

D R A F T

FOR DISCUSSION ONLY

**AMENDMENTS TO
UNIFORM COMMERCIAL CODE ARTICLE 9**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-EIGHTEENTH YEAR
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**AMENDMENTS TO
UNIFORM COMMERCIAL CODE ARTICLE 9**

WITH REPORTER'S PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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May 27, 2009

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UNIFORM COMMERCIAL CODE ARTICLE 9**

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AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9

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AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9

Reporter's Prefatory Note

1. **Background.** The Uniform Law Commissioners (“ULC”) and The American Law Institute (“ALI”) promulgated Revised Article 9 of the Uniform Commercial Code in 1998. By the end of 2001, all of the States had enacted the Revised Article.

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

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

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

- We should not recommend changes that would alter policy decisions made during the 1998 revision unless the current provisions appear to be creating significant problems in practice.
- Recommendations for statutory change should focus on issues as to which ambiguities have been discovered in existing statutory language, where there are substantial problems in practice under the current provisions, or as to which there have been significant non-uniform amendments that suggest the need to consider revisions.
- We should recommend that an issue be handled by a revision to the Official Comments rather than to the statutory text whenever we believe that the statutory language is sufficiently clear and produces the desired result, but that judicial decisions or experience in practice indicates that some clarification might be desirable.

The JRC's discussions focused almost exclusively on the issues listed by the Review Committee. Some additional issues were raised, and the JRC asked the Chair to request that the Scope and Program Committee and Executive Committee expand the JRC's charge to include addressing these issues.

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

The first part of the draft contains amendments to the statutory text, together with any related amendments to the comments. Because the statutory amendments are still under discussion, some of the statutory amendments are yet not accompanied by draft amendments to the comments. The second part of the draft contains modifications to the comments for which no change in statutory text is recommended. The Joint Review Committee may reconsider whether certain proposed changes to the comments would be more appropriate as statutory amendments and vice versa.

1 **AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9**

2
3 **PART ONE**

4 **AMENDMENTS TO THE OFFICIAL TEXT AND RELATED COMMENTS**

5
6 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

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

8 * * *

9 (7) “Authenticate” means:

10 (A) to sign; or

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

15 **Reporter’s Note**

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

18
19
20 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

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

22 * * *

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

1 unit that issues certificates of title as an alternative to issuing a certificate for the collateral if a
2 statute permits the security interest in question to be indicated on the record as a condition or
3 result of the security interest’s obtaining priority over the rights of a lien creditor with respect to
4 the collateral.

5 * * *

6 * * *

7 **Official Comment**

8 * * *

9
10
11 **11. Choice-of-Law-Related Definitions: “Certificate of Title”; “Governmental**
12 **Unit”; “Jurisdiction of Organization”; “Registered Organization”; “State.”** These new
13 definitions reflect the changes in the law governing perfection and priority of security interests
14 and agricultural liens provided in Part 3, Subpart 1.

15
16 Statutes often require applicants for a certificate of title to identify all security interests
17 on the application and require the issuing agency to note the identified security interests on the
18 certificate. Some of these statutes provide that perfection of a security interest in goods covered
19 by the certificate occurs upon notation of the security interest on the certificate. Others
20 contemplate that a notation will be made but provide that priority over the rights of a lien
21 creditor (i.e., perfection) is achieved by another method, e.g., delivery of the application to the
22 issuing agency. A certificate governed by either type of statute can qualify as a “certificate of
23 title” under this Article, even if the statute requiring notation does not expressly state that
24 compliance with specified requirements (e.g., the issuance of a certificate on which a security
25 interest is noted or the delivery of the application to the issuing agency) results in perfection. A
26 certificate can qualify as a “certificate of title” even if the issuing agency fails to note the
27 security interest on the certificate, unless, of course, a statute provides that priority over the
28 rights of a lien creditor is achieved by issuance of a certificate on which the security interest has
29 in fact been noted.

30
31 In many states, a certificate of title covering goods that are encumbered by a security
32 interest is delivered to the secured party by the issuing authority. To eliminate the need for the
33 issuance of a paper certificate under these circumstances, several states have revised their
34 certificate-of-title statutes to permit or require a state agency to maintain an electronic record
35 that evidences ownership of the goods and in which a security interest in the goods may be
36 noted. Such a record is a “certificate of title” if it is in fact maintained as an alternative to the
37 issuance of a paper certificate of title, regardless of whether the certificate-of-title statute
38 provides that the record is a certificate of title and even if the statute does not expressly state that
39 the record is maintained instead of issuing a certificate of title.

40 * * *

1 the bank will comply with instructions originated by the secured party directing disposition of
2 the funds in the deposit account without further consent by the debtor;~~or~~

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

5 (4) another person has control of the deposit account on behalf of the secured
6 party, or, having previously acquired control of the deposit account, acknowledges that it has
7 control on behalf of the secured party.

8 * * *

9 **Official Comment**

10 * * *

11
12
13 **3. Requirements for “Control.”** This section derives from Section 8-106 of Revised
14 Article 8, which defines “control” of securities and certain other investment property. Under
15 subsection (a)(1), the bank with which the deposit account is maintained has control. The effect
16 of this provision is to afford the bank automatic perfection. No other form of public notice is
17 necessary; all actual and potential creditors of the debtor are always on notice that the bank with
18 which the debtor’s deposit account is maintained may assert a claim against the deposit account.
19

20 Under subsection (a)(2), a secured party may obtain control by obtaining the bank’s
21 authenticated agreement that it will comply with the secured party’s instructions without further
22 consent by the debtor. The analogous provision in Section 8-106 does not require that the
23 agreement be authenticated. An agreement to comply with the secured party’s instructions
24 suffices for “control” of a deposit account under this section even if the bank’s agreement is
25 subject to specified conditions, e.g., that the secured party’s instructions are accompanied by a
26 certification that the debtor is in default. (Of course, if the condition is the *debtor’s* further
27 consent, the statute explicitly provides that the agreement would *not* confer control.) See revised
28 Section 8-106, Comment 7.
29

30 Under subsection (a)(3), a secured party may obtain control by becoming the bank’s
31 “customer,” as defined in Section 4-104. As the customer, the secured party would enjoy the
32 right (but not necessarily the exclusive right) to withdraw funds from, or close, the deposit
33 account. See Sections 4-401(a), 4-403(a).
34

35 Under subsection (a)(4), a secured party may obtain control if another person has control
36 and the person acknowledges that it has control on the secured party’s behalf.
37

38 * * *

1 commodity contract is carried; or

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

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

9 * * *

10 **SECTION 9-328. PRIORITY OF SECURITY INTERESTS IN INVESTMENT**

11 **PROPERTY.** The following rules govern priority among conflicting security interests in the
12 same investment property:

13 * * *

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

17 * * *

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

21 (i) if the secured party obtained control under Section 9-106(b)(2),
22 the commodity intermediary's agreement to apply any value distributed on account of the
23 commodity contract as directed by the secured party; or
24

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

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

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

10 * * *

11 **Reporter's Note**

12
13 New Section 9-106(a)(3) conforms “control” of a commodity contract to “control” of a
14 security entitlement in Section 8-106. The corresponding amendment to Section 9-328(2)(C)
15 explains when a secured party that has control under Section 9-106(a)(3) obtains control for
16 purposes of the first-in-time priority rule.
17
18

19 **SECTION 9-105. CONTROL OF ELECTRONIC CHATTEL PAPER.**

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

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

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

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

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

5 (4) copies or ~~revisions~~ amendments that add or change an identified assignee of
6 the authoritative copy can be made only with the ~~participation~~ consent of the secured party;

7 (5) each copy of the authoritative copy and any copy of a copy is readily
8 identifiable as a copy that is not the authoritative copy; and

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

11 Official Comment

12 * * *

13
14
15 2. **“Control” of Electronic Chattel Paper.** This Article covers security interests in
16 “electronic chattel paper,” a new term defined in Section 9-102. This section governs how
17 “control” of electronic chattel paper may be obtained. Subsection (a), which derives from
18 Section 16 of the Uniform Electronic Transactions Act, sets forth the general test for control.
19 Subsection (b) sets forth a safe harbor test that if satisfied, results in control under the general
20 test in subsection (a).

21
22 A secured party’s control of electronic chattel paper (i) may substitute for an
23 authenticated security agreement for purposes of attachment under Section 9-203, (ii) is a
24 method of perfection under Section 9-314, and (iii) is a condition for obtaining special, non-
25 temporal priority under Section 9-330. Because electronic chattel paper cannot be transferred,
26 assigned, or possessed in the same manner as tangible chattel paper, a special definition of
27 control is necessary. In descriptive terms, this section provides that control of electronic chattel
28 paper is the functional equivalent of possession of “tangible chattel paper” (a term also defined
29 in Section 9-102).

