under UCC Article 2 may be an ordinary course buyer. §1-201(9). A buyer of consumer goods has a right to recover the goods from the debtor under UCC Article 2 when the buyer acquires a special property in the goods. §§2-502(2) and 2-716(3). The acquisition by a buyer of a special property in goods generally occurs at the time that the goods are identified to the sales contract. See §2-401(2). In addition, a buyer of goods collateral from a debtor may not take free of the secured party's security interest as a buyer in the ordinary course if the secured party is in possession of the goods. §9-320(e).

Analogous rules for lessees and nonexclusive licensees in the ordinary course are set forth in §9-321.

Buyers and other Transferees Not in the Ordinary Course. Generally, if the debtor sells or otherwise disposes of collateral outside of the ordinary course and the disposition is not authorized by the secured party holding a perfected security interest in that collateral, the security interest continues in the collateral and continues perfected notwithstanding its disposition. §§9-315(a)(1) and 9-507(a). Future advances by the secured party will likewise be secured in priority to the interest of the buyer, so long as the future advance is made within the earlier of 45 days after the sale arose and the secured party's obtaining knowledge of the sale or the secured party makes the advance pursuant to a commitment (see §9-102(a)(68) defining "pursuant to commitment") entered into without knowledge of the lien and before the expiration of a period of 45 days after the buyer's purchase. §§9-323(d) and (e). If the security interest is unperfected, the buyer gives value and the buyer has no knowledge of the security interest, the buyer acquires its interest in the collateral free of the secured party's security interest. §9-317(b).

Negotiable Documents. During the period that goods are in the possession of a bailee who has issued a negotiable document covering the goods, a security interest perfected in the negotiable document has priority over a security interest perfected in the goods during that period. §9-312(c)(2). In addition, where goods are evidenced by a negotiable document, a holder of the negotiable document to whom the negotiable document has been duly negotiated prevails over an earlier security interest in the goods to the extent provided in UCC Article 7. §9-331(a).

Instruments. A security interest in an instrument perfected by filing is generally subordinate to the interest of another secured party or other purchaser if the other secured party or other purchaser takes possession of the instrument for value, in good faith and without knowledge that the purchase violates the rights of the secured party that perfected by filing. §9-330(d). A holder in due course of a negotiable instrument has priority over an earlier secured party to the extent set forth in UCC Article 3. §9-331(a); see §3-306.

Chattel Paper.

Generally. If a security interest in chattel paper is perfected only by filing, not by possession of tangible chattel paper or control of electronic chattel paper, an ordinary course new value purchaser of the chattel paper who takes possession of the tangible chattel

paper or control of the electronic chattel paper in good faith has priority over the security interest so long as the purchaser is without knowledge that the purchase violates the secured party's rights. §9-330(b). If the secured party's interest is legended on the chattel paper, the purchaser is viewed to have knowledge that the purchase will violate the secured party's rights. §9-330(f).

"Merely as Proceeds." An ordinary course new value purchaser of chattel paper who takes possession of tangible chattel paper or control of electronic chattel paper in good faith will have priority over a security interest in the chattel paper claimed "merely as proceeds" of inventory by an existing secured party who has perfected its security interest by filing, even if the purchaser knows of the security interest, so long as the secured party's interest is not legended on the chattel paper. §9-330(a). For what constitutes "merely as proceeds" chattel paper, see PEB Commentary No. 8.

"New Value." Article 9 defines "new value," with one exception, to require additional monetary or other specific consideration. §9-102(a)(57). The one exception is where an inventory secured party, by taking possession of tangible chattel paper or control of electronic chattel paper that is proceeds of its inventory collateral, would qualify for priority under §9-330(a) or (b) but for its failure to provide "new value." In that situation, the inventory secured party need not make an additional advance for value previously given by it to constitute "new value" under §9-330(a) or (b). §9-330(e).

Investment Property. A security interest in investment property perfected by control is superior to a security interest in the same investment property perfected by filing, even if control occurs after the time of filing. §9-328(1). If competing security interests are each perfected by control, they rank in priority of the time of obtaining control. §9-328(2). Even so, a security interest perfected by control in favor of the debtor's securities intermediary has priority over a security interest perfected by filing or other control. §9-328(3). A secured party's possession by agreement of a security certificate in registered form, without any necessary indorsements, results in the secured party's security interest in the certificated security being superior to another secured party's security interest in the certificated security perfected by filing. §9-328(5). Where investment property collateral is transferred to a person protected under UCC Article 8's adverse claim cutoff rules, the transferee remains protected under UCC Article 8. §9-331(b).

Deposit Accounts. A security interest in a deposit account perfected by control is superior to a security interest in the deposit account perfected by another method (e.g., in the case where a security interest in original collateral, other than the deposit account, was perfected and the secured party holding that security interest has an automatically perfected security interest in the deposit account as proceeds of the original collateral). §9-327(1). If competing security interests are each perfected by control, they rank in priority of the time of obtaining control. §9-327(2). But a security interest perfected by control in favor of the debtor's depositary bank, and the depositary bank's right of recoupment or set-off, are superior to a security interest of a competing secured party perfected by control or another method unless the competing secured party obtained perfection by control by becoming the depositary bank's customer on the deposit account. §§9-327(3) and (4) and 9-340. A transferee of funds from a deposit account in which the secured party has a security interest takes free of the secured party's security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party. §9-332(b).

Letter-of-Credit Rights. A security interest in a letter-of-credit right perfected by control is superior to a security interest in a letter-of-credit right perfected automatically as a supporting obligation. §9-329(1). If competing security interests in the letter-of-credit right are each perfected by control, they rank in priority of the time of obtaining control. §9-329(2). A security interest in a letter-of-credit right is subordinate to the rights of a transferee beneficiary or nominated person under §5-114. §9-329(1). Although a secured party may become a transferee of a letter of credit, its rights as transferee will be derived from UCC Article 5 and letter of credit practice. See §9-109(c)(4) and Official Comments 3 and 4 to §9-329.

Claimants as to Proceeds.

Definition. Proceeds are whatever is received upon the sale, exchange or other disposition or collection of collateral. §9-102(a)(64). Investment property distributions, partnership and limited liability company interest distributions, rentals for the lease of goods, and licensing royalties are all proceeds of the underlying collateral. Claims arising out of the loss, nonconformity or interference with the collateral are also proceeds. §9-102(a)(64).

Attachment. Upon the sale, exchange or other disposition or collection of collateral, a secured party's security interest continues in any "identifiable" proceeds. §§9-203(f) and 9-315(a)(2). Common law tracing rules, such as, for example, the "lowest intermediate

balance” test when cash proceeds are commingled with other funds in a deposit account, may be used to determine what proceeds are identifiable. §9-315(b)(2); see *Official Comment 3 to §9-315*.

Perfection. The perfection of the secured party’s security interest in proceeds continues for a period of 20 days. Unless the proceeds are identifiable cash proceeds, the secured party may be required to take additional steps during that 20-day period to continue the perfection of its security interest beyond the 20-day period. §§9-315(c) and (d).

Priority Generally. A secured party’s priority as to its security interest in the proceeds will usually date from the time of the secured party’s priority as to its security interest in the original collateral for the purposes of applying the first-to-file-or-perfect priority rule. §9-322(b)(1). But an inventory purchase-money secured party entitled to priority over an earlier filed secured party has a priority security interest in proceeds of the inventory sold or otherwise disposed of only in limited circumstances:

- if the proceeds are identifiable cash proceeds received by the debtor on or before delivery of the inventory to the buyer,
- if the proceeds are instruments, chattel paper or proceeds of the chattel paper to which the purchase-money secured party, typically by taking possession of the instrument or chattel paper, is entitled to priority under §9-330, or
- if the purchase-money security interest is in farm products livestock.

