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FOR DISCUSSION ONLY

**AMENDMENTS TO UNIFORM  
COMMERCIAL CODE ARTICLE 9**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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For Drafting Committee Meeting, February 6-8, 2009

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ON UNIFORM STATE LAWS

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January 13, 2009

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ARTICLE 9**

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AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9

[Agenda Item III.A.]

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

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

\* \* \*

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

\* \* \*

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

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

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

(A) a default has occurred with respect to the obligation secured by the mortgage [and assigned to the secured party]; and

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

Reporter's Note



1 provisions by agreement. However, in the context of rights and duties after default, our legal  
2 system traditionally has looked with suspicion on agreements that limit the debtor’s rights and  
3 free the secured party of its duties. As stated in former Section 9-501, Comment 4, “no mortgage  
4 clause has ever been allowed to clog the equity of redemption.” The context of default offers  
5 great opportunity for overreaching. The suspicious attitudes of the courts have been grounded in  
6 common sense. This section, like former Section 9-501(3), codifies this long-standing and  
7 deeply rooted attitude. The specified rights of the debtor and duties of the secured party may not  
8 be waived or varied except as stated. Provisions that are not specified in this section are subject  
9 to the general rules in Section 1-102(3).

10 **3. Nonwaivable Rights and Duties.** This section revises former Section 9-501(3) by  
11 restricting the ability to waive or modify additional specified rights and duties: (i) duties under  
12 Section 9-207(b)(4)(C), which deals with the use and operation of consumer goods, (ii) the right  
13 to a response to a request for an accounting, concerning a list of collateral, or concerning a  
14 statement of account (Section 9-210), (iii) the duty to collect collateral in a commercially  
15 reasonable manner (Section 9-607), (iv) the implicit duty to refrain from a breach of the peace in  
16 taking possession of collateral under Section 9-609, (v) the duty to apply noncash proceeds of  
17 collection or disposition in a commercially reasonable manner (Sections 9-608 and 9-615), (vi)  
18 the right to a special method of calculating a surplus or deficiency in certain dispositions to a  
19 secured party, a person related to secured party, or a secondary obligor (Section 9-615), (vii) the  
20 duty to give an explanation of the calculation of a surplus or deficiency (Section 9-616), (viii) the  
21 right to limitations on the effectiveness of certain waivers (Section 9-624), and (ix) the right to  
22 hold a secured party liable for failure to comply with this Article (Sections 9-625 and 9-626).  
23 For clarity and consistency, this Article uses the term “waive or vary” instead of “renounc[e] or  
24 modify[,],” which appeared in former Section 9-504(3).

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

29 Section 9-610(c) limits the circumstances under which a secured party may purchase at its  
30 own private disposition. Transactions of this kind are equivalent to “strict foreclosures” and are  
31 governed by Sections 9-620, 9-621, and 9-622. With the exception of Section 9-620(e), the  
32 provisions of these sections cannot be waived by the debtor or a secondary obligor. See Section  
33 9-624(b).

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

38 **5. Certain Post-Default Waivers.** Section 9-624 permits post-default waivers in limited

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

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

7           \* \* \*

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

9                     (1) at a public disposition; or

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

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

12   **Official Comment**

13           \* \* \*

14           **7. Public vs. Private Dispositions.** This Part maintains two distinctions between  
15 “public” and other dispositions: (i) the secured party may buy at the former, but normally not at  
16 the latter (Section 9-610(c)), and (ii) the debtor is entitled to notification of “the time and place of  
17 a public disposition” and notification of “the time after which” a private disposition or other  
18 intended disposition is to be made (Section 9-613(1)(E)). It does not retain the distinction under  
19 former Section 9-504(4), under which transferees in a noncomplying public disposition could  
20 lose protection more easily than transferees in other noncomplying dispositions. Instead, Section  
21 9-617(b) adopts a unitary standard. Although the term is not defined, as used in this Article, a  
22 “public disposition” is one at which the price is determined after the public has had a meaningful  
23 opportunity for competitive bidding. “Meaningful opportunity” is meant to imply that some form  
24 of advertisement or public notice must precede the sale (or other disposition) and that the public  
25 must have access to the sale (disposition).

26           A secured party’s purchase of collateral at its own private disposition is equivalent to a  
27 “strict foreclosure” and is governed by Sections 9-620, 9-621, and 9-622. With the exception of  
28 Section 9-620(e), the provisions of these sections cannot be waived by the debtor or a secondary  
29 obligor. See Section 9-624(b).

30           \* \* \*



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

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

8 \* \* \*

9 *[Agenda Item III.D.]*

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

11 \* \* \*

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

17 \* \* \*

18 **Official Comment**

19 \* \* \*

20 2. **Commercially Reasonable Dispositions.** Subsection (a) follows former Section 9-  
21 504 by permitting a secured party to dispose of collateral in a commercially reasonable manner  
22 following a default. Although subsection (b) permits both public and private dispositions,

1 including dispositions conducted over the Internet, “every aspect of a disposition . . . must be  
2 commercially reasonable.” This section encourages private dispositions on the assumption that  
3 they frequently will result in higher realization on collateral for the benefit of all concerned.  
4 Subsection (a) does not restrict dispositions to sales; collateral may be sold, leased, licensed, or  
5 otherwise disposed. Section 9-627 provides guidance for determining the circumstances under  
6 which a disposition is “commercially reasonable.”

7 \* \* \*

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

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

12 (A) describes the debtor and the secured party;

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

14 (C) states the method of intended disposition;

15 (D) states that the debtor is entitled to an accounting of the unpaid indebtedness

16 and states the charge, if any, for an accounting; and

17 (E) states the time and place of a public disposition or the time after which any

18 other disposition is to be made.