30
31 3. **Development of Control Systems.** This Article leaves to the marketplace the
32 development of systems and procedures, through a combination of suitable technologies and
33 business practices, for dealing with control of electronic chattel paper in a commercial context.
34 Systems that evolve for control of electronic chattel paper may or may not involve a third party
35 custodian of the relevant records. As under UETA, a system must be shown to reliably establish
36 that the secured party is the assignee of the chattel paper. Reliability is a high standard and
37 encompasses the general principles of uniqueness, identifiability, and unalterability found in

1 subsection (b) without setting forth strict guidelines as to how these principles must be achieved.
2 However, the standards applied to determine whether a party is in control of electronic chattel
3 paper should not be more stringent than the standards now applied to determine whether a party
4 is in possession of tangible chattel paper. For example, just as a secured party does not lose
5 possession of tangible chattel paper merely by virtue of the possibility that a person acting on its
6 behalf *could* wrongfully redeliver the chattel paper to the debtor, so control of electronic chattel
7 paper would not be defeated by the possibility that the secured party's interest *could* be
8 subverted by the wrongful conduct of a person (such as a custodian) acting on its behalf.
9

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

19 **34. “Authoritative Copy” of Electronic Chattel Paper.** One requirement for
20 establishing control under subsection (b) is that a particular copy be an “authoritative copy.”
21 Although other copies may exist, they must be distinguished from the authoritative copy. This
22 may be achieved, for example, through the methods of authentication that are used or by
23 business practices involving the marking of any additional copies. When tangible chattel paper
24 is converted to electronic chattel paper, in order to establish that a copy of the electronic chattel
25 paper is the authoritative copy it may be necessary to show that the tangible chattel paper no
26 longer exists or has been permanently marked to indicate that it is not the authoritative copy.
27

28 **4. Development of Control Systems.** ~~This Article leaves to the marketplace the~~
29 ~~development of systems and procedures, through a combination of suitable technologies and~~
30 ~~business practices, for dealing with control of electronic chattel paper in a commercial context.~~
31 ~~However, achieving control under this section requires more than the agreement of interested~~
32 ~~persons that the elements of control are satisfied. For example, paragraph (4) contemplates that~~
33 ~~control requires that it be a physical impossibility (or sufficiently unlikely or implausible so as to~~
34 ~~approach practical impossibility) to add or change an identified assignee without the~~
35 ~~participation of the secured party (or its authorized representative). It would not be enough for~~
36 ~~the assignor merely to agree that it will not change the identified assignee without the assignee-~~
37 ~~secured party's consent. However, the standards applied to determine whether a party is in~~
38 ~~control of electronic chattel paper should not be more stringent than the standards now applied to~~
39 ~~determine whether a party is in possession of tangible chattel paper. Control of electronic chattel~~
40 ~~paper contemplates systems or procedures such that the secured party must take some action~~
41 ~~(either directly or through its designated custodian) to effect a change or addition to the~~
42 ~~authoritative copy. But just as a secured party does not lose possession of tangible chattel paper~~
43 ~~merely by virtue of the possibility that a person acting on its behalf *could* wrongfully redeliver~~
44 ~~the chattel paper to the debtor, so control of electronic chattel paper would not be defeated by the~~
45 ~~possibility that the secured party's interest *could* be subverted by the wrongful conduct of a~~
46 ~~person (such as a custodian) acting on its behalf.~~
47

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

11 **Reporter's Note**

12
13
14 1. Subsection (a) is new. With its addition, satisfaction of the requirements currently
15 enumerated in Section 9-105 would become sufficient, but not necessary, to establish control.
16 Control may arise under the general standard (new subsection (a)) even if the specific
17 requirements are not satisfied.

18
19 Subsection (a) largely conforms to Section 7-106, which defines control of an electronic
20 document of title. However, two changes were necessary. First, in keeping with the general
21 usage in Article 9, Section 9-105 uses the term "assign" rather than "transfer." Second, although
22 Section 7-106 (which is not limited to secured parties) expands the control concept to include not
23 only an assignee of an electronic document of title but also a person to which an electronic
24 document is originally issued, under Section 9-105 only an assignee electronic chattel paper can
25 have control of the chattel paper.

26
27 The amendments to paragraphs (4), (5), and (6) of subsection (b) are stylistic.

28
29 2. The change from current Section 9-105 to the revised Section *ipso facto* may result in
30 a secured party's achieving control of electronic chattel paper. In these circumstances, control
31 would date from the effective date of the revision and would not relate back.

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

36 * * *

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

40 (1) Subject to paragraph (3), a financing statement filed before the change

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

4 (2) Subject to paragraph (3), if a security interest that is perfected by a financing
5 statement that is effective under paragraph (1) becomes perfected under the law of the other
6 jurisdiction before the earlier of the time the financing statement would have become ineffective
7 under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) or the expiration of
8 the four-month period, it remains perfected thereafter. If the security interest does not become
9 perfected under the law of the other jurisdiction before the earlier time or event, it becomes
10 unperfected and is deemed never to have been perfected as against a purchaser of the collateral
11 for value.

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

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

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

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

24 * * *

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

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

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

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

11 * * *

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

14 **Reporter's Note**

15
16 1. When a debtor changes its location, the law governing perfection generally changes
17 also. See Section 9-301(1). Current Section 9-316 addresses security interests that are perfected
18 (i.e., that have attached and as to which any required perfection step has been taken) before the
19 debtor changes its location. It does not apply to security interests that have not attached before
20 the debtor's location changes. Suppose, for example, that Debtor is an individual who resides in
21 Pennsylvania. Lender perfects a security interest in Debtor's inventory by filing in
22 Pennsylvania. Then, without Lender's knowledge, Debtor's principal residence is relocated to
23 New Jersey. Under Section 9-316, Lender's security interest in inventory on hand as of the
24 relocation date remains perfected for four months thereafter (or, if earlier, until perfection would
25 have ceased under Pennsylvania law). However, although Lender's security interest attaches to
26 inventory that Debtor acquires after relocating to New Jersey, the security interest is unperfected
27 because Lender has not filed in New Jersey.

28
29 New Section 9-316(h) would change the result. In the example, Lender's filing in
30 Pennsylvania would be effective to perfect a security interest in inventory acquired by Debtor
31 within the four months after Debtor relocates (assuming that the financing statement would not
32 have become ineffective earlier). The security interest will remain continuously perfected if,
33 before the expiration of the four-month period (and before the financing statement would have
34 become ineffective), the security interest is perfected under the law of New Jersey. Otherwise,

1 the security interest will become unperfected at the end of the four-month period (or, if earlier,
2 when perfection would have ceased) and will be deemed never to have been perfected as against
3 a purchaser for value.
4

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

17 Proposed Section 9-322(b)(3) carries with it its own difficulties. Suppose, for example,
18 that both Lender and Bank file financing statements under Pennsylvania law while Debtor is
19 located in Pennsylvania. Lender files first. Debtor then relocates to New Jersey. Both Lender
20 and Bank file against Debtor in New Jersey within four-months after relocation, but Bank files
21 first. If Section 9-322(b)(3) were to apply, Bank’s security interest—previously junior—would
22 become senior. New Section 9-322(h) preserves Lender’s priority under these circumstances.
23

24 3. Standing alone, new Section 9-316(h)(1) would impose on buyers, lessees, and
25 licensees a risk that is analogous to the risk that the section would impose on secured parties that
26 take an interest in collateral acquired after the debtor’s relocation. Paragraph (h)(3) would
27 protect these purchasers.
28

29 4. Although new subsection (h) is likely to be most useful to creditors having a security
30 interest in inventory and receivables, it would apply to all kinds of collateral.
31

32 5. The addition of subsection (h) will require explanatory and other changes to the
33 official comments. The revised comments will also explain the application of this subsection to
34 entities that convert from one organizational form to another. They may also include a general
35 statement to the effect that, when used in this section, “another jurisdiction” and “the other
36 jurisdiction” mean the jurisdiction whose Section 9-316 is being applied.
37
38

39 **SECTION 9-316. ~~CONTINUED PERFECTION OF SECURITY INTEREST~~**

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

41 * * *

42 **(i) [Effect of change in governing law on financing statement filed against original**
43 **debtor.] If a financing statement naming an original debtor is filed pursuant to the law of the**

1 jurisdiction designated in Section 9-301(1) or 9-305(c) and the new debtor is located in another
2 jurisdiction, the following rules apply:

3 (1) Subject to paragraph (3), the financing statement is effective to perfect a
4 security interest in collateral in which the new debtor has or acquires rights before or within four
5 months after the new debtor becomes bound under Section 9-203(d), if the financing statement
6 would have been effective to perfect a security interest in the collateral if it had been acquired by
7 the original debtor.

8 (2) Subject to paragraph (3), a security interest that is perfected by the financing
9 statement and which becomes perfected under the law of the other jurisdiction before the earlier
10 of the expiration of the four-month period or the time the financing statement would have
11 become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c)
12 remains perfected thereafter. A security interest that is perfected by the financing statement but
13 which does not become perfected under the law of the other jurisdiction before the earlier time
14 or event becomes unperfected and is deemed never to have been perfected as against a purchaser
15 of the collateral for value.

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

19 **Reporter's Note**

20
21 1. New subsection (i) is similar to new subsection (h). Whereas the latter addresses a
22 given debtor's change of location, the former addresses situations in which a successor to the
23 debtor becomes bound as debtor by the original debtor's security agreement. See Section 9-
24 203(d).