§§9-324(a), (b) and (d). Moreover, a transferee of money (see §1-201(24) defining “money”) will take free of the interest of a secured party claiming the money as proceeds unless the transferee has acted in collusion with the debtor in violating the rights of the secured party. §9-332(a).

Priority Where Certain Original Collateral has Priority under a Non-temporal Perfection Rule. As discussed above, a perfected possessory or control security interest in a deposit account, investment property, a letter-of-credit right, chattel paper, an instrument or a negotiable document may have priority over a security interest perfected by an earlier filing. In these cases, the secured party with priority as to the original collateral and who has

a perfected security interest in the proceeds also has priority in the proceeds if the proceeds are cash proceeds or are of the same type as the original collateral, and, in the case of proceeds that are proceeds of proceeds, any intervening proceeds are cash proceeds, are of the same type as the original collateral, or are an account relating to the collateral. §9-322(c). In addition, under certain circumstances, priority in the proceeds is based upon the first to file rather than under the “first-to-file-or-perfect” priority rule. Those circumstances arise where:

- each secured party has a perfected security interest in a deposit account, investment property, a letter-of-credit right, chattel paper, an instrument or a negotiable document perfected by a method other than filing, and
- the proceeds are not cash proceeds or a deposit account, investment property, a letter-of-credit right, chattel paper, an instrument or a negotiable document. §9-322(d).

Otherwise, the “first-to-file-or-perfect” priority rule applies as to the proceeds. *See Official Comment 9 to §9-322.*

Returned or Repossessed Goods. As Official Comments 9 to 11 to §9-330 explain, Article 9 treats returned or repossessed goods as proceeds of the accounts, chattel paper or other payment rights created when the goods were sold. Moreover, if a chattel paper purchaser has priority over a secured party claiming a security interest in the debtor’s inventory, the chattel paper purchaser has priority over the inventory secured party on returned or repossessed goods arising from the chattel paper. §9-330(c)(2).

Agricultural Lien Proceeds. Article 9 does not address proceeds of an agricultural lien. Article 9 leaves to other law, presumably the statute under which the agricultural lien is created, whether the agricultural lien extends to proceeds and, if so, whether the agricultural lien in proceeds is perfected and what priority it has over a competing claimant. *See Official Comment 9 to §9-315.*

Statutory and Agricultural Liens. A possessory lien on goods for services and materials furnished in the ordinary course given by statute or common law has priority over a secured party's security interest in the goods unless the lien is given by statute and the statute provides otherwise. §9-333. If the lien is an agricultural lien, the general Article 9

priority rules apply unless the agricultural lien is given by statute and the statute provides otherwise. §9-322(g); see *Official Comment 12 to §9-322*.

Unpaid Sellers. An unpaid seller that has not taken a perfected purchase-money security interest entitled to priority in goods sold to a debtor will not usually prevail over a secured party of the debtor holding a perfected security interest in the goods acquired by the debtor. This is the case even if the unpaid seller has a reclamation claim to the goods under UCC Article 2. §§2-402(3)(a), 2-403(4), 2-702(3), 1-201(29) and 1-201(30). But an unpaid seller that retains possession of the goods that it sells to the debtor will have priority over a secured party of the debtor holding a perfected security interest in goods acquired by the debtor. §9-110.

Real Estate Claimants as to Fixtures. A security interest in fixtures may be perfected by a regular Article 9 filing as to the goods or by a fixture filing (see §9-102(a)(40) defining “*fixture filing*”) filed at the office in the jurisdiction where real estate mortgages are recorded, and which provides that it is being filed in the real estate records. §§9-334(e)(3) and 9-501(a)(1) and (2). A fixture filing made before the interest of record of a competing real estate claimant is recorded will generally enable the secured party claiming a security interest in the fixtures to prevail over the real estate claimant if the secured party would have prevailed over the real estate claimant's predecessor in interest. §9-334(e)(1). A purchase-money security interest in goods which become fixtures will generally prevail over an existing interest of record of a competing real estate claimant if a fixture filing is made as to the goods within 20 days after the goods become fixtures. §9-334(d). A fixture security interest will, however, often be subordinate to the construction mortgage of a construction mortgagee where the goods become fixtures before completion of construction. §9-334(h). Even so, a security interest in certain readily removable goods perfected before the goods become fixtures has priority over a competing real estate claimant in the goods, including a construction mortgagee. §9-334(e)(2); see §9-334(h). In addition, a secured party with a security interest in a manufactured home has priority over a competing real estate claimant if the security interest in the manufactured home was perfected in a manufactured-home transaction under an applicable certificate of title statute. §9-334(e)(4); see §§9-102(a)(53) and (54) defining “*manufactured home*” and “*manufactured-home transaction*” respectively.

Crops. A perfected security interest in crops has priority over the interest of an owner or mortgagee of the real estate on which the crops are grown if the debtor is the owner or is in possession of the real estate. §9-334(i).

Accessions. Article 9 generally leaves to the other priority rules set forth in part 3 of Article 9 the resolution for determining the priority between competing secured parties holding security interests in goods which are accessions (*see §9-102(a)(1) defining “accession”*), including the priority dispute between a security party holding a security interest in an accession and a secured party holding a security interest in the whole of the goods. *See Official Comment 6 to §9-335.* However, a security interest in an accession is junior to a security interest in the whole perfected by compliance with a certificate of title statute. *§9-335(d).* For example, in the event that a debtor grants to a secured party a security interest in a motor vehicle perfected by notation of the secured party’s interest on the motor vehicle’s certificate of title and the debtor also grants to a seller of tires to the debtor a security interest in the tires perfected automatically or by filing, the motor vehicle secured party will prevail as to the tires if the tires become accessions to the motor vehicle. *See Official Comment 7 to §9-336.*

Commingled Goods. If goods in which one secured party has a perfected security interest are commingled with other goods in which another secured party has a perfected security interest, if neither secured party otherwise has a prior security interest in the other’s goods, and if the identity of each secured party’s collateral is lost in a product or mass, then each security party’s security interest attaches to the product or mass. *§9-336(d).* Their priority then ranks equally in accordance with a formula by which each secured party is allocated the proportion of the product or mass which the value of that secured party’s collateral bore to the sum of the values of both parties’ collateral at the time that the collateral became commingled. *§9-336(f)(2).*

Filing Office Records. Although the filing of a financing statement that is improperly rejected by the filing office is effective under §9-520(c)’s “tender rule,” nevertheless the security interest is subordinate to the interest of a subsequent secured party or other purchaser giving value in reliance upon the clean record in the filing office. *§9-516(d).* In addition, a secured party may, inadvertently or otherwise, file a financing statement containing information, required by §9-516(b)(5), that is incorrect. For example, the secured party may incorrectly state in the financing statement the type of organization or mailing address of the debtor. In such a case, although the secured party’s security interest may be perfected by the filing, the secured party’s security interest is subordinate to a later perfected secured party, and a purchaser, other than a secured party, of the collateral takes free of the earlier secured party’s security interest, if the later secured party or other purchaser gives value in reliance upon the incorrect information. *§9-338.*

Creditors Senior by Contractual Subordination. Any secured party may contractually subordinate its security interest to a secured party or other person whose interest would not otherwise have priority. §9-339.

Production-Money Secured Parties (Optional). Article 9 contains an *optional* set of model provisions for those jurisdictions that wish to provide a priority security interest, referred to as a production-money security interest, for extenders of new credit enabling a debtor to produce crops if the proceeds of the credit are in fact used for the production of the crops. These provisions, set forth in Appendix II to Article 9, are analogous to the purchase-money security interest provisions for inventory contained in §§9-103 and 9-324. In the event that a jurisdiction enacts the production-money security interest provisions, a holder of a production-money security interest in crops will prevail over an earlier filed secured party claiming a non-production-money security interest in the crops. *Model §9-324A(a)*. If the secured party holds both a production-money security interest and an agricultural lien on the crops, the priority rules applicable to the agricultural lien govern. *Model §9-324A(e)*.