19 \* \* \*

20 **Official Comment**

21 \* \* \*

22 **2. Contents of Notification.** To comply with the “reasonable authenticated notification”  
23 requirement of Section 9-611(b), the contents of a notification must be reasonable. Except in a  
24 consumer-goods transaction, the contents of a notification that includes the information set forth  
25 in paragraph (1) are sufficient as a matter of law, unless the parties agree otherwise. (The

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

10 A notification of a public disposition by auction conducted over the Internet satisfies  
11 paragraph (1)(E) if it states the date and time of the scheduled beginning and end of the auction  
12 and the Uniform Resource Locator (URL) or other Internet address where information about the  
13 collateral may be obtained and bids may be placed.

14 [Agenda Item IV.]

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

16 \* \* \*

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

21 [Agenda Item V.]

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

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

24 \* \* \*

25 (4) “Accounting”, except as used in “accounting for”, means:

26 \_\_\_\_\_ (A) in a consumer transaction, a record:

27 ~~(A)~~(i) authenticated by a secured party;

1                    ~~(B)~~(ii) indicating the aggregate unpaid secured obligations as of a  
2 date not more than 35 days earlier or 35 days later than the date of the record; and

3                    ~~(C)~~(iii) identifying the components of the obligations in reasonable  
4 detail; and

5                    (B) in a transaction other than consumer transactions, a record:

6                    (i) authenticated by a secured party;

7                    (ii) indicating as of the date of the record, the amount that, if  
8 received by the secured party, would entitle the debtor to the filing of a termination statement  
9 under Section 9-513(c); and

10                   (C) identifying the components of the obligations in reasonable detail.

11                   \* \* \*

12                   **SECTION 9-210. REQUEST FOR ACCOUNTING; REQUEST REGARDING**  
13 **LIST OF COLLATERAL OR STATEMENT OF ACCOUNT.**

14                   (a) **[Definitions.]** In this section:

15                   (1) “Request” means a record of a type described in paragraph (2), (3), or (4).

16                   (2) “Request for an accounting” means a record authenticated by a debtor  
17 requesting that the recipient provide an accounting of the unpaid obligations secured by collateral  
18 and reasonably identifying the transaction or relationship that is the subject of the request.

19                   \* \* \*

20                   (b) **[Duty to respond to requests.]** Subject to subsections (c), (d), (e), and (f), a secured  
21 party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a  
22 consignor, shall comply with a request within 14 days after receipt:

1 (1) in the case of a request for an accounting, by authenticating and sending to the  
2 debtor or to a person designated by the debtor in a request for an accounting, an accounting; and

3 (2) in the case of a request regarding a list of collateral or a request regarding a  
4 statement of account, by authenticating and sending to the debtor an approval or correction.

5 \* \* \*

6 (e) **[Request for accounting or regarding statement of account; no interest in**  
7 **obligation claimed.]** A person that receives a request for an accounting or a request regarding a  
8 statement of account, claims no interest in the obligations when it receives the request, and  
9 claimed an interest in the obligations at an earlier time shall comply with the request within 14  
10 days after receipt by sending to the debtor an authenticated record:

11 (1) disclaiming any interest in the obligations; and

12 (2) if known to the recipient, providing the name and mailing address of any  
13 assignee of or successor to the recipient's interest in the obligations.

14 (f) **[Charges for responses.]** A debtor is entitled without charge to one response to a  
15 request under this section during any six-month period. The secured party may require payment  
16 of a charge not exceeding \$25 for each additional response.

17 **Reporter's Note**

18 The foregoing is based on a proposal submitted by Robert Zadek.

19 *[Agenda Item VI.]*

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



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

10            Normally, there will be no question when a buyer of chattel paper, documents,  
11 instruments, or security certificates “receives delivery” of the property. See Section 1-201  
12 (defining “delivery”). However, sometimes a buyer or lessee of goods, such as complex  
13 machinery, takes delivery of the goods in stages and completes assembly at its own location.  
14 Under those circumstances, the buyer or lessee “receives delivery” within the meaning of  
15 subsections (b) and (c) when, after an inspection of the portion of the goods remaining with the  
16 seller or lessor, it would be apparent to a potential lender to the seller or lessor that another  
17 person might have an interest in the goods.

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

27            Unless Section 9-109 excludes the transaction from this Article, a buyer of accounts,  
28 chattel paper, payment intangibles, or promissory notes is a “secured party” (defined in Section  
29 9-102), and subsections (b) and (d) do not determine priority of the security interest created by  
30 the sale. Rather, the priority rules generally applicable to competing security interests apply. See  
31 Section 9-322.

32            \* \* \*

### 33            **Reporter’s Note**

34            The application of subsection (d) is expanded to cover buyers of all types of collateral  
35 that are not capable of possession. Although in all likelihood the amendment reflects the  
36 intention of the Article 9 Drafting Committee, it appears sufficiently substantive so as to  
37 constitute a change in the rule rather than a clarification. If so, the amendment would be

1 inapplicable to transactions entered into before its effective date. The Joint Review Committee  
2 may wish to express a view as to whether the result under the amendment might be reached today  
3 under Section 1-103(a) (the UCC “must be liberally construed and applied to promote its  
4 underlying purposes and policies”).

5 *[Agenda Item VII.A.]*

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 authenticate or adopt a~~

14 ~~record, to attach to or logically associate with the record an electronic sound, symbol, or process~~

15 **Official Comment**

16 **9. Definitions Relating to Medium Neutrality.**

17 \* \* \*

18 b. **“Authenticate”; “Communicate”; “Send.”** The terms “authenticate” and  
19 “authenticated” generally replace “sign” and “signed.” “Authenticated” replaces and broadens  
20 the definition of “signed,” in Section 1-201, to encompass authentication of all records, not just  
21 writings. (References to authentication of, e.g., an agreement, demand, or notification mean, of  
22 course, authentication of a record containing an agreement, demand, or notification.) The terms  
23 “communicate” and “send” also contemplate the possibility of communication by nonwritten  
24 media. These definitions include the act of transmitting both tangible and intangible records.  
25 The definition of “send” replaces, for purposes of this Article, the corresponding term in Section  
26 1-201. The reference to “usual means of communication” in that definition contemplates an  
27 inquiry into the appropriateness of the method of transmission used in the particular

1 circumstances involved.