25
26 Consider the difficulty faced by Lender under the facts of official comment 5 to Section
27 9-316:

28
29 Debtor is a Pennsylvania corporation. Debtor grants to Lender a security interest in

1 Debtor's existing and after-acquired inventory. Lender perfects by filing in
2 Pennsylvania. Debtor's shareholders decide to "reincorporate" in Delaware. They form
3 a Delaware corporation (Newcorp) into which they merge Debtor. By virtue of the
4 merger, Newcorp becomes bound by Debtor's security agreement. See Section 9-203.
5 After the merger, Newcorp acquires inventory to which Lender's security interest
6 attaches. Because Newcorp is located in Delaware, Delaware law governs perfection of a
7 security interest in Newcorp's inventory. See Sections 9-301, 9-307.
8

9 Delaware's current Section 9-316(a) applies to the pre-merger collateral that was
10 transferred from Debtor to Newcorp, and in which Lender held a security interest perfected
11 under Pennsylvania law. Under this section, Lender's security interest in the transferred
12 collateral remains perfected for one year after the merger (assuming that perfection would not
13 have ceased earlier under Pennsylvania law). Because Lender's financing statement was filed in
14 Pennsylvania and not Delaware, current Section 9-316(a) would have no application to inventory
15 acquired by Newcorp, a Delaware corporation, after the merger. For the same reason, Lender's
16 security interest in Newcorp's post-merger inventory would be unperfected until Lender files
17 against Newcorp in Delaware.
18

19 Under new subsection (i), however, the financing statement filed in Pennsylvania would
20 be effective to perfect a security interest that attaches to the post-merger collateral. The new
21 subsection would eliminate the risk that a change in Debtor's location would result in security
22 interests in post-relocation collateral being unperfected until Lender discovers the relocation and
23 files in Delaware. The perfection afforded by the Pennsylvania financing statement would end
24 four months after the merger (reincorporation) unless Lender perfects under Delaware law
25 within the four-month period (or, if earlier, before the financing statement would have become
26 ineffective under Pennsylvania law).
27

28 2. In many cases, an original debtor (Debtor, a Pennsylvania corporation) will merge
29 into a corporation (Survivor, a Delaware corporation) that has been operating before the merger.
30 In these cases, subsection (i) would affect Lender's security interest not only in inventory
31 acquired by Survivor after the merger but also in inventory held by Survivor at the time of the
32 merger. Where Lender files against Debtor's inventory in Pennsylvania before the merger,
33 amended Section 9-316 would yield the following results (assuming that the financing statement
34 would not have become ineffective under Pennsylvania law):
35

36 a. *Transferred inventory.* Lender's perfected security interest in the inventory that
37 Survivor acquired from Debtor would remain perfected for one year after the merger.
38 See subsection (a). If Lender perfects under Delaware law within the year, then the
39 security interest would remain perfected thereafter. See subsection (b).
40

41 b. *Survivor's pre-merger inventory.* Lender's security interest in collateral that Survivor
42 had on hand at the time of the merger would attach and become perfected when Survivor
43 becomes a new debtor. It would remain perfected for four months after Survivor
44 becomes a new debtor. If Lender perfects under Delaware law within the four-month
45 period, then the security interest would remain perfected thereafter. See subsection (i).
46

47 c. *Inventory acquired post-merger.* Lender's security interest in collateral that Survivor

1 acquires within four months after Survivor becomes a new debtor would become
2 perfected when Survivor acquires the collateral. If Lender perfects under Delaware law
3 within the four-month period, then the security interest would remain perfected
4 thereafter. See subsection (i).
5

6 3. The cases described in Note 2 also may give rise to a “double-debtor” problem, in
7 which Lender and Survivor’s secured parties hold competing security interests in the same
8 inventory. Section 9-326 contains the priority rules addressing this problem. They have been
9 amended to take account of new subsection (i).
10

11 4. Under current law, the security interest of a secured party in the position of Lender
12 would be unperfected, and a buyer, lessee, or licensee normally would take free of it under
13 Section 9-317. New subsection (i)(3) preserves this result.
14

15 5. Although new subsection (i) is likely to be most useful to creditors having a security
16 interest in inventory and receivables, it would apply to all kinds of collateral.
17

18 6. The addition of subsection (i) will require explanatory and other changes to the
19 official comments. The revised comments will also explain the application of this subsection to
20 entities that convert from one organizational form to another.
21
22

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

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

31 (b) **[Priority under other provisions; multiple original debtors.]** The other provisions
32 of this part determine the priority among conflicting security interests in the same collateral
33 perfected by filed financing statements that are effective solely under Section 9-508 or Sections
34 9-508 and 9-316(i)(1). However, if the security agreements to which a new debtor became
35 bound as debtor were not entered into by the same original debtor, the conflicting security

1 interests rank according to priority in time of the new debtor's having become bound.

2 **Reporter's Note**

3
4 Section 9-326 resolves the priority of conflicting security interests in situations like the
5 following:

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

13
14 Under current law, SP-D's security interest would attach to inventory that Survivor had
15 on hand at the time of the merger or acquired after the merger. Section 9-508 makes SP-D's
16 financing statement effective to perfect its security interest in this inventory, even though the
17 financing statement was filed against Debtor. The first-to-file-or-perfect rule (Section 9-
18 322(a)(1)) would award priority to SP-D. However, it is subject to Section 9-326, which awards
19 priority to SP-S. Section 9-326 identifies the subordinated security interest as one that is
20 "perfected by a filed financing statement that is effective solely under Section 9-508."
21

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

31 New subsection (i) would address this second problem by making SP-D's Pennsylvania
32 filing effective with respect to inventory that Survivor had at the time of the merger and
33 inventory that Survivor acquired within four months after the merger. To insure that the first-to-
34 file-or-perfect rule subordinates a security interest like SP-D's, Section 9-326 would be amended
35 to subordinate a security interest that is perfected by a financing statement that is "effective
36 solely under Section 9-508 or Sections 9-508 and 9-316(i)(1)."
37
38

39 **SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY** 40 **INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.**

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

1 according to the following rules:

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

6 * * *

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

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

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

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

17 * * *

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

20 Reporter's Note

21 Consider this example:

22 SP-D holds a security interest in the existing and after-acquired inventory of Debtor, a
23 Pennsylvania corporation. In 2007 SP-D perfected its security interest by filing a
24 financing statement against Debtor in Pennsylvania. SP-S holds a security interest in the
25 existing and after-acquired inventory of Survivor, a Delaware corporation. In 2008 SP-S
26 perfected its security interest by filing a financing statement against Survivor in
27
28

1 Delaware. In 2009 Debtor merges into Survivor. Shortly after the merger, Survivor
2 acquires additional inventory.
3

4 SP-S's security interest would attach to the post-merger inventory and would be perfected by
5 SP-S's filing in Delaware. SP-D's security interest also would attach to the post-merger
6 inventory and, under new Section 9-316(i)(1), would be a perfected security interest until four
7 months after the merger. Because SP-D's security interest would be perfected by a financing
8 statement that is "effective solely under . . . Sections 9-508 and 9-316(i)(1)," Section 9-326(a)
9 would subordinate SP-D's security interest to SP-S's.
10

11 Now suppose that SP-D files an initial financing statement against Survivor in Delaware
12 before the expiration of the four-month period. Under new Section 9-316(i)(2), SP-D's security
13 interest in the inventory that Survivor acquired post-merger would remain perfected after the
14 period expires. SP-D's Delaware filing should not, however, elevate the priority of SP-D's
15 subordinate security interest. SP-S was the first to file against Survivor; Debtor never had an
16 interest in the collateral in question, which Survivor acquired independently of the merger. But
17 once SP-D files against Survivor in Delaware, SP-D's security interest in this collateral no
18 longer would be perfected by a financing statement that is "effective solely under . . . Sections 9-
19 508 and 9-316(i)" and so no longer would be covered by the subordination rule in Section 9-
20 326(a).
21

22 The amendments to Section 9-322(a) and (b) would preserve the subordination by dating
23 SP-D's priority, for purposes of the first-to-file-or-perfect rule, from the time of its Delaware
24 filing. The amendments would relieve SP-S, which was the first secured party to file against
25 Survivor, from any need to check for subsequent filings by competing secured parties. (Note
26 that the amendments would not affect the rule in Section 9-325(a), which governs the priority of
27 security interests in inventory that Debtor transferred to Survivor in the merger.)
28
29

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

32 * * *

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

38 * * *

1 1. The application of subsection (d) is expanded to cover buyers of all types of collateral
2 that are not susceptible to possession. In all likelihood the amendment reflects the original
3 intention of the Article 9 Drafting Committee.
4

5 2. This draft adds the word “tangible” before “documents” to conform to the
6 amendments to Article 9 that accompany Revised Article 7.
7
8

9 **SECTION 9-406. DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF**
10 **ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS**
11 **ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES,**
12 **AND PROMISSORY NOTES INEFFECTIVE.**

13 * * *

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

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

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

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

1 against the account debtor or other obligor, notwithstanding a provision in the underlying
2 contract that purports to prevent an assignee from doing so.

3
4 The draft addresses the allocation of transactions between the broader override in Section
5 9-406(a) and the narrower override in Section 9-408(a). The distinction is most likely to matter
6 where the collateral is the right to payment of a loan.

7
8 Under current law, if the right to payment of the loan is evidenced by chattel paper, then
9 a contractual restriction would not be effective to restrict the assignee's right to enforce against
10 the account debtor. If, however, the right to payment of the loan is evidenced by an instrument,
11 or is a payment intangible, then a contractual restriction would not be effective to restrict the
12 assignee's right to enforce against the account debtor if the assignment is made for collateral
13 purposes. If, however, the assignment is a sale of the payment intangible or promissory note,
14 then Section 9-408(a) applies and the assignee's right to enforce is limited by any contractual
15 restriction. Whether current Section 9-406 or 9-408 applies to a foreclosure sale of the
16 receivable by an assignee for collateral purposes is unclear. The proposed amendment would
17 clarify that Section 9-406 applies and that, therefore, a buyer at a foreclosure sale would be free
18 to enforce the account debtor's obligation.

19
20 Consider this example:

21
22 Lender makes a loan to Borrower. The loan is not evidenced by chattel paper. The loan
23 agreement (or note) provides that Lender's rights may not be assigned and, if Lender
24 wrongfully assigns the rights, an assignee may not enforce Borrower's obligation to pay.
25 Lender assigns the right to payment (i.e., the payment intangible or instrument) to
26 Assignee.