VI. CERTAIN THIRD PARTY RIGHTS

Rights of Account Debtors.

Definition. An account debtor is someone obligated on an account, chattel paper or general intangible. But an obligor on a negotiable instrument is not an account debtor, even though the negotiable instrument is otherwise part of chattel paper. §9-102(a)(3).

Account Debtor Discharge. An account debtor is obligated to pay the assignee of an account, chattel paper or general intangible when the account debtor is notified of the assignment and that payments are to be made to the assignee. The account debtor is permitted to request the assignee to exhibit reasonable evidence that the assignment has been made; if the assignee fails to provide that evidence, the account debtor may continue to pay the assignor. §9-406(c).

Claims and Set-Offs. Where a secured party has a security interest in an account, chattel paper or general intangible arising under a contract between the debtor and the account debtor, the account debtor may assert a claim or defense against the secured party arising under that contract. §9-404(a)(1). The account debtor

may also assert a claim or defense arising with respect to any other obligation of the debtor to the account debtor except for claims or defenses accruing on such other obligations after the account debtor has been notified of the security interest. §9-404(a)(2). The secured party, however, is not generally subject to affirmative contract or tort liability to the account debtor merely because of the existence of the security interest. §9-402. Moreover, in a commercial transaction a claim or defense of an account debtor may be asserted only to reduce the amount owed; it may not be asserted affirmatively against the secured party. §9-404(b). Nevertheless, the rules of §9-404 are subject to any contrary consumer law rule. §9-404(c). A consumer account debtor has the benefit of the notice required by Federal Trade Commission Rule 433, 16 C.F.R. Part 433 (the so-called “FTC Holder in Due Course Waiver”) to be stated on the evidence of an account or general intangible or upon chattel paper even if the notice is not so stated. §9-404(d). The obligations of an insurer under a health-care-insurance receivable are governed by other law. §9-404(e).

Agreements Not to Assert Claims or Defenses. Subject to any contrary consumer law in a consumer transaction, an account debtor may agree generally not to assert personal claims or defenses against an assignee. §9-403. But the rules of §9-403 are subject to any contrary consumer law rule. §9-403(e). A consumer account debtor has the benefit of the notice of the FTC Holder in Due Course Waiver required to be stated on the evidence of an account or general intangible or upon chattel paper even if the notice is not so stated. §9-403(d). The provisions of §9-403 are otherwise a “safe harbor,” i.e., they are without prejudice to other circumstances where such agreements are effective under other law. §9-403(f).

Anti-assignment Clauses. Article 9 renders ineffective a clause restricting the creation or enforcement of a security interest in an account or chattel paper, or, if it secures an obligation, a promissory note or a payment intangible. §§9-406(d) and 9-407. Article 9 also renders ineffective a rule of law that would prevent the attachment, perfection or enforcement of a security interest in an account or chattel paper. §9-406(f). Moreover, Article 9 renders ineffective a clause in any promissory note or payment intangible, in the case of a sale of the promissory note or payment intangible, or in any other general intangible, as well as any rule of law, relating to a promissory note or payment or other general intangible, that prevents a security interest from attaching and becoming perfected, so long as the rights of the account debtor or other party favored by

the anti-assignment clause or rule of law are not disturbed. A security interest in such a promissory note or payment or other general intangible may attach and be perfected notwithstanding an anti-assignment clause or rule of law restricting assignment, but the secured party is not entitled to enforce the security interest without, if so permitted under other law, the consent of the account debtor or other party favored by the anti-assignment clause or rule of law. §9-408. For purposes of §9-408, an assignment of a health-care-insurance receivable is treated as if it were a general intangible rather than an account governed by §9-406. §§9-406(i) and 9-408.

Persons Obligated on Instruments. Under UCC Article 3, a person obligated on a negotiable instrument, such as a maker or indorser, when notified to pay a transferee of the instrument, may require the transferee to exhibit the instrument in order to demonstrate that the transferee is the person entitled to enforce the instrument. §§3-501(b)(2) and 3-602(a). Article 9 does not change this rule, nor does it address whether a non-negotiable instrument must be exhibited by the transferee as a condition to payment by the obligated person.

Securities Intermediaries. Article 9 does not affect the rule in UCC Article 8 that a securities intermediary has no obligation to enter into a control agreement with a secured party claiming a security interest in a securities account, even if the debtor entitlement holder so requests. §8-106(g).

Depository Banks. Unless a secured party has control over a deposit account, the depository bank has no obligation to deal with the secured party with respect to the deposit account. §9-341. A depository bank has no obligation to enter into a control agreement with the secured party relating to the deposit account even if the debtor customer so requests. §9-342.

Letter of Credit Issuers. A clause in a letter of credit restricting its transfer is ineffective to prevent a security interest in a letter-of-credit right from attaching and being perfected as a supporting obligation, so long as the rights of the issuer or any nominated person are not disturbed. §9-409.

VII. CERTAIN DUTIES OF SECURED PARTY

Duty of Reasonable Care When Collateral is in Possession or Control of Secured Party. A secured party generally has an obligation under Article 9 to use reasonable care to preserve collateral in the secured

party's possession. Unless otherwise agreed with the debtor, the secured party must take reasonable steps to preserve rights of the debtor in instruments and chattel paper in the secured party's possession against prior parties. §9-207(a). The secured party is entitled to charge the collateral in its possession for the secured party's reasonable expenses in preserving the collateral. §9-207(b)(1). If the debtor agrees to the secured party's repledge of collateral in the secured party's possession or control, the debtor's right of redemption as a claim against the secured party is preserved even though a third party who took by repledge may have gained superior rights in the collateral, whether by law or by agreement with the debtor. §9-207(c)(3); see *Official Comments 5 and 6 to §9-207 and Official Comment 3 to §9-314*. The secured party's duties under §9-207 do not apply where the secured party is a buyer of accounts, chattel paper, promissory notes or payment intangibles or is a consignor unless, in the case of the duty of reasonable care, the buyer or consignor has recourse against the debtor or a secondary obligor based upon a credit or other default of the account debtor or other obligor on the collateral. §9-207(d).

Duty to Account. Article 9 permits a debtor to ask the secured party to approve or correct the debtor's statement as to the amount of secured obligations and the identity of collateral. §§9-210(a)(3) and (4) and (b)(2). The secured party is required to respond within 14 days or risk liability to the debtor for any loss to the debtor caused by the secured party's failure to respond. §§9-210(b) and 9-625(b) and (f). If the secured party has sold its interest in the secured obligations and collateral, it must disclose the name and address of the secured party's successor, if known to the secured party. §§9-210(d) and (e). The debtor has an additional right to request an accounting of the unpaid secured obligations, with analogous provisions for the timeliness of the secured party's response, risk of the secured party's liability to the debtor for failure to respond, and required disclosure of any known transferee of the unpaid secured obligations. §§9-210(a)(2), (b), and (e) and 9-625(b) and (f).

Duty to Terminate or Release. Once the secured obligations have been paid and the secured party has no further commitment to extend credit or otherwise give value, Article 9 requires the secured party to file a termination statement, if the financing statement covers consumer goods, and otherwise upon the debtor's request to send to the debtor to file, or itself file, a termination statement. If the secured party fails to do so in a timely manner, it risks liability to the debtor for any loss to the debtor caused by the secured party's failure. §§9-513 and 9-625(b) and (e)(4). Article 9 provides analogous provisions, once the secured obligations have been paid and the secured party has no further commitment to extend credit or otherwise give value, for the secured party to release control of

collateral and to release account debtors from any obligations to make payments to the secured party. §§9-208, 9-209 and 9-625(b) and (e)(1) and (2).