2 **Reporter’s Note**

3 The definition has been conformed to the definition of “sign” in Section 7-102(a)(11).

4 *[Agenda Item VII.B.]*

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

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

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

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

15 *[Paragraph (b)(2)—Alternative A]*

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

18 *[Paragraph (b)(2)—Alternative B]*

19 (2) the authoritative copy identifies the secured party as: ~~the assignee of the record~~  
20 ~~or records~~

21 (A) the person to which the record or records were issued; or

1 (B) if the authoritative copy indicates that the record or records have been  
2 transferred, the person to which the record or records were most recently [transferred] [assigned];

3 *[Paragraph (b)(2)—Alternative C]*

4 (2) the authoritative copy identifies the secured party as ~~the assignee of the record~~  
5 ~~or records~~ the person to which the record or records were most recently [transferred] [assigned];

6 *[End of Alternatives]*

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

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

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

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

### 15 **Reporter’s Note**

16 1. This Section has been revised to conform to Section 7-106, which defines control of  
17 an electronic document of title. Section 7-106 differs from Section 9-105 in three substantive  
18 ways.

19 First, whereas Section 9-105 contemplates that a person (secured party) having control of  
20 electronic chattel paper is an assignee of chattel paper, Section 7-106 (which is not limited to  
21 secured parties) expands the control concept to include a person to which an electronic document  
22 of title is issued. Pending the Committee’s determination whether Section 9-105 should likewise  
23 apply to a secured party to which electronic chattel paper has been issued, paragraphs (a) and  
24 (b)(2)(B) of the draft present bracketed alternatives. Also bracketed is the choice of using  
25 language of “transfer” or “assignment.”

26 Second, Section 9-105(4) requires the “participation” of the secured party. Section 7-

1 106(b)(4) replaces “participation” with “consent.” Official Comment 4 to Section 9-105(4)  
2 suggests that these two words are not synonyms: “[P]aragraph (4) contemplates that control  
3 requires that it be a physical impossibility (or sufficiently unlikely or implausible so as to  
4 approach practical impossibility) to add or change an identified assignee without the participation  
5 of the secured party (or its authorized representative). It would not be enough for the assignor  
6 merely to agree that it will not change the identified assignee without the assignee-secured  
7 party’s consent.”

8 The Joint Review Committee should consider whether either of these substantive changes  
9 is appropriate. Implicit in the Joint Review Committee’s decision to conform Section 9-105 to  
10 Section 7-106 is its approval of the third substantive change: Satisfaction of the requirements  
11 currently enumerated in Section 9-105 would become sufficient, but not necessary, to establish  
12 control. Control may arise under the general standard (new subsection (a)) even where the  
13 specific requirements are not satisfied.

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

17 *[Agenda Item VIII.]*

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

20 \* \* \*

21 **(h) [Effect on filed financing statement of change in governing law.]** A financing  
22 statement filed pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(c)  
23 is effective to perfect a security interest in collateral to which a security interest attaches within  
24 four months after the debtor changes its location to another jurisdiction if the financing statement  
25 otherwise would have been effective to perfect a security interest in the collateral. If a security  
26 interest that is perfected by a financing statement that is effective under the preceding sentence  
27 becomes perfected under the law of the other jurisdiction before the earlier of the time the

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

#### 6 **Reporter's Note**

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

19 New subsection (h) would change the result. In the example, Lender's filing in  
20 Pennsylvania would be effective to perfect a security interest in inventory acquired by Debtor  
21 within the four months after Debtor relocates (assuming that the financing statement would not  
22 have become ineffective earlier). The security interest will remain continuously perfected if,  
23 before the expiration of the four-month period (and before the financing statement would have  
24 become ineffective), the security interest is perfected under the law of New Jersey. Otherwise,  
25 the security interest will become unperfected at the end of the four-month period (or, if earlier,  
26 when perfection would have ceased) and will be deemed never to have been perfected.

27 Under current law, a competing secured party generally can rely on the public record in  
28 New Jersey to determine its priority as to collateral acquired by Debtor post-relocation.  
29 However, under new subsection (h), the priority of Lender's security interest might be based on  
30 its Pennsylvania filing. This possibility imposes a new risk on competing creditors.

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

33 3. The addition of subsection (h) will require explanatory and other changes to the

1 Official Comments. The revised Comments will also explain the application of this subsection  
2 to entities that convert from one organizational form to another.

3 *[Agenda Item IX.A.]*

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

6 \* \* \*

7 **Official Comment**

8 \* \* \*

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

12 Subsection (a) subordinates the original debtor's secured party's security interest  
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. As used in this section, "a filed financing statement that is  
16 effective solely under Section 9-508" refers to a financing statement filed against the *original*  
17 *debtor* that ~~continues to be~~ is effective under Section 9-508 to perfect a security interest in the  
18 collateral in question. It does not encompass a new initial financing statement providing the  
19 name of the new debtor, even if the initial financing statement is filed to maintain the  
20 effectiveness of a financing statement under the circumstances described in Section 9-508(b).  
21 Nor does it encompass a financing statement filed against the original debtor which remains  
22 effective against collateral transferred by the original debtor to the new debtor. See Section 9-  
23 508(c). Concerning priority contests involving transferred collateral, see Sections 9-325 and 9-  
24 507.

25 *[Agenda Item IX.B.]*

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



1 Consider the difficulty faced by Lender under the facts of Official Comment 5 to Section  
2 9-316:

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

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

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

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

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

1 (b).

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

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

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

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

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

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

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

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

### 7 **Reporter's Note**

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

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

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

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

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

1 inventory that Survivor acquired within four months after the merger. To insure that the first-to-  
2 file-or-perfect rule subordinates a security interest like SP-D's, Section 9-326 would be amended  
3 to subordinate a security interest that is perfected by a financing statement that is "effective  
4 solely under Section 9-508 or Sections 9-508 and 9-316(i)."