27
28 If the assignment to Assignee is a sale, then Section 9-408(a) applies and the contractual
29 restrictions are ineffective with respect to the creation, attachment, and perfection of
30 Assignee's security interest.

31
32 If the assignment to Assignee is for security, the restriction would not be effective if
33 Assignee itself sought to collect or if Assignee sold to a buyer at foreclosure (and,
34 presumably, if the foreclosure buyer resold). However, the restriction would be effective
35 against nonforeclosure buyers who did not take through a foreclosure buyer.

36
37 Section 9-406 is clear that a contractual restriction would not be effective to restrict the
38 assignee's right *qua* assignee to enforce the account debtor's obligation under Section 9-607.
39 The proposed amendment would eliminate any doubt that the restriction would not be effective
40 to restrict the assignee's right to enforce if the assignee became the owner of the payment
41 intangible or promissory note by accepting it in a "strict foreclosure" under Section 9-620.
42
43

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

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

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

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

12
13 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

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

15 * * *

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

18 * * *

19 (67A) “Public organic record” means:

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

24 (B) an organic record or records of a business trust composed of the

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

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

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

15 * * *

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

23 * * *

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Reporter’s Note

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

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

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

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

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

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

Like Former Section 9-402(1), Section 9-503(a)(4) provides that, when the debtor is an individual, a financing statement is sufficient only if it provides the “name of the debtor.” Inasmuch as some individuals use variations of their name at various times—for example,

1 sometimes using the full middle name and sometimes a middle initial—, this standard does not
2 provide absolute certainty.

3
4 American law provides each individual with nearly unlimited freedom to change his
5 name. Unlike citizens of most other nations, citizens of the United States do not hold an official
6 identity document, and so no single source for determining and verifying the debtor’s name is
7 available. For these reasons, absolute certainty in concerning the name of an individual debtor
8 seems impossible to achieve. Rather, the questions for the Joint Review Committee have been
9 whether more certainty than is currently available is needed and, if it is, how much certainty can
10 Article 9 provide and at what cost.

11
12 Whether the existing level of certainty is sufficiently great that a statutory change is
13 warranted has been the subject of some dispute. Many believe that it is not. The majority of
14 reported cases in which a financing statement was held to be insufficient because of an error in
15 the debtor’s name concern entity debtors, not individuals. Although some reported cases have
16 held that filings against individual debtors were insufficient because they did not provide the
17 correct name for the debtor, the financing statements typically were insufficient because they
18 contained a typographical error or provided the debtor’s nickname rather than a “real” name, and
19 not because the secured party chose the “wrong” name from among those appearing on
20 documents disclosed through the exercise of due diligence. Indeed, no reported case has found
21 that the name appearing on the debtor’s driver’s license is insufficient.

22
23 The possibility that more than one name may satisfy the statutory requirement (e.g.,
24 Franklin Delanao Roosevelt and Franklin D. Roosevelt) may require searchers to search under
25 more than one name. However, the advent of on-line searching has significantly reduced the
26 delay and cost of searching under more than one of the likely names and increased the ease of
27 making multiple searches. Likewise, the burden of filing under more than one name has become
28 quite small, inasmuch as filing is done electronically and most states charge a very low fee, or no
29 fee at all, for adding an additional debtor name to a filing.

30
31 Others believe that amendments to Article 9 are needed, although there is no clear
32 agreement as to exactly what those amendments should contain. In response to their concerns,
33 three different approaches towards clarifying what name or names are sufficient were developed.
34 These approaches are:

35
36 (A) to amend Article 9 to require that a financing statement provide the name for the
37 debtor that appears on a driver’s license or other specified document (the “only if” approach);
38

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

42 (C) to amend Article 9 to create two classes of security interests—one as to which a
43 financing statement provides the name that appears on a driver’s license or other specified
44 document filing and another as to which a financing statement provides the name of the debtor
45 but not the name on the specified document, and to provide that a security interest in the latter
46 class generally does not have priority over competing secured parties, buyers, lessees, and
47 licensees (the “priority” approach). The members of a task force of the American Bankers

1 Association tend to favor this approach.
2

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

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

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

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

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

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

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

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

1 * * *

2 (3) * * *

3 * * *

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

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

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

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

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

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

21 ~~(4)~~(5) in other cases:

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

24 (B) if the debtor does not have a name, only if it provides the names of the

1 partners, members, associates, or other persons comprising the debtor.

2 * * *

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

7
8 **SECTION 9-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF**
9 **FINANCING STATEMENT.**

10 * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 * * *

22 (c) **[Financing statement not seriously misleading.]** If a search of the records of the
23 filing office under the debtor's correct name, using the filing office's standard search logic, if
24 any, would disclose a financing statement that fails sufficiently to provide the name of the debtor

1 in accordance with Section 9-503(a), the name provided does not make the financing statement
2 seriously misleading.

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

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

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

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

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

15 **Reporter’s Note**

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

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

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

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

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

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

23
24 Debtor, who resides in Illinois, grants a security interest to SP in certain business
25 equipment. SP files a financing statement in Illinois that provides a name that is
26 sufficient under Illinois’ Section 9-503(a)(4) (Alternative A) or 9-503(g) (Alternative B).
27 On January 1, Debtor relocates to Indiana. Upon the relocation, the governing law
28 changes from the law of Illinois to the law of Indiana. However, under Indiana’s Section
29 9-316, a security interest perfected by the Illinois filing remains perfected for four
30 months, i.e., through the end of April. If SP does not file in Indiana before the four-
31 month period expires, then the security interest will become unperfected and will be
32 deemed never to have been perfected as against a purchaser of the collateral for value.
33 See Indiana’s Section 9-316(b).

34
35 In the example, the name on Debtor’s Illinois driver’s license would be irrelevant for
36 purposes of Indiana’s Section 9-503(a)(4) (Alternative A) or 9-503(g) (Alternative B), inasmuch
37 as it was not issued by “this State,” i.e., Indiana. Of course, a financing statement providing that
38 name might be effective under Section 9-506 (i.e., it might not be seriously misleading) and,
39 under Alternative B, it might satisfy Indiana’s Section 9-503(a)(4) (i.e., it might be the
40 individual name of the debtor).

41
42 3. Draft Section 9-507(d) specifies two events that would constitute a change of the
43 debtor’s name. First, an individual debtor would change his name upon the apparent expiration
44 of the identity document indicating the name provided in the financing statement, if,
45 immediately following the apparent expiration, the debtor’s name under Section 9-503(a)(4) is
46 different from the name provided. Second, an individual debtor would change his name when a
47 new identity document is issued that is on a higher step than, or superseding, the one indicating

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

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

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

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

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

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

1 the name of an individual debtor.

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

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

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

10 * * *

11 (4) in other cases:

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

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

16 * * *

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

23 (h) **[Multiple licenses or cards.]** If this State has issued to an individual more than one
24 [driver’s license] or [identification card] of a kind described in subsection (g), the one that was
25 issued most recently is the one to which the subsection refers.
26

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

3 * * *

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

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

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

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

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

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

21
22 **SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.**

23 * * *

24 (b) **[Financing statement seriously misleading.]** Except as otherwise provided in

1 subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in
2 accordance with Section 9-503(a) or (g) is seriously misleading.

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

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

10 (e) **[Individual “debtor’s correct name.”]** If a debtor who is an individual changes the
11 debtor’s name under Section 9-507(d), the “debtor’s correct name” in subsection (c) means the
12 name of the debtor which, immediately after the change, would be sufficient under Section 9-
13 504(a)(4) or (g).

14 *[End of Alternative B1]*

15
16 *[Alternative B2—Form of Name]*

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

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

20 * * *

21 (4) in other cases:

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

24 (B) if the debtor does not have a name, only if it provides the names of the

1 partners, members, associates, or other persons comprising the debtor.

2 * * *

3 (g) **[Exception for individual debtor’s name.]** A financing statement that does not
4 provide the individual name of the debtor nevertheless does sufficiently provide the name of a
5 debtor who is an individual if it provides the surname, first given name, and first initial of the
6 second given name, if any, of the individual.

7 *[End of Alternative B: “Safe Harbor” Approach]*

8 **Reporter’s Note**

9
10 1. Under Alternative B, a financing statement providing the name on the debtor’s
11 debtor’s driver’s license or identification card would be sufficient, if the license or card appears
12 on its face not to have expired. See Section 9-503(g). However, a financing statement that
13 provides the debtor’s individual name would also be sufficient, even if that name does not
14 appear on the license or card. See Section 9-503(a)(4). If the State of the debtor’s principal
15 residence (“this State”) has issued more than one such document, the name that is sufficient is
16 the one indicated on the most recent document. See Section 9-503(h).

17
18 2. Draft Section 9-507(d) specifies two events that would constitute a change of the
19 debtor’s name. First, an individual debtor would change his name upon the apparent expiration
20 of the identity document indicating the name provided in the financing statement, if,
21 immediately following the apparent expiration, the debtor’s name under Section 9-503(a)(4) is
22 different from the name provided. Second, an individual debtor would change his name when
23 the State of the debtor’s principal residence issues a license or card that indicates a name
24 different from the one provided on the financing statement. An individual whose name is
25 determined under Section 9-503(a)(4) would change his name as under current law.

26
27 Even if the debtor’s name changes, the filed financing statement does not become
28 seriously misleading if it can be found by searching under the debtor’s “correct” name, using the
29 filing office’s standard search logic. Draft Section 9-506(e) explains what is meant by the
30 debtor’s “correct name” when the debtor’s name changes under Section 9-507(d): The name that
31 Section 9-503(a)(4) or (g) would yield immediately after the debtor’s name changes.