VIII. CHOICE OF LAW

When it is necessary to determine whether a security interest has attached, has or has not been perfected, or has priority over another interest, it is necessary to ask which jurisdiction's law applies. If a dispute occurs in a particular forum in a UCC jurisdiction, the first step is to look to the choice of law rules of the forum jurisdiction's UCC to determine which jurisdiction's laws the forum jurisdiction is required to apply. Several concepts should be kept in mind: (1) the security agreement's choice of law provisions which govern the contractual agreement between the debtor and the secured party, (2) the law which will govern whether the security interest, even if enforceable by the secured party against the debtor under the law of the jurisdiction chosen in the security agreement, is perfected as against third parties, and (3) the law which will govern the effect of perfection and non-perfection and the priority of the security interest.

Contract Choice of Law. The governing law provision of the security agreement will usually be respected by the forum jurisdiction for purposes of determining the contractual rights and obligations of the debtor and the secured party to the other as long as the secured transaction bears a "reasonable relation" to the jurisdiction whose law was chosen. While the rules in §1-301 found in the 2002 revision of Article 1 actually create, at least in commercial transactions, a more flexible standard for parties to chose a governing law provision, nevertheless most states, in enacting the 2002 revision of Article 1, have rejected the rules in §1-301 for the "reasonable relationship" test found in former §1-105(1). Even so, under both revised Article 1 and former Article 1, the secured party and the debtor may not vary by their contract the mandatory choice of law rules in Article 9, as discussed below, dealing with the perfection and priority of security interests. §1-301(g); former §1-105(2).

Perfection.

General Rule: Location of the Debtor. Except as provided below, the local law of the jurisdiction where the debtor is located governs whether or not perfection of a security interest has taken place. §9-301(1). Given Article 9's general choice of law rule based upon the location of the debtor, Article 9 provides special rules to determine that location.

Registered Organizations. A debtor may be a registered organization, which is defined under Article 9 as an organization (§1-201(25)) organized in a single State (*which is limited to jurisdictions in the United States and its territories and possession; see §9-102(a)(76)*) and for which the State must maintain a public record showing the organization to have been organized. §9-102(a)(70). A debtor which is a registered organization is located in the jurisdiction of its organization. §9-307(e). For example, if the debtor is a corporation, limited liability company or limited partnership organized under the laws of a particular state, the debtor is located in that state. *See Official Comment 11 to §9-102.*

Other Debtors. A debtor which is not a registered organization is located at his principal residence if the debtor is an individual, at the debtor's place of business if the debtor is an organization that has only one place of business, or at the debtor's chief executive office if the debtor is an organization that has more than one place of business. §9-307(b).

Foreign Debtors. If the debtor is located in a jurisdiction, outside of the United States, which does not provide for a public filing system generally to enable a secured party to prevail over a subsequent lien creditor, then the debtor is deemed to be located in the District of Columbia. §9-307(c).

Special Rules. Special rules apply to determine the locations of federal registered organizations, certain foreign air carriers, and bank branches and agencies. *See §§9-307(f), (h), (i) and (j).*

Possessory Security Interests. The local law of the jurisdiction where the collateral is located governs whether or not perfection of a security interest by possession has taken place. §9-301(2).

Fixtures. If perfection of a security interest in fixtures is claimed by a fixture filing, the local law of the jurisdiction where the fixtures are located governs whether or not perfection has taken place. §9-301(3)(A).

Timber to be Cut. The local law of the jurisdiction where the timber is located governs whether or not perfection of a security interest in timber to be cut has taken place. §9-301(3)(B).

As-extracted Collateral. The local law of the jurisdiction where the wellhead or minehead is located governs whether or not perfection of a security interest in as-extracted collateral has taken place. §9-301(4).

Titled Goods. In general, where ownership of goods is evidenced by a certificate of title issued by a particular jurisdiction and, for perfection to take place or as a result of perfection, the secured party's security interest needs to be noted on the certificate of title, then the local law of the issuing jurisdiction governs whether or not perfection has taken place. §9-303(c). However, the choice-of-law rule for determining whether or not a security interest in titled goods, which are inventory held for sale or lease by a person that is in the business of selling goods of that kind, has been perfected is that of the debtor's location under §9-301. That is because under §9-311(d) titled goods which are inventory held for sale or lease by a person that is in the business of selling goods of that kind are treated as ordinary goods for purposes of perfection; a security interest in titled goods, which are inventory held for sale or lease by a person that is in the business of selling goods of that kind, need not be noted on the certificate of title for the goods. See *Official Comment 5 to §9-303*.

Agricultural Liens. The local law of the jurisdiction where the relevant farm products are located governs whether perfection of an agricultural lien on the farm products has taken place. §9-302.

Investment Property. The local law of the jurisdiction in which the debtor is located governs whether or not a security interest in investment property has been perfected by filing. §9-305(c)(1). If perfection is not claimed by filing, :

- the local law where the security certificate is located governs whether or not perfection of a security interest in a certificated security has taken place,
- the local law of the issuer's jurisdiction (*see §8-110(d) for applicable rules*) governs whether or not perfection of a security interest in an uncertificated security has taken place, and

- the local law of the securities intermediary's jurisdiction (*see* §8-110(e) for applicable rules) or commodity intermediary's jurisdiction (*see* §9-305(b) for applicable rules) governs whether or not perfection of a security interest in a security entitlement, securities account or commodity account has taken place.

§9-305(a).

Deposit Accounts. The local law of the jurisdiction of the depositary bank governs whether or not perfection of a security interest in a deposit account has taken place. §9-304(a). Article 9 contains rules for determining where the depositary bank is located, closely following the rules for determining the location of a securities intermediary. *See* §9-304(b).

Letter-of-Credit Rights. The law of the jurisdiction of the issuer or nominated person generally determines whether or not perfection of a security interest in a letter-of-credit right, other than a letter-of-credit right which is claimed merely as a supporting obligation, has taken place. The issuer's or nominated person's jurisdiction is determined under §5-116. §9-306. However, if the issuer's or nominated person's jurisdiction is not a State (*see* §9-102(a)(76)), then the law of the debtor's location determines whether or not the security interest has been perfected. *See Official Comments 2 and 3 to §9-306.*

Effect of Perfection or Non-Perfection and Priority. To determine the effect of perfection or non-perfection or priority, Article 9 at times requires the forum jurisdiction to look to the local law of a jurisdiction that is different from the jurisdiction whose law determines whether or not perfection has taken place:

Tangible Negotiable Documents, Goods, Instruments, Money or Tangible Chattel Paper. In the case of tangible negotiable documents, goods, instruments, money or tangible chattel paper, the jurisdiction where the collateral is located is the jurisdiction whose law governs the effect of perfection or non-perfection and priority. §9-301(3)(C).

Certificated Securities. In the case of certificated securities, the jurisdiction whose law governs the effect of perfection or non-perfection and priority is the jurisdiction where the security certificate is located. §9-305(a)(1).

Uncertificated Securities. In the case of uncertificated securities, the jurisdiction whose law governs the effect of perfection or non-perfection and priority is the jurisdiction of the location of the issuer. §9-305(a)(2).

Security Entitlements, Commodity Contracts, Securities Accounts and Commodity Accounts. In the case of security entitlements, commodity contracts, securities accounts and commodity accounts, the jurisdiction whose law governs the effect of perfection or non-perfection and priority is the jurisdiction where securities intermediary or commodity intermediary is located. §§9-305(a)(3) and (4).

Other Personal Property. Otherwise, the jurisdiction whose law governs whether or not perfection has taken place also governs the effect of perfection or non-perfection and priority.

IX. POST-CLOSING CHANGES

Change of Debtor's Name. If a debtor changes its name so that an existing financing statement becomes "seriously misleading," the secured party must file an amendment to the existing financing statement to reflect the debtor's new name within four months following the name change, or the financing statement will not be effective to perfect the security interest in assets of the debtor acquired after that four-month period. §9-507(c).