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

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

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

14                   \* \* \*

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

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

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

22                   (3) the time of filing or perfection as to a security interest in collateral which

1 remains perfected under Section 9-316(i)(2) is the time the security interest becomes perfected  
2 under the law of the other jurisdiction.

3 \* \* \*

#### 4 **Reporter's Note**

5 Consider this example:

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

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

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

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

1 *[Agenda Item X.]*

2 *[no draft]*

3 *[Agenda Item XI.]*

4 **SECTION 8-106. CONTROL.**

5 \* \* \*

6 (d) A purchaser has “control” of a security entitlement if:

7 (1) the purchaser becomes the entitlement holder; ~~or~~

8 (2) the securities intermediary has agreed that it will comply with entitlement  
9 orders originated by the purchaser without further consent by the entitlement holder; or

10 (3) another person has control of the security entitlement on behalf of the  
11 purchaser or, having previously acquired control of the security entitlement, acknowledges that it  
12 has control on behalf of the purchaser.

13 **Official Comment**

14 \* \* \*

15 4. Subsection (d) specifies the means by which a purchaser can obtain control of a  
16 security entitlement. Three mechanisms are possible, analogous to those provided in subsection  
17 (c) for uncertificated securities. Under subsection (d)(1), a purchaser has control if it is the  
18 entitlement holder. This subsection would apply whether the purchaser holds through the same  
19 intermediary that the debtor used, or has the securities position transferred to its own  
20 intermediary. Subsection (d)(2) provides that a purchaser has control if the securities  
21 intermediary has agreed to act on entitlement orders originated by the purchaser if no further  
22 consent by the entitlement holder is required. Under subsection (d)(2), control may be achieved  
23 even though the original entitlement holder remains as the entitlement holder. Finally, a  
24 purchaser may obtain control under subsection (d)(3) if another person has control and the person  
25 acknowledges that it has control on the purchaser’s behalf. Control under subsection (d)(3)  
26 parallels the delivery of certificated securities and uncertificated securities under Section 8-301.  
27 Of course, the acknowledging person cannot be the debtor.

1           **SECTION 9-104. CONTROL OF DEPOSIT ACCOUNT.**

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

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

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

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

9   **Official Comment**

10                   \* \* \*

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

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

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

30           Subsection (a) contains no analogue to Section 8-106(d)(3), which provides that a

1 purchaser has control of a security entitlement if another person has control of the security  
2 entitlement on behalf of the purchaser or if the other person, having previously acquired control  
3 of the security entitlement, acknowledges that it has control on behalf of the purchaser.  
4 However, inasmuch as subsection (a) does not displace the common law of agency, see Section  
5 1-103(b), a secured party has control of a deposit account if its agent has control. Of course, the  
6 debtor cannot qualify as an agent for the secured party for purposes of the secured party's having  
7 control. Cf. Section 9-313, Comment 3.

8 \* \* \*

9 *[Agenda Item XII.A.]*

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

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

12 \* \* \*

13 (10) "Certificate of title" means a certificate of title with respect to which a  
14 statute provides for the security interest in question to be indicated on the certificate as a  
15 condition or result of the security interest's obtaining priority over the rights of a lien creditor  
16 with respect to the collateral.

17 \* \* \*

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

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

23 (1) a statute, regulation, or treaty of the United States whose requirements for a  
24 security interest's obtaining priority over the rights of a lien creditor with respect to the property

1 preempt Section 9-310(a);

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

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

9 (b) **[Compliance with other law.]** Compliance with the requirements of a statute,  
10 regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien  
11 creditor is equivalent to the filing of a financing statement under this article. Except as otherwise  
12 provided in subsection (d) and Sections 9-313 and 9-316(d) and (e) for goods covered by a  
13 certificate of title, a security interest in property subject to a statute, regulation, or treaty  
14 described in subsection (a) may be perfected only by compliance with those requirements, and a  
15 security interest so perfected remains perfected notwithstanding a change in the use or transfer of  
16 possession of the collateral.

17 \* \* \*

### 18 **Reporter's Note**

19 The underlying premise of Section 9-311(b), which defers to the perfection requirements  
20 of certificate-of-title statutes, is that notation of a security interest on the certificate of title  
21 affords notice of the security interest to third parties. Accordingly, the definition of "certificate  
22 of title" in Section 9-102(a)(10) covers only those certificates "with respect to which a statute  
23 provides for the security interest in question to be indicated on the certificate as a condition or  
24 result of the security interest's obtaining priority over the rights of a lien creditor with respect to  
25 the collateral."



1 jurisdiction; or

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

4 \* \* \*

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

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

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

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

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

18 \* \* \*

19 **Official Comment**

20 \* \* \*

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

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

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

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

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







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

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

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

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

16   *Paragraph (b)—Alternative A*

17   *(this is paired with § 9-406(e), Alternative A)*

18           (b) **[Applicability of subsection (a) to sales of certain rights to payment.]** Subsection  
19 (a) applies to a security interest in a payment intangible or promissory note only if the security  
20 interest arises out of a sale, including a sale pursuant to a disposition (Section 9-610), of the  
21 payment intangible or promissory note.

1 *Paragraph (b)—Alternative B*

2 *(this is paired with § 9-406(e), Alternative B)*

3 (b) **[Applicability of subsection (a) to sales of certain rights to payment.]** Subsection  
4 (a) applies to a security interest in a payment intangible or promissory note only if the security  
5 interest arises out of a sale, other than a sale pursuant to a disposition (Section 9-610), of the  
6 payment intangible or promissory note.