32
33 3. The rule in Section 9-503(g) has been drafted as an exception to the rule in Section 9-
34 503(a)(4). The Joint Review Committee may wish to consider whether the rule should appear
35 instead as an alternative.

36
37
38 *[Alternative C: Name for Individual Debtor—“Priority Approach”]*
39

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

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

3 * * *

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

6 * * *

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

10 * * *

11 * * *

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

13 (a) [Sufficiency of debtor’s name.] A financing statement sufficiently provides the
14 name of the debtor:
15

16 * * *

17 (3) * * *

18 * * *

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

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

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

1 of the individual which is indicated on the [driver's license];

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

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

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

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

17 ~~(4)~~(5) in other cases:

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

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

22 * * *

23 (g) [Multiple licenses or cards.] If this State, the United States, or another country has
24 issued to an individual more than one [driver's license], [identification card], or passport of a

1 kind described in the applicable subparagraph of subsection (a)(4), the one that was issued most
2 recently is the one to which the subparagraph refers.

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

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

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

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

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

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

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

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

23 (c) **[Lessees that receive delivery.]** Except as otherwise provided in subsection (e), a
24 lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and

1 receives delivery of the collateral without knowledge of the security interest or agricultural lien
2 and before it is perfected by a method other than a low-priority filing.

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

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

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

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

17
18 **SECTION 9-320. BUYER OF GOODS.**

19 * * *

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

24 (1) without knowledge of the security interest;

- 1 (2) for value;
- 2 (3) primarily for the buyer's personal, family, or household purposes; and
- 3 (4) before ~~the filing of a financing statement~~ a high-priority filing covering the
- 4 goods is made.

5 * * *

6

7 **SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY**

8 **INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.**

9 (a) **[General priority rules.]** Except as otherwise provided in this section, priority

10 among conflicting security interests and agricultural liens in the same collateral is determined

11 according to the following rules:

12 (1) Conflicting perfected security interests and agricultural liens rank according

13 to priority in time of filing or perfection, except that a security interest perfected by a low-

14 priority filing is subordinate to a security interest perfected by a high-priority filing. Priority

15 dates from the earlier of the time a filing covering the collateral is first made or the security

16 interest or agricultural lien is first perfected, if there is no period thereafter when there is neither

17 filing nor perfection.

18 (2) A perfected security interest or agricultural lien has priority over a conflicting

19 unperfected security interest or agricultural lien.

20 (3) The first security interest or agricultural lien to attach or become effective has

21 priority if conflicting security interests and agricultural liens are unperfected.

22 * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (b) **[Deemed rights of debtor if buyer's security interest unperfected.]** For purposes
8 of determining the rights of creditors of, and purchasers for value of an account or chattel paper
9 from, a debtor that has sold an account or chattel paper, while the buyer's security interest is
10 unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical
11 to those the debtor sold.

12 (c) **[Deemed rights of debtor if buyer's security interest perfected by low-priority**
13 **filing.]** For purposes of determining the rights of purchasers for value of an account or chattel
14 paper from a debtor that has sold an account or chattel paper, while the buyer's security interest
15 is perfected by a low-priority filing, the debtor is deemed to have rights and title to the account
16 or chattel paper identical to those the debtor sold.

17
18 **SECTION 9-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF**
19 **FINANCING STATEMENT.**

20 * * *

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

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

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

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

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

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

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

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

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

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

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

23 (A) the passport that indicates the name appears on its face to expire and
24 the name that, immediately upon the apparent expiration, would be sufficient under Section 9-

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

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

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

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

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

13
14 **SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.**

15 * * *

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

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

24 (d) **[“Debtor’s correct name.”]** For purposes of Section 9-508(b), the “debtor’s correct

1 name” in subsection (c) means the correct name of the new debtor.

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

5 (1) in the case of a change under Section 9-507(d)(1)(A), 9-507(d)(2)(A), 9-
6 507(d)(3)(A), or 9-507(d)(4)(A), the name of the debtor that would be sufficient under Section
7 9-504(a)(4) immediately after the apparent expiration; and

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

12
13 **SECTION 9-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL.**

14 * * *

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

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

20 (1) the debtor;

21 (2) any secondary obligor; and

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

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

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

- 4 (i) identified the collateral;
- 5 (ii) was indexed under the debtor's name as of that date; and
- 6 (iii) was filed in the office in which to file a financing statement
7 against the debtor covering the collateral as of that date; and

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

11 * * *

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

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

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

- 18 (A) did not receive a response to the request for information; or
- 19 (B) received a response to the request for information and sent an
20 authenticated notification of disposition to each secured party or other lienholder named in that
21 response whose financing statement covered the collateral.

22 (f) [**Debtor's name.**] If the debtor is an individual, the "debtor's name" for purposes
23 of subsections (c) and (e) is the name specified in Section 9-503(a)(4).

1 **SECTION 9-621. NOTIFICATION OF PROPOSAL TO ACCEPT**

2 **COLLATERAL.**

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

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

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

11 (A) identified the collateral;

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

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

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

18 * * *

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

21 **Reporter’s Note**

22
23 The amendments to Sections 9-611 and 9-621 make clear that an enforcing secured party
24 need not give notice to the holder of a security interest perfected by a low-priority filing unless
25 the enforcing party has received an authenticated notification from the holder.
26

2 **Reporter’s Note**

3
4 **1. Classes of Security Interests Perfected by Filing.** Alternative C divides security
5 interests perfected by filing into two classes. A financing statement that provides the name
6 determined under the cascade, or waterfall, in Section 9-503(a)(4) would afford to the secured
7 party all the benefits that current law affords to a security interest perfected by filing. The draft
8 uses the term “high-priority filing” for a filing of this kind.
9

10 Section 9-503(h) would give effect to a financing statement that does not provide the
11 name specified in subsection (a)(4) but instead provides the debtor’s individual name. The draft
12 uses the term “low-priority filing” for a filing of this kind. Although a low-priority financing
13 would be sufficient to perfect a security interest, a security interest perfected by a low-priority
14 filing would be subordinate to the rights of most third parties other than a lien creditor and a
15 competing security interest perfected by a low-priority filing.
16

17 A name that would be disclosed by a search described in Section 9-506(b) under the
18 name specified in subsection (a)(4) would be “sufficient under Section 9-503(a)(4)” within the
19 meaning of the definition of “high-priority filing” and would “sufficiently provide the name of a
20 debtor who is an individual pursuant to subsection (a)(4)” within the meaning of Section 9-
21 503(h). The Joint Review Committee may wish to consider whether this point is clear from the
22 text.
23

24 The fact that the steps of the cascade in Alternative C’s version of Section 9-503(a)(4)
25 differ from those of the cascade in Alternative A results from the fact that the particular steps in
26 the cascade remain under discussion. The discussion of issues concerning the cascade that
27 appears in Reporter’s Notes 1, 2, 4, and 5 to Alternative A are relevant to the cascade in
28 Alternative C.
29

30 **2. Competing Security Interests under Section 9-322.** As between competing security
31 interests perfected by filing, the amendment to subsection (a)(1) states the basic rule of the
32 “priority” approach, i.e., that a security interest perfected by a low-priority filing is subordinate
33 to a security interest perfected by a high-priority filing. As drafted, the first-to-file-or-perfect
34 rule would continue to apply as between competing low-priority filings and as between
35 competing security interests, one of which is perfected by filing and the other of which is
36 perfected by another method (subject, of course, to the “superpriority” rules elsewhere in part 3).
37

38 The amendment to subsection (a)(1) can result in a circular priority. Suppose, for
39 example, that after SP-1 perfects by a low-priority filing, SP-2 perfects by taking possession.
40 Under the first-to-file-or-perfect rule, SP-1’s perfected security interest has priority over SP-2’s.
41 Thereafter, SP-3 perfects by a high-priority filing. Under the first-to-file-or-perfect rule, SP-2’s
42 security interest is senior to SP-3’s; however, under the new exception in subsection (a)(1), SP-
43 3’s security interest would be senior to SP-1’s, which is senior to SP-2’s, which is senior to SP-
44 3’s, etc. One way in which to prevent this circular priority from arising would be to provide that
45 a security interest perfected by a low-priority filing is subordinate to a security interest perfected
46 by possession.

1 **3. Purchase-money Priority.** New Section 9-324(h) would implement the “priority”
2 rule as it affects purchase-money security interests. This subsection does not affirmatively state
3 that a security interest perfected by a high-priority filing is senior to a security interest perfected
4 by a low-priority filing (which would be the case under the general rule in amended Section 9-
5 322(a)(1)). Rather, subsection (h) prevents Section 9-324 from giving a “superpriority” to a
6 PMSI perfected by a low-priority filing as against a security interest perfected by a high-priority
7 filing. Under these circumstances, subsection (h) disapplies the PMSI “superpriority” rules with
8 respect to both the purchase-money collateral itself and the proceeds of the purchase-money
9 collateral.

10
11 Current Section 9-324(g) deals with the relatively unusual case in which a debtor creates
12 two purchase-money security interests in the same collateral and both security interests qualify
13 for special priority under one of the other subsections. It gives priority to a seller-retained PMSI
14 over a PMSI that secures an enabling loan. As amended, it would be subject to new subsection
15 (h), which would deny priority to a seller-retained PMSI that is perfected by a low-priority filing
16 as against an enabling lender’s PMSI that is perfected by a high-priority filing.

17
18 **4. Competing Lien Creditor.** As against a lien creditor, a security interest perfected by
19 a low-priority filing has the same rights as any other perfected security interest.