Change of Debtor's Location. If a debtor which is not a registered organization changes its location to another jurisdiction, the secured party must file a new financing statement in the new jurisdiction within four months following the change (or before the financing statement in the original jurisdiction lapses, if earlier) in order to maintain the perfection of its security interest by filing in collateral which must be perfected by filing where the debtor is located. §9-316(a). A debtor which is a registered organization will not typically be able to change its location. For example, a dissolved corporation will be considered as located in the jurisdiction in which it was organized prior to the dissolution. See §9-307(g). Moreover, the attachment, perfection and priority of a security interest in the assets of a corporate debtor which reincorporates will likely be analyzed as if the new corporation were a new debtor under the "double debtor" provisions discussed below.

Double Debtor Issues. Article 9 addresses a number of "double debtor" issues.

Transfer of Collateral to a Person who Becomes a Debtor. If collateral in which a secured party has a security interest perfected by filing under the law of the jurisdiction of the location of the debtor is transferred to a person who thereby becomes a debtor (see §9-102(28)(A) defining “debtor”), the filing remains effective to continue the perfection of the security interest. §9-507(a). But, if the transferee debtor is located in a jurisdiction different from that of the transferor debtor, the secured party has a period of one year (or until the expiration of any earlier period in which the perfection of the security interest would lapse under the law of the transferor debtor’s jurisdiction) to perfect the security interest under the law of the jurisdiction of the location of the transferee debtor in order to maintain the perfection of its security interest beyond that period. §9-316(a)(3); see §9-509(c) for the secured party’s authority to file a financing statement in the new jurisdiction. If the security interest is not perfected in that jurisdiction during that period, it is deemed never to have been perfected against a purchaser for value. §9-316(b).

Priority Dispute Between Secured Party of Transferor and Secured Party of Transferee as to Transferred Collateral. A debtor may transfer collateral subject to a perfected security interest to a transferee who creates a security interest in favor of the transferee’s secured party. In that case, the “first-to-file-or-perfect” priority rule is called off, and the transferor debtor’s secured party will prevail as to the transferred collateral so long as its security interest in the transferred collateral remains perfected. §9-325.

Priority Dispute Between Secured Party of Transferor and Secured Party of Transferee When Transferee Becomes Bound by Transferor’s Security Agreement.

New Debtor. A debtor, whose assets are subject to a security interest under a security agreement in favor of its secured party, may merge with another organization, or the debtor may otherwise transfer its assets or business to another person. In such a case, the survivor of the merger or other transferee may become bound by the original debtor’s security agreement, both for collateral existing at the time when the transferee becomes bound and, if applicable under the security agreement, after-acquired collateral in either of two cases:

(1) By operation of law other than Article 9 or by contract, the security agreement of the transferor becomes effective to create a security interest in property of the transferee, or

(2) By operation of law other than Article 9 or by contract, the transferee becomes generally obligated for the obligations of the transferor, including the secured obligations of the transferor, and acquires all or substantially all of the assets of the transferor.

§9-203(d). Article 9 refers to the transferee in either of such cases as a new debtor. §9-102(a)(56).

Attachment. A new debtor, by definition, becomes bound by the original debtor's security agreement. §§9-102(a)(56) and 9-203(d). Accordingly, the security interest of the original debtor's secured party in the collateral existing at the time of the transaction and, if applicable under the security agreement, after-acquired collateral attaches in the hands of the new debtor. §9-203(e).

Perfection. A filing that would have been effective to perfect a security interest in the collateral of original debtor's secured party under the security agreement had the original debtor not effected the transaction with the new debtor is generally effective to perfect the secured party's security interest in that collateral, both existing and after-acquired, in the hands of the new debtor. §9-508(a). But there are three important exceptions.

Continuation of Perfection as to Transferred Assets if the New Debtor is Located in a New Jurisdiction. If collateral in which the original debtor's secured party has a security interest that is perfected under the law of the jurisdiction of the location of the original debtor but the new debtor is located in another jurisdiction, the secured party has a period of one year (or the expiration of any earlier period in which the perfection of the security interest would lapse under the law of the original debtor's jurisdiction) to perfect the security interest under the law of the jurisdiction of the location of the new debtor in order to maintain the

perfection of its security interest. §9-316(a)(3); see §9-509(c) for the secured party's authority to file a financing statement in the new debtor's jurisdiction. If the security interest is not perfected in that jurisdiction during that period, it is deemed never to have been perfected against a purchaser for value. §9-316(b).

Perfection as to After-acquired Assets if the New Debtor is Located in a New Jurisdiction. If the new debtor is located in a jurisdiction different from that of the original debtor, the original debtor's secured party must perfect its security interest under the law of the new debtor's jurisdiction in order for the original secured party's security interest to be perfected in the new debtor's collateral acquired after the new debtor became bound by the original debtor's security agreement. See §9-316(a)(3) which provides a one-year grace period to continue perfection in a new debtor's location only for collateral existing at the time that the new debtor becomes bound under §9-203(d); for authorization for the original debtor's secured party to file a financing statement against the new debtor, see §9-509(b). The secured party of the original debtor has no grace period to perfect its security interest in collateral acquired after the new debtor became bound by the original debtor's security agreement, if the location of the new debtor is in a jurisdiction different from that of the original debtor.

Perfection as to After-acquired Assets if the New Debtor is Located in Same Jurisdiction but its Name is Seriously Misleading. If the original debtor's secured party has perfected its security interest in the collateral of the original debtor by filing in the jurisdiction of the location of the original debtor and the new debtor is located in the same jurisdiction, but the name of the new debtor is seriously misleading when compared to the name of the original debtor, the original debtor's secured party has a period of four months from the time that the new debtor became bound by the original debtor's security agreement to file a financing statement against the new debtor. If the original debtor's secured party fails to file a financing statement against the new debtor within that

four month period, its security interest in collateral acquired by the new debtor after that four-month period is unperfected by filing. §9-508; see §9-509(b) for the secured party's authorization to file the financing statement.

Priority as to Existing Collateral. If the original debtor's secured party has a perfected security interest in the transferred collateral, the "first-to-file-or-perfect" priority rule is called off, and the original debtor's secured party will prevail over the secured party of the new debtor as to the transferred collateral so long as the original debtor's secured party's security interest in the transferred collateral remains perfected. §9-325.

Priority as to After-Acquired Collateral. If the original debtor's secured party needs to rely upon perfection by filing against the original debtor to claim perfection of its security interest in collateral acquired by the new debtor after the new debtor became bound by the original debtor's security agreement, the original debtor's secured party's security interest in the after-acquired collateral is junior to a security interest created by the new debtor in favor of the new debtor's secured party. §9-326.

Titled Goods. A secured party may have perfected its security interest in titled goods by having its security interest noted as lienholder on the certificate of title for the goods. If the debtor obtains a certificate of title for the goods in a new jurisdiction, and the secured party's security interest is not noted on the new certificate of title, the secured party's security interest continues perfected, despite the coverage under the new certificate of title, so long as the security interest would have remained perfected if the goods had not been covered by the new certificate of title. §9-316(d). However, that security interest becomes "unperfected" as against a purchaser of the goods for value unless, during the four-month period commencing from the time of coverage under the new certificate of title, the secured party's security interest is noted on the new certificate of title or the secured party has repossessed the goods. §9-316(e). Absent perfection by either method within that four-month period, a buyer may take free of the security interest under §9-317(b). See *Official Comment 5 to §9-316*. Even inside of the four-month period, an innocent buyer, other than a dealer, that buys in reliance upon a new "clean" certificate of title will take free of the security interest. §9-337(1). Likewise, even inside of the four-month period, an innocent secured party that extends credit in

reliance upon a new “clean” certificate of title, takes a security interest in the titled goods and perfects the security interest under the issuing state’s certificate of title statute, has priority over the earlier security interest. §9-337(2).