7 *Paragraphs (a) & (b)—Alternative C*

8 *(this is paired with § 9-406(d) & (e), Alternative C)*

9 (a) **[Term restricting assignment generally ineffective.]** Except as otherwise provided  
10 in subsection (b), a term in a promissory note or in an agreement between an account debtor and  
11 a debtor which relates to a health-care-insurance receivable or a general intangible, including a  
12 contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent  
13 of the person obligated on the promissory note or the account debtor to, the assignment or  
14 transfer of, or creation, attachment, or perfection of a security interest in, the promissory note,  
15 health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:  
16 (1) would impair the creation, attachment, or perfection of a security interest; or  
17 (2) provides that the assignment or transfer or the creation, attachment, or  
18 perfection of the security interest may give rise to a default, breach, right of recoupment, claim,  
19 defense, termination, right of termination, or remedy under the promissory note, health-care-  
20 insurance receivable, or general intangible.

21 (b) ~~**[Applicability of subsection (a) to sales of certain rights to payment intangibles.]**~~  
22 Subsection (a) applies to a security interest in a payment intangible or promissory note only if

1 ~~the security interest arises out of a sale of the payment intangible or promissory note.~~ [Reserved.]

2 *[End of Alternatives]*

3 \* \* \*

#### 4 **Reporter's Note**

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

10 The draft contains three pairs of alternatives for addressing the allocation of transactions  
11 between the broader override in Section 9-406(a) and the narrower override in Section 9-408(a).

12 The distinction is most likely to matter where the collateral is the right to payment of a  
13 loan. Under current law, if the right to payment of the loan is evidenced by chattel paper, then a  
14 contractual restriction would not be effective to restrict the assignee's right to enforce against the  
15 account debtor. If, however, the right to payment of the loan is evidenced by an instrument, or is  
16 a payment intangible, then a contractual restriction would not be effective to restrict the  
17 assignee's right to enforce against the account debtor if the assignment is made for collateral  
18 purposes. If, however, the assignment is a sale of the payment intangible or promissory note,  
19 then Section 9-408(a) applies and the assignee's right to enforce is limited by any contractual  
20 restriction. Whether current Section 9-406 or 9-408 applies to a foreclosure sale of the  
21 receivable by an assignee for collateral purposes is unclear.

22 The policy underlying the existing allocation of transactions between the two sections  
23 also is not completely clear. If the idea is to protect borrowers who contract for freedom from  
24 enforcement by assignees, then Section 9-408(a)—which does not impair otherwise effective  
25 contractual restrictions on enforcement by assignees—should apply to all assignees, including  
26 those who take an assignment for security and then seek to enforce their security interests by  
27 collecting the unpaid loan from the obligor or account debtor under Section 9-607. This  
28 approach—which respects otherwise effective contractual restrictions on enforcement regardless  
29 of whether the loan is sold or assigned for security—is reflected in Alternative C.

30 Both Alternative A and Alternative B retain the distinction between sales (as to which  
31 Section 9-408(a) applies) and assignments for security (as to which Section 9-406(b) applies).  
32 These alternatives differ only in their treatment of foreclosure sales. Alternative A would treat  
33 foreclosure sales like any other sale: Section 9-408(a) would apply, and the buyer would be  
34 bound by a contractual restriction on enforcement, even though the seller was not. Under  
35 Alternative B, Section 9-406(a) would leave a buyer at a foreclosure sale free to enforce.

1 Consider this example:

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

7 If the assignment to Assignee is a sale, then Section 9-408(a) applies and the  
8 contractual restrictions are ineffective with respect to the creation, attachment, and  
9 perfection of Assignee's security interest. This would be the result under all three  
10 pairs of alternatives.

11 If the assignment to Assignee is for security:

12 Under Alternative A, the restriction would not be effective (i.e., Section 9-  
13 406(a) would apply) if Assignee itself sought to collect from Borrower.  
14 However, the restriction would be effective (i.e., Section 9-408(a) would  
15 apply) if Assignee sold (at foreclosure or otherwise) to a buyer who sought  
16 to collect.

17 Under Alternative B, the restriction would not be effective if Assignee  
18 itself sought to collect or if Assignee sold to a buyer at foreclosure (and,  
19 presumably, if the foreclosure buyer resold). However, the restriction  
20 would be effective against nonforeclosure buyers who did not take through  
21 a foreclosure buyer.

22 Under Alternative C, the restriction would be effective (i.e., Section 9-  
23 408(a) would apply) against all third parties, including Assignee, a buyer  
24 from Assignee at foreclosure, and a nonforeclosure buyer.

25 *[Agenda Item XIV.]*

26 *[no draft]*

27 *[Agenda Item XV.]*

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

29 **Official Comment**

1           **5. Receivables-related Definitions.**

2           \* \* \*

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

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

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

31           A right to the payment of money is frequently buttressed by ancillary covenants, such as  
32 covenants in a purchase agreement, note, or mortgage requiring insurance on the collateral or  
33 forbidding removal of the collateral, or covenants to preserve the creditworthiness of the  
34 promisor, such as covenants restricting dividends and the like. This Article does not treat these  
35 ancillary rights separately from the rights to payment to which they relate. For example,  
36 attachment and perfection of an assignment of a right to payment of a monetary obligation,  
37 whether it be an account or payment intangible, also carries these ancillary rights. Among these  
38 ancillary rights are the lessor’s rights with respect to leased goods that arise upon the lessee’s

1 default. See Section 2A-523. Accordingly, and contrary to the opinion in *In re Commercial*  
2 *Money Center, Inc.*, 350 B.R. 465 (B.A.P. 9th Cir. 2006), where the lessor’s rights under a lease  
3 would constitute chattel paper, an assignment of the lessor’s right to payment under the lease  
4 would be chattel paper, even if the assignment purports to exclude those ancillary rights.