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

30
31 Consider the case in which the first buyer of accounts or chattel paper (B-1) perfects its
32 security interest by a low-priority filing and the second buyer (B-2) perfects by a high-priority
33 filing. Section 9-318(a) would prevent B-2 from acquiring any interest in the sold receivables,
34 and subsection (b) would not apply because B-1’s security interest is perfected. But the policy
35 underlying the “priority” approach dictates that B-2 should become the owner of the collateral
36 free of B-1’s security interest. New Section 9-318(c) would enable B-2’s interest to attach
37 notwithstanding subsection (a), and amended Section 9-322(a)(1) would give priority to B-2’s
38 interest.

39
40 Section 9-318(c) also would come into play when intangible collateral is sold to a buyer,
41 other than a secured party, who would take free of B-1’s perfected-by-low-priority-filing
42 security interest under amended Section 9-317(d)(1).

43
44 **6. Other Priority Rules.** The draft does not distinguish between security interests
45 perfected by a high-priority filing and those perfected by a low-priority filing in the following
46 circumstances:

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

4
5 b. Section 9-336, which deals with conflicting security interests in a product or mass that
6 results when goods become commingled goods.

7
8 c. Sections 9-326 and 9-325, which address “double-debtor” problems.
9

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

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

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

32 Section 9-325 addresses the problem that arises when a debtor acquires property that is
33 subject to a security interest created by another debtor. Currently, this section provides that a
34 security interest created by the transferor has priority over a security interest created by the
35 transferee, if the security interest created by the transferor was perfected when the transferee
36 acquired the collateral.
37

38 **Example 2:** A owns an item of equipment subject to a perfected security interest in
39 favor of SP-A. A sells the equipment to B, not in the ordinary course of business. B
40 acquires its interest subject to SP-A’s security interest. Under current Section 9-325, if B
41 creates a security interest in the equipment in favor of SP-B, SP-B’s security interest is
42 subordinate to SP-A’s security interest, even if SP-B filed against B before SP-A filed
43 against A, and even if SP-B took a purchase-money security interest. Normally, SP-B
44 could have investigated the source of the equipment and discovered SP-A’s filing before
45 making an advance against the equipment, whereas SP-A had no reason to search the
46 filings against someone other than its debtor, A.
47

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

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

22
23 Even if the debtor's name changes, a filed financing statement does not become seriously
24 misleading if it can be found by searching under the debtor's "correct" name, using the filing
25 office's standard search logic. Draft Section 9-506(e) explains what is meant by the debtor's
26 "correct name" when the debtor's name changes under Section 9-507(d). If the name change
27 results from the expiration of the source document, the correct name is the name that Section 9-
28 503(a)(4) would yield after the expiration. If the name change results from the issuance of a new
29 source document, the correct name is the name that is indicated on the new document (which, of
30 course, is the name that Section 9-503(a)(4) would yield after the issuance of the new
31 document).

32
33 The Joint Review Committee has yet to consider whether priority should be affected by a
34 change of the debtor's name and, if so, whether the statute needs to be amended to reflect the
35 desired outcome.

36
37 **Example 3:** Financing statements covering an item of equipment are filed in this order:

- 38
39 C-1: Low priority
40 C-2: High priority
41 C-3: High priority

42
43 Priority would rank as follows: C-2 > C-3 > C-1.

44
45 D changes his name, such that C-1's filing becomes high-priority and C-2's and C-3's
46 filings remain high-priority. Would this change result in C-1's security interest having priority
47 over the other two? (Compare the case in which D's name doesn't change but C-1 amends its

1 financing statement to become a high-priority filing.)

2
3 **Example 4:** Under the facts of Example 3, D changes his name, such that C-2's and
4 C-3's filings become low-priority and C-1's filing remains low-priority. Would the first-to-file-
5 or-perfect rule apply, giving C-1's security interest priority over the other two? (Compare 9-
6 316(b) and 9-515(c).)

7
8 **8. Enforcement.** The amendments to Sections 9-611 and 9-621 make clear that an
9 enforcing secured party need not give notice to the holder of a security interest perfected by a
10 low-priority filing unless the enforcing party has received an authenticated notification from the
11 holder.

12
13 **9. Risks of Nonuniform Enactments.** If some, but not all, Article 9 jurisdictions were
14 to enact Alternative C, significant choice-of-law problems would be likely to result.

15
16 **Example 5:** Debtor's principal residence is in Kansas. SP-1 and SP-2 each files a
17 financing statement against Debtor in the Kansas filing office. Some of Debtor's equipment is
18 located in Kansas, and some is across the border in Missouri. Although the law of the State of
19 Debtor's principal residence (Kansas) governs perfection, the law of the State in which the
20 collateral is located governs priority. Thus, Kansas law governs the priority of the security
21 interests in the equipment located in Kansas, whereas Missouri law governs the priority of the
22 security interests in the equipment located in Missouri. Assume Missouri has enacted
23 Alternative C, and Kansas has not. If SP-1 made a "low-priority" filing and SP-2 made a "high-
24 priority" filing, then SP-1 will be senior as to the Kansas equipment under Kansas's first-to-file-
25 or-perfect rule, but junior as to the Missouri equipment under Missouri's "priority" approach.
26 Moreover, movement of equipment between Kansas and Missouri will change the relative
27 priority of the two secured parties.

28
29 *[End of Alternative Approaches to Name of Individual Debtor]*

30
31
32 **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.**

33 (a) **[Sufficiency of debtor's name.]** A financing statement sufficiently provides the
34 name of the debtor:

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

39 (2) if the debtor is a decedent's estate, only if the financing statement provides the

1 name of the decedent and indicates that the debtor is an estate;

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

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

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

9 (4) in other cases:

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

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

14 * * *

15 Official Comment

16 * * *

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

30 * * *

31 Reporter’s Note

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

4
5 **SECTION 9-307. LOCATION OF DEBTOR.**

6 * * *

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

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

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

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

18 * * *

19 **Official Comment**

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

31
32 In some cases, the law of the United States authorizes the registered organization to
33 designate a main office, home office, or other comparable office. See, e.g., 12 U.S.C. Sections

1 22 and 1464(a); 12 C.F.R. Section 552.3. Designation of such an office constitutes the
2 designation of the State of location for purposes of Section 9-307 (f)(2).
3

4 Subsection (f) also specifies the location of a branch or agency in the United States of a
5 foreign bank that has one or more branches or agencies in the United States. The law of the
6 United States ~~authorized~~ authorizes a foreign bank (or, on behalf of the bank, a federal agency)
7 to designate a single home state for all of the foreign bank's branches and agencies in the United
8 States. See 12 U.S.C. Section 3103(c) and 12 C.F.R. Section 211.22. As authorized, the
9 designation constitutes the State of location for the branch or agency for purposes of Section 9-
10 307(f), unless all of a foreign bank's branches or agencies that are in the United States are
11 licensed in only one State, in which case the branches and agencies are located in that State. See
12 subsection (i).
13

14 In cases not governed by subsection (f) or (i), the location of a foreign bank is determined
15 by subsections (b) and (c).
16

17 **Reporter's Note**

18
19 1. The amendment to subsection (f) would remove any doubt that, as the comment
20 indicates, when the law of the United States authorizes a registered organization to designate a
21 main office, home office, or other comparable office, designation of such an office constitutes
22 the designation of the State of location for purposes of Section 9-307(f)(2).
23

24 2. The amendment to the comment would correct a typographical error.
25
26

27 **SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF** 28 **FILING.**

29 * * *

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

32 * * *

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

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

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

1 financing statement to which the record relates;

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

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

6 **[Alternative B]**

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

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

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

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

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

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

19 **[End of Alternatives]**

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

24 **[Subsection (d)—Alternative A]**

1 *amendments and cannot search their records by both the name of the debtor and the file number*
2 *should enact Alternative B to Sections 9-512(a), 9-518(b), 9-518(d), 9-519(f) and 9-522(a).*
3
4

5 **SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF**
6 **FILING.**

7 * * *

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

10 * * *

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

12 * * *

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

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

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

19 * * *

20 * * *

21
22 **Reporter's Note**

23
24 1. Current Section 9-518 provides a mechanism whereby an aggrieved debtor may use
25 the filing office to make a public declaration concerning the debtor's belief that a filed financing
26 statement naming the debtor is inaccurate or was wrongfully filed. New subsections (c) and (d)
27 would provide a similar mechanism to a secured party of record for a financing statement to
28 express its belief that a person who filed a record relating to the financing statement was not
29 entitled to do so. As the current text does with respect to subsection (b), the amendments would
30 provide alternative versions of subsection (d). Each State would choose the alternative that is
31 better suited to the method by which searches are conducted in the real-estate records maintained
32 in the State.

1 2. Because this section currently refers to the statement as a “correction statement,”
2 some debtors have filed one under the misapprehension that the filing has legal effect. It does
3 not. See subsection (c) (as amended, subsection (e). To prevent future confusion, the
4 amendment would refer to the statement as a “statement of a claim.” The comments will be
5 amended to reflect this change in terminology.
6
7

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

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

11 * * *

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

17 * * *

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

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

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

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

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

27 **Reporter’s Note**
28

1 The amendment to paragraph (b)(2)(A) is for clarification only; it does not reflect a
2 change in meaning. Accordingly, the amendment should apply to all transactions governed by
3 Article 9, including those that were entered into before the effective date of the amendment.
4

5
6 **SECTION 8-103. RULES FOR DETERMINING WHETHER CERTAIN**
7 **OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS.**

8 * * *

9 (h) An obligation, share, participation, or interest does not satisfy Section 8-
10 102(a)(13)(ii) or 8-102(a)(15)(i) merely because the issuer or a person acting on its behalf:

11 (1) maintains records of the owner thereof for a purpose other than registration of
12 transfer; or

13 (2) could, but does not, maintain books for the purpose of registration of transfer.