Proceeds. Steps may be required to be taken by a secured party to maintain the perfection of its security interest in proceeds. §9-315(d).

X. ENFORCEMENT

Article 9 sets forth various rights and remedies of a secured party with respect to the collateral upon the debtor’s default. Article 9 also requires that the secured party proceed to enforce its security interest in ways which give minimum protections to the debtor and certain other interested parties.

Default. A secured party has rights and remedies under part 6 of Article 9 upon default by a debtor. The remedies of a secured party are not exclusive, and the secured party may resort to any one remedy without losing rights under the others. §9-601(c). What constitutes a "default" is not defined in Article 9 and is determined by the terms of the security agreement or other agreements between the debtor and the secured party. Events of default contained in loan agreements, promissory notes and security agreements typically include the debtor's nonpayment, misrepresentations, failure to comply with covenants, cross-defaults and the debtor's bankruptcy. A default occurs under an agricultural lien when the secured party has the right to enforce the lien. §9-606.

Secured Party's Options after Default. Upon the debtor's default, the secured party may take possession of collateral, but only if doing so will not result in a breach of the peace. §§9-609(a) and (b). The secured party may collect the collateral from account debtors and other persons obligated on collateral. §9-607. Also, the secured party may, subject to certain debtor and third party protections, either sell or otherwise dispose of the collateral and apply the proceeds to the satisfaction of the secured debt or retain the collateral in satisfaction of the secured debt. §§9-610 and 9-620. In addition, the secured party may judicially foreclose on the collateral under local judicial foreclosure procedures. §9-601(f). Below is a fuller discussion of the secured party’s options of collection, disposition and retention relating to the collateral.

Collection. When agreed between the debtor and the secured party but in any event upon the debtor’s default, the secured party may collect payments directly from account debtors and other

persons obligated on collateral by notifying the account debtors and obligated persons to pay the secured party directly. §9-607(a). If there is credit recourse to the debtor (as in the case of a full or partial recourse loan to the debtor), the collection must be made in a commercially reasonable manner. §9-607(c). Article 9 provides a mechanism by which a secured party that is an assignee of an obligation secured by a real estate mortgage may become the mortgagee of record upon the debtor's default in order to foreclose nonjudicially on the mortgage. See §9-607(b). The secured party may receive and apply against the secured debt funds in a deposit account over which the secured party has control. §§9-607(a)(4) and (5). Furthermore, the secured party may deduct the secured party's collection expenses from collections made by it in a commercially reasonable manner. §9-607(d).

Disposition. The secured party may sell or otherwise dispose of the collateral by public or private sale and apply the proceeds of the disposition towards the satisfaction of the secured debt. The following discussion highlights the requirement of the commercial reasonableness of the disposition, the requirement of notification of the disposition, provisions of Article 9 relating to the disposition itself, and a special provision that adjusts a secured party's deficiency claim in the event of a disposition to an insider for low value.

Requirement of Commercial Reasonableness. Every aspect of the disposition must be commercially reasonable. §§9-610 and 9-615. The obligation of the secured party to exercise commercial reasonableness may not be waived by the debtor or an obligor. §9-602(7).

Requirement of Notification of Disposition. Unless the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the secured party must send the debtor and certain other persons reasonable authenticated notification of the time and place of any public disposition or reasonable authenticated notification of the time after which any private disposition is to take place. §§9-611, 9-612 and 9-613. The notification must be given not only to the debtor and any secondary obligor, but also to all persons who have given to the secured party an authenticated notification of an interest in the collateral and to all secured parties and other lienholders of the collateral disclosed on a search of the proper filing office

within certain time parameters §§9-611(b), (c) and (e)). In a commercial transaction, 10 days prior notification of disposition is per se reasonable. §9-612(b). Article 9 also sets forth “safe harbor” disposition notification forms in commercial and consumer transactions. §§9-613 and 614. The debtor or any secondary obligor may waive its right to receive the disposition notice but only in an authenticated agreement made after default. §9-624(a).

The Disposition Itself. The secured party may disclaim or modify disposition warranties otherwise given to a foreclosure transferee. §9-610(e). The secured party may purchase the collateral at a public disposition. The secured party may not purchase collateral at a private disposition unless the collateral is of a kind customarily sold on a recognized market or is the subject of standard price quotations. §9-610(c). A secured party disposition generally discharges all subordinate interests in the collateral. §9-617(a). Furthermore, Article 9 provides for a title clearing mechanism for the secured party to effect a transfer of record title to titled collateral to the foreclosure purchaser of that collateral. §9-619.

Insider Dispositions for Low Value. If a secured party, a person related to a secured party (see §§9-102(a)(62) and (63) defining “person related to” for individuals and organizations, respectively) or a secondary obligor acquires collateral at a foreclosure disposition and the amount of the foreclosure proceeds so paid is significantly below the range of proceeds that a complying disposition to an unrelated purchaser would have brought, any deficiency calculation is required to be readjusted to reflect a credit to the debtor for the higher amount of any such disposition proceeds that would have been paid to the secured party by such a hypothetical unrelated purchaser. §9-615(f).

Retention of Collateral in Satisfaction of the Secured Debt. The secured party may under some circumstances retain the collateral in total satisfaction or, in the case of a commercial transaction, partial satisfaction of the secured debt. The following discussion highlights certain limitations of the retention remedy, the requirement that the secured party send to the debtor and others an advance notice of the secured party’s proposal to retain

collateral, the effect of a person entitled to receive the proposal objecting to the proposal, and the effect of acceptance of retention.

Limitations on Retention Remedy. If the collateral is consumer goods, the secured party may not propose to retain collateral which is not in the possession of the secured party. Otherwise, a secured party may propose to retain any collateral, whether tangible or intangible and even tangible collateral that is at the time in the debtor's possession. See §9-620(a)(3). A secured party in a commercial transaction may propose to retain collateral in partial satisfaction, rather than total satisfaction, of the secured debt. In that case, the debtor must, after default, affirmatively consent to the retention. §9-620(c)(1). But in a consumer transaction, the secured party may only propose to retain collateral in total satisfaction of the secured debt. §9-620(g). Moreover, the remedy of retaining the collateral in satisfaction of the secured debt is not available for certain consumer goods where a significant portion of the purchase price of the goods or of the secured debt has already been paid. §9-620(e).

Requirement to Send a Proposal of Retention. The secured party must send a proposal to retain the collateral not only to the debtor but also to all persons who have given to the secured party an authenticated notification of an interest in the collateral and to all secured parties and other lienholders of the collateral disclosed on a search of the proper filing office. §9-621(a). If the secured party proposes to retain the collateral in partial satisfaction of the secured debt, the secured party must send the proposal to any secondary obligor as well. §9-621(b). The debtor or a secondary obligor may waive its right to receive a retention notice, or agree to the secured party's retention, but only after default. §§9-602(10) and 9-620(c)(1).

Effect of Objection to Retention. If the secured party receives an objection from the debtor, a secondary obligor or another secured party or lienholder entitled to notice and the objection is received within 20 days after the notice was sent, the secured party may not retain the collateral in satisfaction of the secured debt. §§9-620(a) and (d).

Effect of Acceptance of Retention. Acceptance of retention of the collateral generally discharges all subordinate interests in the collateral. §9-622.

Application of Noncash Proceeds. In the event of the secured party's receipt of noncash proceeds (*see* §9-102(a)(58) *defining "non-cash proceeds"*) by collection or disposition of the collateral, the secured party may value the noncash proceeds and apply them to the secured debt, but the secured party must do so in a commercially reasonable manner. Alternatively, unless the secured party's failure so to value and apply the noncash proceeds to the secured debt is commercially unreasonable, the secured party may reduce and collect or dispose of the noncash proceeds, as collateral, until the noncash proceeds have been converted to cash for application of the secured debt. §§9-608(a)(3) and 9-615(c); *see also Official Comment 4 to §9-608 and Official Comment 3 to §9-615.*

Surplus or Deficiency. If the collateral secures an obligation, unless otherwise agreed, the secured party is to account to the debtor for any surplus in the collection or disposition of collateral, and the debtor is liable for a deficiency. In a secured transaction which is a sale of accounts, chattel paper, promissory notes or payment intangibles, unless otherwise agreed, the debtor is not entitled to a surplus, and the debtor is not liable for a deficiency. §§9-608(b) and 9-615(e).