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

9 \* \* \*

10 **SECTION 9-109. SCOPE.**

11 \* \* \*

12 **Official Comment**

13 \* \* \*

14  
15 **5. Transfer of Ownership in Sales of Receivables.** A “sale” of an account, chattel  
16 paper, a promissory note, or a payment intangible includes a sale of a right in the receivable, such  
17 as a sale of a participation interest. The term also includes the sale of an enforcement right. For  
18 example, a “[p]erson entitled to enforce” a negotiable promissory note (Section 3-301) may sell  
19 its ownership rights in the instrument. See Section 3-203, Comment 1 (“Ownership rights in  
20 instruments may be determined by principles of the law of property, independent of Article 3,  
21 which do not depend upon whether the instrument was transferred under Section 3-203.”). Also,  
22 the right under Section 3-309 to enforce a lost, destroyed, or stolen negotiable promissory note  
23 may be sold to a purchaser who could enforce that right by causing the seller to provide the proof  
24 required under that section. This Article rejects decisions reaching a contrary result, e.g., *Dennis*  
25 *Joslin Co. v. Robinson Broadcasting*, 977 F. Supp. 491 (D.D.C. 1997).

26 Nothing in this section or any other provision of Article 9 prevents the transfer of full and  
27 complete ownership of an account, chattel paper, an instrument, or a payment intangible in a  
28 transaction of sale. However, as mentioned in Comment 4, neither this Article nor the definition  
29 of “security interest” in Section 1-201 provides rules for distinguishing sales transactions from  
30 those that create a security interest securing an obligation. This Article applies to both types of  
31 transactions. The principal effect of this coverage is to apply this Article’s perfection and  
32 priority rules to these sales transactions. Use of terminology such as “security interest,” “debtor,”  
33 and “collateral” is merely a drafting convention adopted to reach this end, and its use has no  
34 relevance to distinguishing sales from other transactions. See PEB Commentary No. 14.

35 Following a debtor’s outright sale and transfer of ownership of a receivable, the debtor-

1 seller retains no legal or equitable rights in the receivable that has been sold. See Section 9-  
2 318(a). This is so whether or not the buyer's security interest is perfected. (A security interest  
3 arising from the sale of a promissory note or payment intangible is perfected upon attachment  
4 without further action. See Section 9-309.) However, if the buyer's interest in accounts or  
5 chattel paper is unperfected, a subsequent lien creditor, perfected secured party, or qualified  
6 buyer can reach the sold receivable and achieve priority over (or take free of) the buyer's  
7 unperfected security interest under Section 9-317. This is so not because the seller of a  
8 receivable retains rights in the property sold; it does not. Nor is this so because the seller of a  
9 receivable is a "debtor" and the buyer of a receivable is a "secured party" under this Article (they  
10 are). It is so for the simple reason that Sections 9-318(b), 9-317, and 9-322 make it so, as did  
11 former Sections 9-301 and 9-312. Because the buyer's security interest is unperfected, for  
12 purposes of determining the rights of creditors of and purchasers for value from the debtor-seller,  
13 under Section 9-318(b) the debtor-seller is deemed to have the rights and title it sold. Section 9-  
14 317 subjects the buyer's unperfected interest in accounts and chattel paper to that of the debtor-  
15 seller's lien creditor and other persons who qualify under that section.

16 \* \* \*

17  
18 *[Agenda Item XVI.]*

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

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

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

28 \* \* \*

29 **Official Comment**

1                   \* \* \*

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

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

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

22                   Under a notice-filing system, a filed financing statement indicates to third parties that a  
23 person may have a security interest in the collateral indicated. With further inquiry, they may  
24 discover the complete state of affairs. Where a financing statement that is ineffective when filed  
25 becomes effective thereafter, the policy underlying the notice-filing system determines the “time  
26 of filing” for purposes of subsection (a)(1). For example, upon the debtor’s ratification of the  
27 unauthorized filing of an otherwise sufficient initial financing statement, the filing becomes  
28 authorized and the financing statement becomes effective. Because the authorization does not  
29 increase the notice value of the financing statement, the time of the unauthorized filing is the  
30 “time of filing” for purposes of this subsection (a)(1). A different result would obtain where an  
31 initial financing statement is ineffective because the name of the debtor is incorrect and seriously  
32 misleading and the filing office changes its standard search logic so that the name on the  
33 financing statement no longer is seriously misleading. See Section 9-506(c). Because the  
34 financing statement did not afford notice to third parties until the search logic changed and the  
35 financing statement became effective, the time of the change is the “time of filing” for purposes  
36 of subsection (a)(1).

37                   **Example 2:** A and B make non-purchase-money advances secured by the same  
38 collateral. The collateral is in Debtor’s possession, and neither security interest is

1 perfected when the second advance is made. Whichever secured party first perfects its  
2 security interest (by taking possession of the collateral or by filing) takes priority. It  
3 makes no difference whether that secured party knows of the other security interest at the  
4 time it perfects its own.

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

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

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

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

27 \* \* \*

### 28 **Official Comment**

29 \* \* \*

30 **3. Unauthorized Filings.** Records filed in the filing office do not require signatures for  
31 their effectiveness. Subsection (a)(1) substitutes for the debtor's signature on a financing  
32 statement the requirement that the debtor authorize in an authenticated record the filing of an  
33 initial financing statement or an amendment that adds collateral. Also, under subsection (a)(1), if  
34 an amendment adds a debtor, the debtor who is added must authorize the amendment. A person  
35 who files an unauthorized record in violation of subsection (a)(1) is liable under Section 9-625(b)

1 and (e) for actual and statutory damages. Of course, a filed financing statement is ineffective to  
2 perfect a security interest if the filing is not authorized. See Section 9-510(a). Law other than  
3 this Article, including the law with respect to ratification of past acts, generally determines  
4 whether a person has the requisite authority to file a record under this section. See Sections 1-  
5 103, 9-502, Comment 3. This Article applies to other issues, such as the priority of a security  
6 interest perfected by the filing of a financing statement. See Section 9-322, Comment 4.

7 *[Agenda Item XVII.]*

8 **SECTION 9-109. SCOPE.**

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

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

13 \* \* \*

14 **Official Comment**

15 \* \* \*

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

26 \* \* \*

27 *[Agenda Item XVIII.A.1.]*



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

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

5 (B) perfection of a security interest in timber to be cut; and

6 (C) the effect of perfection or nonperfection and the priority of a nonpossessory  
7 security interest in the collateral.