14 **Official Comment**

15 * * *

16
17
18 9. Subsection (h) rejects the holding of *Highland Capital Management LP v.*
19 *Schneider*, 8 N.Y.3d 406 (2007). The registrability requirement in the definition of “registered
20 form,” and its parallel in the definition of “security,” are satisfied only if books are maintained by
21 or on behalf of the issuer for the purpose of registration of transfer, including the determination of
22 rights under Section 8-207(a) (or if, in the case of a certificated security, the security certificate so
23 states). It is not sufficient that the issuer records ownership, or records transfers thereof, for other
24 purposes. Nor is it sufficient that the issuer, while not in fact maintaining books for the purpose of
25 registration of transfer, could do so, for such is always the case. Subsection (h) is declaratory of the
26 proper interpretation of the definitions of “registered form” and “security,” not a change in law.
27

28 **Reporter’s Note**

29
30 This proposed amendment to Section 8-103 would be wholly unnecessary but for
31 the New York Court of Appeals’ opinion in *Highland Capital*. The opinion’s interpretation of
32 the definitions of “registered form” and “security” in Section 8-102 cannot be supported by the
33 existing statutory text.

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PART TWO

**MODIFICATIONS TO THE COMMENTS
UNACCOMPANIED BY AMENDMENTS
TO THE OFFICIAL TEXT**

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

Official Comment

5. Receivables-related Definitions.

* * *

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

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

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

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

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

3
4 * * *

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

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

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

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

1 also would be chattel paper, even if the assignment excludes other rights.

2
3 Every “payment intangible” is also a “general intangible.” Likewise, “software” is a
4 “general intangible” for purposes of this Article. See Comment 25. Accordingly, except as
5 otherwise provided, statutory provisions applicable to general intangibles apply to payment
6 intangibles and software.

7
8 * * *

9
10 **Reporter’s Note**

11
12 1. The point made in the sentence added to paragraph 5.b. will be further amplified.

13
14 2. The addition to paragraph 5.d. illustrates the correct application of the Article 9
15 classification system in the context of an assignment of the lessor’s right to payment under a
16 lease that is chattel paper.

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

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

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

24 * * *

25 * * *

26 **Official Comment**

27
28 * * *

29
30 2. **Basic Scope Provision.** Subsection (a)(1) derives from former Section 9-102(1) and
31 (2). These subsections have been combined and shortened. No change in meaning is intended.
32 Under subsection (a)(1), all consensual security interests in personal property and fixtures are
33 covered by this Article, except for transactions excluded by subsections (c) and (d). As to which
34 transactions give rise to a “security interest,” the definition of that term in Section 1-201 must be
35 consulted. When a security interest is created, this Article applies regardless of the form of the
36 transaction or the name that parties have given to it. Likewise, the subjective intention of the
37 parties with respect to the legal characterization of their transaction is irrelevant to whether this
38 Article applies, as it was to the application of former Article 9 under the proper interpretation of
39 former Section 9-102.
40

1 * * *

2
3 **Reporter's Note**

4
5 Section 9-102(a)(1) provides that Article 9 applies to a transaction that creates a security
6 interest. The addition to the comment emphasizes that this is the case, regardless of the
7 subjective intention of the parties with respect to the legal characterization of their transaction.
8

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

12 * * *

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

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

17 * * *

18 * * *

19 **Official Comment**

20 * * *

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

31 * * *

32
33
34 b. ~~Fixtures~~**Fixture Filings.** ~~Application of~~ Under the general rule in paragraph
35 (1), a security interest in fixtures may be perfected by filing in the office specified by Section 9-
36 501(a) as enacted in the jurisdiction in which the debtor is located. However, application of this
37 rule to perfection of a security interest ~~in fixtures~~by filing a fixture filing would yield strange
38 results. For example, perfection of a security interest in fixtures located in Arizona and owned

1 by a Delaware corporation would be governed by the law of Delaware. Although Delaware law
2 would send one to a filing office in Arizona for the place to file a financing statement as a fixture
3 filing, see Section 9-501, Delaware law would not take account of local, nonuniform, real-
4 property filing and recording requirements that Arizona law might impose. For this reason,
5 paragraph (3)(A) contains a special rule for security interests perfected by a fixture filing; the
6 law of the jurisdiction in which the fixtures are located governs perfection, including the formal
7 requisites of a fixture filing. Under paragraph (3)(C), the same law governs priority. Fixtures
8 are “goods” as defined in Section 9-102.

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

21
22 * * *

23
24
25 **SECTION 9-501. FILING OFFICE.**

26 * * *

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

31 * * *

32 **Official Comment**

33
34 * * *

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

1 of the debtor will inform persons searching the record as to where to make a search.

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

10 **Reporter’s Note**

11
12
13 The modifications to the comments to Sections 9-301 and 9-502 provide a fuller
14 explanation of where a financing statement should be filed when the debtor is a transmitting
15 utility.

16 **SECTION 9-307. LOCATION OF DEBTOR.**

17
18
19 (a) [**“Place of business.”**] In this section, “place of business” means a place where a
20 debtor conducts its affairs.

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

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

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

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

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

1 registration system as a condition or result of the security interest’s obtaining priority over the
2 rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor
3 is located in the District of Columbia.

4 **Official Comment**

5 * * *

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

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

26 * * *

27
28
29 **Reporter’s Note**

30
31 The proposed modification emphasizes that subsection (b), and therefore subsection (c),
32 does not apply if one of the special rules in subsections (e), (f), (i), and (j) applies.

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

37 (a) [**General rule: effect on perfection of change in governing law.**] A security
38 interest perfected pursuant to the law of the jurisdiction designated in Section 9-301(1) or
39 9-305(c) remains perfected until the earliest of:

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

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

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

6 * * *

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

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

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

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

19 or

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

21 * * *

22 **Official Comment**

23 * * *

24 5. **Goods Covered by Certificate of Title.** Subsections (d) and (e) address continued
25
26

1 perfection of a security interest in goods covered by a certificate of title. The following
2 examples explain the operation of those subsections.

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

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

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

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

1 parties, the seller (debtor) is deemed to have all rights and title that the seller sold. The seller is
2 deemed to have these rights even though, as between the parties, it has sold all its rights to the
3 buyer. Subsection (b) makes this explicit. As a consequence of subsection (b), if the buyer's
4 security interest is unperfected, the seller can transfer, and the creditors of the seller can reach,
5 the account or chattel paper as if it had not been sold.
6

7 **Example 1:** Debtor sells accounts or chattel paper to Buyer-1 and retains no interest in
8 them. Buyer-1 does not file a financing statement. Debtor then sells the same
9 receivables to Buyer-2. Buyer-2 files a proper financing statement. Having sold the
10 receivables to Buyer-1, Debtor would not have any rights in the collateral so as to permit
11 Buyer-2's security (ownership) interest to attach. Nevertheless, under this section, for
12 purposes of determining the rights of purchasers for value from Debtor, Debtor is
13 deemed to have the rights that Debtor sold. Accordingly, Buyer-2's security interest
14 attaches, is perfected by the filing, and, under Section 9-322, is senior to Buyer-1's
15 interest.
16

17 * * *

18
19 **5. Not a Priority Rule.** If a debtor sells an account, chattel paper, payment intangible or
20 promissory note to a buyer, and the debtor later transfers an interest in the same receivable to
21 another purchaser, a priority contest arises. If the interests are such that the priority contest is
22 governed by Article 9, it is resolved by application of the priority rules of Article 9. Subsection
23 (a) does not import the common-law principle of *nemo dat quod non habet* to displace those
24 rules. In many circumstances the priority rules of Article 9 will give the interest of the second
25 purchaser priority over the buyer's previously-acquired ownership interest. To the extent that
26 the priority rules entail such priority, the debtor necessarily has "power to transfer rights in the
27 collateral" within the meaning of Section 9-203(b)(3). See Section 9-203(b)(3), Comment 6.
28 Subsection (b) is essentially a codification of the foregoing principles as applied to a particular
29 contest of the foregoing type, and various comments note that these principles apply to other
30 particular contests. See Section 9-318, Comment 4; Section 9-317, Comment 6. These
31 principles apply generally to all priority contests of the foregoing type. However, when a
32 buyer's ownership interest is awarded priority under the applicable Article 9 priority rule, the
33 identification of the applicable rule as one of "priority" does not imply that the seller has
34 retained any interest.
35

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

1 **Reporter’s Note**

2
3 New comment 5 appears as it was submitted by Ken Kettering and Chuck Mooney, with
4 slight emendations.
5

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

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

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

16 * * *

17 **Official Comment**

18 * * *

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

26
27 **Example 1:** On February 1, A files a financing statement covering a certain item of
28 Debtor’s equipment. On March 1, B files a financing statement covering the same
29 equipment. On April 1, B makes a loan to Debtor and obtains a security interest in the
30 equipment. On May 1, A makes a loan to Debtor and obtains a security interest in the
31 same collateral. A has priority even though B’s loan was made earlier and was perfected
32 when made. It makes no difference whether A knew of B’s security interest when A
33 made its advance.
34

35 The problem stated in Example 1 is peculiar to a notice-filing system under which filing
36 may occur before the security interest attaches (see Section 9-502). The justification for
37 determining priority by order of filing lies in the necessity of protecting the filing system—that is,

1 of allowing the first secured party who has filed to make subsequent advances without each time
2 having to check for subsequent filings as a condition of protection. Note, however, that this
3 first-to-file protection is not absolute. For example, Section 9-324 affords priority to certain
4 purchase-money security interests, even if a competing secured party was the first to file or
5 perfect.