Redemption. The debtor may redeem the collateral by paying off the secured debt any time before the secured party has disposed or is contractually committed to dispose of the collateral or has retained the collateral in satisfaction of the secured debt. §9-623. The debtor may waive its right of redemption in a commercial transaction, but only after default. §9-624(c).

Non-compliance. Article 9 provides that the secured party is generally liable to the debtor for any loss caused by the secured party's failure to comply with the enforcement provisions of part 6 of Article 9. §9-625(b). Article 9 adopts a rebuttable presumption rule for commercial transactions where an improper foreclosure or other enforcement results in a deficiency claim: in a commercial transaction, the value of the collateral is presumed to have equaled the entire secured debt (thus eliminating the deficiency claim) unless the secured party is able to show otherwise. §9-626(a)(3). Article 9 does not address which measure of damages should be applied in a consumer transaction. A specific penalty, however, may be imposed, regardless of any damages being shown, on a non-complying secured party where the collateral is consumer goods. §9-625(c)(2). In some circumstances, a secured party who does not comply with the

enforcement provisions of part 6 of Article 9, whether in a commercial or consumer transaction, may be liable for statutory damages as well. §§9-625(e)(5) and (6).

Status of Guarantors. A guarantor or other secondary obligor (*see §9-102(a)(71) defining "secondary obligor"*) of the secured obligations is entitled to many of the same rights and protections as is the underlying debtor. Article 9 requires disposition notifications to be given to guarantors and other secondary obligors, and it provides that a guarantor or other secondary obligor may not waive such notification unless the waiver is given after default. §§9-611(c)(2) and 624(a). A secured party is not, however, liable for failure to provide a disposition notification to a guarantor or other secondary obligor unknown to the secured party. §§9-628(a) and (b).

Certain Consumer Provisions. Notice given to a consumer debtor ten days in advance of the secured party's disposition of the collateral is not per se a reasonable notice. §9-612(b). A secured party must, following disposition of collateral, provide a consumer debtor with an explanation of the calculation of any deficiency claim before making demand upon the debtor for payment of that deficiency. §9-616. In a consumer transaction, a secured party may not retain collateral that is in the possession of the debtor and may not retain collateral in only partial satisfaction of the secured debt. §§9-620(a)(3) and (g). A consumer debtor may not waive his right of redemption, even after default. §9-624(c). Article 9 leaves the courts to fashion an appropriate damage rule (e.g. rebuttable presumption, absolute bar or offset) in the case of a secured party's non-compliance with part 6 of Article 9. §9-626(b).

Certain Exclusions. The enforcement provisions contained in part 6 of Article 9 do not apply to true consignors. Nor do these provisions apply to buyers of accounts, chattel paper, promissory notes or payment intangibles except for the buyer's obligation to use commercial reasonableness in the collection of collateral where the buyer has a right of chargeback on uncollected collateral or full or limited credit recourse to the debtor. §§9-601(g) and 9-607(c).

XI. DEFINITION OF "GOOD FAITH"

Consistent with revisions to other UCC Articles, Article 9 has its own definition of "good faith" as "honesty in fact *and the observance of reasonable commercial standards of fair dealing.*" §9-102(a)(43)(*italics added*).

XII. TRANSITION PROVISIONS

Part 7 of Article 9 contains provisions to assist in the transition from former Article 9 to Article 9. These transition provisions are summarized below.

Effective Date. In order to minimize choice of law issues arising on the effective date of Article 9 in a particular jurisdiction, Article 9 established a uniform effective date of July 1, 2001. §9-701. Unless otherwise provided in part 7 of Article 9, Article 9 applies, as of its effective date, to all transactions within its scope, even if the transaction was entered into prior to that date at a time when former Article 9 or other law was applicable. §9-702(a).

Pre-Effective-Date Causes of Action. Article 9 does not affect causes of action in litigation that was pending on Article 9's effective date. §9-702(c).

Pre-Effective-Date Collateral Description in Security Agreement. Official Comment 3 to the §9-703 makes clear that, as a matter of customary contract interpretation, former Article 9 terms used in a collateral description in a security agreement executed prior to Article 9's effective date should not normally be interpreted as requiring, after Article 9's effective date, that the terms be interpreted as if defined in Article 9. Instead, the terms would normally be interpreted as they were defined in former Article 9 when the security agreement was executed.

Pre-Effective-Date Security Interests Created Outside of Former Article 9 but within Article 9. Unless otherwise provided in part 7 of Article 9, a security interest in collateral outside of the scope of former Article 9 but included within the scope of Article 9 remains valid under Article 9 and may be enforced after Article 9's effective date under Article 9 or under the law governing the transaction prior to Article 9's effective date. §9-702(b).

Pre-Effective-Date Security Interests Perfected under Former Article 9. A security interest that was enforceable and perfected under former Article 9 or other law may or may not meet the requirements for enforceability and perfection under Article 9.

Requirements Met under Article 9. A security interest that was enforceable and perfected under former Article 9 or other law, and for which the requirements for enforceability and perfection

were met under Article 9 on Article 9's effective date, remains enforceable and perfected under Article 9. §9-703(a).

Requirements not Met under Article 9: Generally. If the security interest was enforceable and perfected under former Article 9 or other law, but the requirements for enforceability or perfection are not met under Article 9 on Article 9's effective date, the security interest remains enforceable and, with one exception described below for a security interest perfected by filing under former Article 9, remains perfected for a period of one year following Article 9's effective date. The security interest will no longer be enforceable, and its perfection will lapse, if the requirements for enforceability and perfection under Article 9 have not been satisfied by the end of that one-year period. §9-703(b).

Requirements not Met under Article 9: Perfection by Filing under Former Article 9. The one exception from the general rules for the continuation, on and after Article 9's effective date, of perfection of a security interest perfected under former Article 9, but not under Article 9, relates to a security interest perfected under former Article 9 by filing. In the case of a security interest perfected by filing under former Article 9, the one-year post-effective date grace period in §9-703(b) for maintaining perfection under Article 9 does not apply. §9-703(b) (“*Except as otherwise provided in Section 9-705*”); see *Official Comment 4 to §9-705*. The maintenance of perfection, on and after Article 9's effective date, of a security interest perfected by filing under former Article 9 is addressed separately in §§9-705 and 9-706 as discussed below.

Pre-Effective-Date Unperfected Security Interests. A security interest that is enforceable but is unperfected under former Article 9 or other law may or may not meet the requirements for enforceability and perfection under Article 9.

Enforceability of Unperfected Security Interest. An unperfected security interest which was enforceable under former Article 9 or other law, but for which the requirements for enforceability are not met under Article 9 on Article 9's effective date, remains enforceable for a period of one year following Article 9's effective date. The security interest will no longer be enforceable if the requirements for enforceability under Article 9 have not been satisfied by the end of that one-year period. §§9-704(1) and (2).

Perfection of Unperfected Security Interest. A security interest which was enforceable but unperfected under former Article 9 or other law, and for which the requirements for perfection are not met under Article 9 on Article 9's effective date, does not achieve perfection under Article 9 until Article 9's perfection requirements are satisfied. §9-704(3)(B).