8 \* \* \*

### 9 Official Comment

10 \* \* \*

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

19 \* \* \*

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

30 The filing of a financing statement to perfect a security interest in collateral of a

1 transmitting utility constitutes a fixture filing with respect to goods that are or become fixtures.  
2 See Section 9-501(b). Accordingly, to perfect a security interest in this collateral by a fixture  
3 filing, a financing statement should be filed in the office specified by Section 9-501(b) as enacted  
4 in the jurisdiction in which the goods are located. Where the fixtures collateral is located in more  
5 than one State, filing in more than one State will be necessary to perfect a security interest in all  
6 the collateral by a fixture filing. Of course, a security interest in nearly all types of collateral  
7 (including fixtures) of a transmitting utility may be perfected by filing in the office specified by  
8 Section 9-501(a) as enacted in the jurisdiction in which the transmitting utility is located.  
9 However, such a filing will not be effective as a fixture filing except with respect to goods that  
10 are located in that jurisdiction.

11 \* \* \*

12 **SECTION 9-501. FILING OFFICE.**

13 \* \* \*

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

18 \* \* \*

19 **Official Comment**

20 \* \* \*

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

27 A given State's subsection (b) applies only where the local law of that State governs  
28 perfection. As to most collateral, perfection by filing is governed by the law of the jurisdiction in  
29 which the debtor is located. See Section 9-301(1). Where a security interest in goods is

1 perfected by a filing a fixture filing, however, the law of the jurisdiction in which the goods are  
2 located governs perfection. See Section 9-301(3)(A). As a consequence, filing in the filing  
3 office of more than one State may be necessary to perfect a security interest in collateral of a  
4 transmitting utility by a fixture filing. See Section 9-301, Comment 5.b.

5 *[Agenda Item XVIII.B.]*

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

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

9 (1) subject to subsection (f), if the debtor is a registered organization, only if the  
10 financing statement provides the name of the debtor indicated on the public organic record ~~of~~  
11 filed with the debtor’s jurisdiction of organization ~~which shows the debtor to have been~~  
12 ~~organized;~~

13 \* \* \*

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

17 (1) the name of the debtor which is indicated on the most recently filed record that  
18 is intended to state, amend, or restate the debtor’s name; and

19 (2) if that record indicates more than one name of the debtor, the name of the  
20 debtor which that record states to be the debtor’s name.

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

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

1 \* \* \*

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

4 \* \* \*

5 (67A) “Public organic record” means a record or records composed of the record  
6 initially filed with a State or the United States to form or organize an organization and any record  
7 filed with the State or the United States which [amends or restates] [effects an amendment or  
8 restatement of] the initial record, if the record or records are available to the public for  
9 inspection. The term includes an organic record or records of a business trust that is initially  
10 filed with a State and any record filed with the State which [amends or restates] [effects an  
11 amendment or restatement of] the initial record, if a statute of the State governing business trusts  
12 requires that the record or records be filed with the State and the record or records are available  
13 to the public for inspection.

14 \* \* \*

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

21 \* \* \*

22 **Reporter’s Note**



1 to property held in trust, only if the financing statement provides the name of the debtor indicated  
2 on the public record of the debtor's jurisdiction of organization which shows the debtor to have  
3 been organized;

4 (2) if the debtor is a decedent's estate, only if the financing statement provides the  
5 name of the decedent and indicates that the debtor is an estate;

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

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

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

13 (4) in other cases:

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

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

18 \* \* \*

19 **Official Comment**

20 \* \* \*

21 2. **Debtor's Name.** The requirement that a financing statement provide the debtor's  
22 name is particularly important. Financing statements are indexed under the name of the debtor,  
23 and those who wish to find financing statements search for them under the debtor's name.

1 Subsection (a) explains what the debtor’s name is for purposes of a financing statement. If the  
2 debtor is a “registered organization” (defined in Section 9-102 so as to ordinarily include  
3 corporations, limited partnerships, and limited liability companies), then the debtor’s name is the  
4 name shown on the public records of the debtor’s “jurisdiction of organization” (also defined in  
5 Section 9-102). Subsections (a)(2) and (a)(3) contain special rules for decedent’s estates and  
6 common-law trusts. (Subsection (a)(1) applies to business trusts that are registered  
7 organizations; however it does not apply to a trustee acting with respect to property held in trust,  
8 even if the trustee is a registered organization.)

9 \* \* \*

### 10 **Reporter’s Note**

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

13  
14 *[Agenda Item XVIII.D.]*

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

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

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

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

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

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

26 (c) [**Limitation of applicability of subsection (b).**] Subsection (b) applies only if a

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

### 7 Official Comment

8 \* \* \*

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

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

28 **Example 1:** Debtor is an English corporation with 7 offices in the United States  
29 and its chief executive office in London, England. Debtor creates a security  
30 interest in its accounts. Under subsection (b)(3), Debtor would be located in  
31 England. However, subsection (c) provides that subsection (b) applies only if  
32 English law generally conditions perfection of a security interest in accounts on  
33 giving public notice in a filing, recording, or registration system for purposes of

1 perfecting a security interest in the accounts. Otherwise, Debtor is located in the  
2 District of Columbia. Under Section 9-301(1), perfection, the effect of perfection,  
3 and priority are governed by the law of the jurisdiction of the debtor's  
4 location—here, England or the District of Columbia (depending on the content of  
5 English law).