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

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

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

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

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

1
2 **SECTION 9-509. PERSONS ENTITLED TO FILE A RECORD.**

3
4 * * *

5
6 **Official Comment**

7
8 * * *

9
10 3. **Unauthorized Filings.** Records filed in the filing office do not require signatures for
11 their effectiveness. Subsection (a)(1) substitutes for the debtor’s signature on a financing
12 statement the requirement that the debtor authorize in an authenticated record the filing of an
13 initial financing statement or an amendment that adds collateral. Also, under subsection (a)(1),
14 if an amendment adds a debtor, the debtor who is added must authorize the amendment. A
15 person who files an unauthorized record in violation of subsection (a)(1) is liable under Section
16 9-625(b) and (e) for actual and statutory damages. Of course, a filed financing statement is
17 ineffective to perfect a security interest if the filing is not authorized. See Section 9-510(a).
18 Law other than this Article, including the law with respect to ratification of past acts, generally
19 determines whether a person has the requisite authority to file a record under this section. See
20 Sections 1-103, 9-502, Comment 3. This Article applies to other issues, such as the priority of a
21 security interest perfected by the filing of a financing statement. See Section 9-322, Comment 4.
22

23 **Reporter’s Note**

24
25 A record that is filed without the required authorization is ineffective. In some cases the
26 filing of a record is authorized after the record is filed or an unauthorized filing is ratified. The
27 modifications to the comments to Sections 9-322 and 9-509 illustrate the effect of such post-
28 filing authorizations and ratifications.
29

30
31 **SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY**
32 **INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.**

33 * * *

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

38 (1) any supporting obligation for the collateral; and

39 (2) proceeds of the collateral if:

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

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

3 and

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

7 * * *

8 **Official Comment**

9 * * *

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

24 * * *

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

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

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

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

20 **Reporter's Note**

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

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

28 * * *

29 **Official Comment**

30
31 * * *

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

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

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

6
7 **Reporter's Note**
8

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

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

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

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

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

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

30 * * *

1 **Official Comment**

2
3 * * *

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

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

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

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

29
30 **Reporter’s Note**

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

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

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

42 (1) the debtor authorizes the filing in an authenticated record or pursuant to

1 subsection (b) or (c); or

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

5 * * *

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

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

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

14 * * *

15 **Official Comment**

16 * * *

17
18
19 **6. Amendments; Termination Statements Authorized by Debtor.** Most amendments
20 may not be filed unless the secured party of record, as determined under Section 9-511,
21 authorizes the filing. See subsection (d)(1). However, under subsection (d)(2), the authorization
22 of the secured party of record is not required for the filing of a termination statement if the
23 secured party of record failed to send or file a termination statement as required by Section 9-
24 513, the debtor authorizes it to be filed, and the termination statement so indicates. An
25 authorization to file a record under subsection (d) is effective even if the authorization is not in
26 an authenticated record. Compare subsection (a)(1). However, the person filing the record
27 would be prudent to obtain and retain an authenticated record authorizing the filing.

28 * * *

29
30
31
32 **SECTION 9-602. WAIVER AND VARIANCE OF RIGHTS AND DUTIES.** Except

1 as otherwise provided in Section 9-624, to the extent that they give rights to a debtor or obligor
2 and impose duties on a secured party, the debtor or obligor may not waive or vary the rules
3 stated in the following listed sections:

4 * * *

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

6 * * *

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

9 * * *

10 Official Comment

11
12 1. **Source.** Former Section 9-501(3).

13
14 2. **Waiver: In General.** Section 1-102(3) addresses which provisions of the UCC are
15 mandatory and which may be varied by agreement. With exceptions relating to good faith,
16 diligence, reasonableness, and care, immediate parties, as between themselves, may vary its
17 provisions by agreement. However, in the context of rights and duties after default, our legal
18 system traditionally has looked with suspicion on agreements that limit the debtor's rights and
19 free the secured party of its duties. As stated in former Section 9-501, Comment 4, "no
20 mortgage clause has ever been allowed to clog the equity of redemption." The context of default
21 offers great opportunity for overreaching. The suspicious attitudes of the courts have been
22 grounded in common sense. This section, like former Section 9-501(3), codifies this
23 long-standing and deeply rooted attitude. The specified rights of the debtor and duties of the
24 secured party may not be waived or varied except as stated. Provisions that are not specified in
25 this section are subject to the general rules in Section 1-102(3).

26
27 3. **Nonwaivable Rights and Duties.** This section revises former Section 9-501(3) by
28 restricting the ability to waive or modify additional specified rights and duties: (i) duties under
29 Section 9-207(b)(4)(C), which deals with the use and operation of consumer goods, (ii) the right
30 to a response to a request for an accounting, concerning a list of collateral, or concerning a
31 statement of account (Section 9-210), (iii) the duty to collect collateral in a commercially
32 reasonable manner (Section 9-607), (iv) the implicit duty to refrain from a breach of the peace in
33 taking possession of collateral under Section 9-609, (v) the duty to apply noncash proceeds of
34 collection or disposition in a commercially reasonable manner (Sections 9-608 and 9-615), (vi)
35 the right to a special method of calculating a surplus or deficiency in certain dispositions to a
36 secured party, a person related to secured party, or a secondary obligor (Section 9-615), (vii) the
37 duty to give an explanation of the calculation of a surplus or deficiency (Section 9-616), (viii)
38 the right to limitations on the effectiveness of certain waivers (Section 9-624), and (ix) the right

1 to hold a secured party liable for failure to comply with this Article (Sections 9-625 and 9-626).
2 For clarity and consistency, this Article uses the term “waive or vary” instead of “renounc[e] or
3 modify[,],” which appeared in former Section 9-504(3).
4

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

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

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

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

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

29 * * *

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

31 (1) at a public disposition; or

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

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

34 **Official Comment**

35 * * *

36
37
38 **7. Public vs. Private Dispositions.** This Part maintains two distinctions between
39 “public” and other dispositions: (i) the secured party may buy at the former, but normally not at
40 the latter (Section 9-610(c)), and (ii) the debtor is entitled to notification of “the time and place
41 of a public disposition” and notification of “the time after which” a private disposition or other

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

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

13
14 * * *

15
16
17 **SECTION 9-624. WAIVER.**

18
19 (a) **[Waiver of disposition notification.]** A debtor or secondary obligor may waive the
20 right to notification of disposition of collateral under Section 9-611 only by an agreement to that
21 effect entered into and authenticated after default.

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

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

28 **Official Comment**

29
30 1. **Source.** Former Sections 9-504(3), 9-505, 9-506.

31
32 2. **Waiver.** This section is a limited exception to Section 9-602, which generally
33 prohibits waiver by debtors and obligors. It makes no provision for waiver of the rule
34 prohibiting a secured party from buying at its own private disposition. Transactions of this kind
35 are equivalent to “strict foreclosures” and are governed by Sections 9-620, 9-621, and 9-622.

1 **Reporter’s Note**

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

5
6
7 **SECTION 9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT.**

8 * * *

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

14 * * *

15 **Official Comment**

16
17 * * *

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

28
29 * * *

30
31
32 **SECTION 9-613. CONTENTS AND FORM OF NOTIFICATION BEFORE**
33 **DISPOSITION OF COLLATERAL: GENERAL.** Except in a consumer-goods transaction,
34 the following rules apply:

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

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

8 * * *

9 **Official Comment**

10 * * *

11
12
13 **2. Contents of Notification.** To comply with the “reasonable authenticated notification”
14 requirement of Section 9-611(b), the contents of a notification must be reasonable. Except in a
15 consumer-goods transaction, the contents of a notification that includes the information set forth
16 in paragraph (1) are sufficient as a matter of law, unless the parties agree otherwise. (The
17 reference to “time” of disposition means here, as it did in former Section 9-504(3), not only the
18 hour of the day but also the date.) Although a secured party may choose to include additional
19 information concerning the transaction or the debtor’s rights and obligations, no additional
20 information is required unless the parties agree otherwise. A notification that lacks some of the
21 information set forth in paragraph (1) nevertheless may be sufficient if found to be reasonable by
22 the trier of fact, under paragraph (2). A properly completed sample form of notification in
23 paragraph (5) or in Section 9-614(a)(3) is an example of a notification that would contain the
24 information set forth in paragraph (1). Under paragraph (4), however, no particular phrasing of
25 the notification is required.

26
27 This section applies to a notification of a public disposition conducted electronically. A
28 notification of an electronic disposition satisfies paragraph (1)(E) if it states the time when the
29 disposition is scheduled to begin and states the electronic location. For example, under the
30 technology current in 2009, the Uniform Resource Locator (URL) or other Internet address
31 where the site of the public disposition can be accessed suffices as an electronic location.

32
33 **Reporter’s Note**

34
35 The additions to the comments to Sections 9-610 and 9-613 would illustrate how these
36 sections are to be applied to electronic dispositions.

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

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

4 * * *

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

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

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

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

13 Official Comment

14 * * *

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

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

1 Article.

2
3 **Reporter’s Note**

4
5 The additional sentences would remove any doubt that the “minor error” rule in Section
6 9-506(a) applies to an initial financing statement, including one that is filed to continue the
7 effectiveness of a financing statement that was filed before revised Article 9 took effect.
8

9
10 **ARTICLE 11**

11 **EFFECTIVE DATE AND TRANSITION PROVISIONS**

12 * * *

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

18 **Reporter’s Note**

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