Perfection by Pre-Effective-Date Actions other than Filing for After-Acquired Collateral. If an action (exclusive of the filing of financing statements) under former Article 9 or other law was taken before Article 9's effective date to perfect a security interest that attaches in collateral after Article 9's effective date, and that action would have been sufficient to perfect the security interest under former Article 9 or other law, the security interest in that collateral becomes and remains perfected under Article 9 for a period of one year following Article 9's effective date. The perfection will lapse if the requirements for perfection under Article 9 have not been satisfied by the end of that one-year period. §9-705(a).

Perfection by Pre-Effective-Date Filing. The filing of a financing statement that was effective to perfect a security interest in collateral under former Article 9 may or may not be effective to perfect a security interest in that collateral under Article 9.

Pre-Effective-Date Filing Effective under Article 9. If a financing statement filed in a jurisdiction and office before Article 9's effective date, whether or not effective under former Article 9, would, if filed in that jurisdiction and office on Article 9's effective date, be effective to perfect a security interest under Article 9, the filing is given effect under Article 9. §9-705(b). Such a filing may be continued, after Article 9's effective date, by the filing of a continuation statement in that jurisdiction and office only if the continuation statement, together with other filing office records relating to the financing statement, satisfies the requirements of part 5 of Article 9 for an initial financing statement. §§9-705(d) and (f). The continuation statement, to be effective, must be filed within the six-month period prior to the lapse of the financing statement. §9-515(d).

Pre-Effective-Date Filing Not Effective under Article 9. If a financing statement filed in a jurisdiction and office before Article 9's effective date that was effective to perfect a security interest under former Article 9 would, if filed on Article 9's effective date, be ineffective to perfect that security interest under Article 9, the filing is nevertheless given effect under Article 9 until the earlier to occur

of the financing statement's normal lapse (without regard to any continuation statement filed after Article 9's effective date) and June 30, 2006. §9-705(c). To avoid lapse and in order to continue the original financing statement, an initial financing statement (often called an "in lieu" initial financing statement), referring to the original financing statement to be continued, must be filed under §9-706 in the jurisdiction and office required by Article 9.

Continuation Where Article 9 Changes the Meaning of a Collateral Description. If a financing statement filed before Article 9's effective date was filed in the correct jurisdiction and office under Article 9 but the meaning of the collateral description on the financing statement has changed under Article 9 (e.g., a general intangible under former Article 9 is an account under Article 9), any continuation statement filed on or after Article 9's effective date must contain an amendment to the collateral description to comply with the meaning of the collateral description in Article 9; otherwise, the continuation statement is not effective for the collateral for which the description should have been amended. §9-705(f); see, e.g., §9-504 (cross-referencing §9-108). Similarly, any "in lieu" initial financing statement that is filed to continue under §9-706 an original financing statement filed before Article 9's effective date must contain a collateral description that complies with the meaning of the collateral description in Article 9. §9-706(c)(1). Upon Article 9's effective date, the secured party is authorized by the debtor to make any such amendment necessary to continue the perfection of the secured party's security interest. §9-708(2).

Continuation: Other Requirements. In addition to collateral description requirements, a continuation statement filed on or after Article 9's effective date, together with any other records already on file in the filing office pertaining to the related financing statement, as well as an "in lieu" initial financing statement filed as a continuation under §9-706, must generally satisfy the other requirements for an initial financing statement under part 5 of Article 9. The continuation statement, or "in lieu" initial financing statement, may need to contain the requisite information set forth in §9-516(b) to avoid filing office rejection. See §§9-516(b), 9-705(f) and 9-706(c)(1).

Initial Financing Statement as a Continuation: the "In Lieu" Initial Financing Statement. If a financing statement filed before Article 9's effective date remains effective on Article 9's effective date although filed in a jurisdiction and office which would not otherwise be effective to perfect

the security interest under Article 9, that financing statement, to avoid lapse, must be continued as an “in lieu” initial financing statement in the jurisdiction and office required by Article 9.

Requirements. An “in lieu” initial financing statement must satisfy the filing requirements of part 5 of Article 9. In addition, in order to put subsequent searchers on notice that the “in lieu” initial financing statement is intended to continue the original financing statement filed in a different jurisdiction and office, the “in lieu” initial financing statement must identify the original filing by filing office, dates of filing and filing numbers (both for original filing and the most recent continuation statement, if any, of the original filing) and must indicate that the original filing remains effective. §9-706(c). Upon the effective date of Article 9, the secured party is authorized by the debtor to file any “in lieu” initial financing statement necessary to continue the perfection of the secured party’s security interest created under former Article 9. §9-708(2).

Pre-Effective-Date Filings Covered. The “in lieu” initial financing statement may continue more than one original financing statement filed before Article 9’s effective date. *See Official Comment 2 to §9-706.*

Timing of Filing. The “in lieu” initial financing statement may be filed at any time before lapse of the original filing, even before the normal six-month period prior to lapse. *See Official Comment 1 to §9-706.* The secured party may have made an “in lieu” initial financing statement filing even before the effective date of Article 9 assuming that the filing office accepted the filing and that the debtor had signed the financing statement, as required under §9-402(1) of former Article 9, or had otherwise authorized the filing. *See Official Comment 1 to §9-706.*

Period of Effectiveness. An “in lieu” initial financing statement filed on or after Article 9’s effective date lapses upon the expiration of the period for the effectiveness of the financing statement set forth in §9-515. §9-706(b)(2). An “in lieu” initial financing statement filed before Article 9’s effective date lapses upon the expiration of the period for the effectiveness of a financing statement set forth in §9-403 of former Article 9. §9-706(b)(1).

Amendments to Pre-Effective-Date Financing Statements.

Generally. An amendment (other than a continuation as discussed above) made on or after Article 9's effective date to a financing statement filed before Article 9's effective date, must generally be filed in the jurisdiction and office required by Article 9. §9-707(b)(first sentence). If the financing statement was filed in the jurisdiction and office required under Article 9, then the financing statement may be amended by the filing of an amendment in that office. §9-707(c)(1). If, however, the financing statement was not filed in the jurisdiction and office required by Article 9, the financing statement must be amended by means of the filing of an "in lieu" initial financing statement filed in the jurisdiction and office required by Article 9. The amendment may be made by filing the "in lieu" initial financing statement with the modified information, or the "in lieu" initial financing statement may be filed first and then amended to reflect the modified information. §§9-707(c)(2) and (3).

Alternative Technique for Termination. As an alternative, it may be possible to file a termination statement in the office in which the related financing statement filed before Article 9's effective date was filed. §9-707(e). However, if the financing statement was not filed in the jurisdiction and office required by Article 9, the termination statement may be filed only if the financing statement has not already been continued by an "in lieu" initial financing statement filed in the jurisdiction and office required by Article 9. §9-707(e)("unless..."). Moreover, the termination statement must be one that is effective under the law of the jurisdiction in which the financing statement filed before Article 9's effective date was filed. §9-707(b)(second sentence). That requirement will usually mean that the financing statement may be terminated in this manner only if it is filed in an office of that jurisdiction referred to in the jurisdiction's §9-501, i.e., the statewide central filing office in the jurisdiction or a local filing office in the jurisdiction in which a financing statement was filed as fixture filing or covering timber to be cut or as-extracted collateral is filed. See §§9-513(d)(termination statement effective when filed in the filing office) and 9-102(a)(37)(defining "filing office" as the place designated in §9-501 as the place to file a financing statement).

Priority. Article 9 determines priorities that were not established under former Article 9 before Article 9's effective date. Accordingly, an attached security interest that was not perfected under former Article 9 may not, merely by Article 9 becoming effective and causing that security interest to become perfected, obtain priority over a competing perfected security interest to which it was junior under former Article 9. §9-709(a).

Moreover, the priority of a security interest that attaches after the effective date of Article 9 and which is perfected by a financing statement filed before Article 9's effective date dates from Article 9's effective date, not from the date of the earlier filing, if the earlier filing would have been ineffective to perfect the security interest under former Article 9. §9-709(b).