6 **Example 2:** Debtor is an English corporation with 7 offices in the United States  
7 and its chief executive office in London, England. Debtor creates a security  
8 interest in equipment located in London. Under subsection (b)(3) Debtor would  
9 be located in England. However, subsection (c) provides that subsection (b)  
10 applies only if English law generally conditions perfection on giving public notice  
11 in a filing, recording, or registration system for perfection of a security interest in  
12 equipment. Otherwise, Debtor is located in the District of Columbia. Under  
13 Section 9-301(1), perfection is governed by the law of the jurisdiction of the  
14 debtor's location, whereas, under Section 9-301(3), the law of the jurisdiction in  
15 which the collateral is located—here, England—governs priority.

16 Under this rule, a debtor may be located in one jurisdiction for purposes of a security interest in  
17 one type of collateral and a different jurisdiction for a security interest in another type of  
18 collateral.

19 The foregoing discussion assumes that each transaction bears an appropriate relation to  
20 the forum State. In the absence of an appropriate relation, the forum State's entire UCC,  
21 including the choice-of-law provisions in Article 9 (Sections 9-301 through 9-307), will not  
22 apply. See Section 9-109, Comment 9.

## 23 **SECTION 9-101. SHORT TITLE.**

24 \* \* \*

### 25 **Official Comment**

26 \* \* \*

#### 27 **4. Summary of Revisions.**

28 \* \* \*

##### 29 **c. Choice of Law.**

30 \* \* \*

1 Location of non-U.S. debtors. If, applying the foregoing rules, a debtor is located in a  
2 jurisdiction whose law does not generally require public notice as a condition of perfection of a  
3 nonpossessory security interest in the relevant collateral in transactions of the type involved, the  
4 entity is deemed located in the District of Columbia. See Section 9-307. Thus, to the extent that  
5 this Article applies to non-U.S. debtors, perfection could be accomplished in many cases by a  
6 domestic filing.

7 \* \* \*

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

9 The proposed revisions to the Comment are meant to clarify when subsection (c) applies  
10 and the meaning of the phrase, "a jurisdiction whose law generally requires information  
11 concerning the existence of a nonpossessory security interest to be made generally available in a  
12 filing, recording, or registration system." The following, submitted by Steve Weise and Neil  
13 Cohen, explains the revisions concerning the latter issue:

14 It is not clear how to apply the criterion in § 9-307(c) that a jurisdiction in which  
15 the debtor would be located under § 9-307(b) (the "foreign jurisdiction") will qualify as  
16 the location of the debtor only if the law of the foreign jurisdiction "generally requires"  
17 filing with respect to a non-possessory security interest in order to beat a lien creditor.  
18 For convenience, here is the full text of § 9-307(c):

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

26 The use of the word "generally" to modify "requires" raises several questions:

27 Is the "generally requires" test applied to all collateral or just transaction  
28 collateral?

29 First, it is not clear whether the reference to "the collateral" in connection with the  
30 filing test means that the foreign filing system must apply (i) to all collateral within the  
31 scope of Article 9, or (ii) only collateral within the scope of Article 9 and part of the  
32 secured transaction at hand.

33 The Review Committee tentatively decided at the October 2008 meeting that the §  
34 9-307(c) test should be interpreted in the context of the particular transaction so that

1 satisfaction of the “generally requires” criterion would be measured by reference only to  
2 collateral of the type in the secured transaction. This interpretation has the advantage of  
3 not “disqualifying” a foreign jurisdiction that requires filing in a transaction of the sort at  
4 hand (and has an available filing system) just because, with respect to other types of  
5 property not present in the transaction, filing is not required.

6 Should the “generally requires” test be interpreted even more narrowly so as to  
7 refer to the foreign jurisdiction’s filing rules with respect to the transaction collateral in  
8 the type of transaction at hand?

9 Construing the “generally applies” test so as to apply only to the type of collateral  
10 involved in the deal may not solve all problems, though. There are some types of  
11 collateral as to which, even under Article 9, the necessity of filing depends on the nature  
12 of the transaction (e.g., filing is required for a non-PMSI in consumer goods, but not for a  
13 PMSI; filing is required for security interest in payment intangibles securing an  
14 obligation, but not for a security interest that is the interest of a buyer of payment  
15 intangibles.)

16 In view of this difference in filing requirements depending not only on the nature  
17 of the collateral but also on the nature of the transaction, does the phrase “generally  
18 applies” mean that it is sufficient if the foreign filing system covers the type of collateral  
19 (without regard to the nature of the transaction involved) or whether the foreign filing  
20 system must also cover the type of the collateral and the type of transaction involved.  
21 Examined from a different perspective, does a jurisdiction fail the “generally applies” test  
22 if other transactions involving the collateral at hand do not require a filing for perfection,  
23 but the jurisdiction’s law requires a filing for perfection for the collateral at hand in the  
24 sort of transaction at hand. The Review Committee’s initial determination was that the  
25 criterion was to be applied at the level of the type of collateral involved.

26 Several scenarios can be imagined in which a different result would obtain  
27 depending on the interpretation of the “generally requires” criterion. Three are presented  
28 below. The Review Committee may wish to consider whether, in light of the following  
29 scenarios, to recommend an interpretation of the criterion that is specific both to the  
30 collateral and the transaction type:

31 1. Non-PMSI security interest in consumer goods. Assume that the  
32 transaction is a non-PMSI security interest in consumer goods and that the law in the  
33 foreign jurisdiction, like Article 9, requires a filing for that collateral in this sort of  
34 transaction but does not require a filing for the same type of collateral in a different sort  
35 of transaction (such as a PMSI in consumer goods):

36 1.1. If 9-307(c) is a collateral-specific (but not transaction-specific) rule and if  
37 “generally” is interpreted to mean something like “almost always”, then the foreign

1 jurisdiction would be “disqualified” as the debtor’s location because other transactions in  
2 the same property (PMSI security interest in consumer goods or sale of payment  
3 intangibles) would not require a filing in the foreign jurisdiction and the debtor would be  
4 located in DC, even though a filing could have been made in the foreign jurisdiction.

5 1.2. If 9-307(c) is a collateral-specific (but not transaction-specific) rule and if  
6 “generally” is interpreted to mean something like “a bunch of the time”, then the foreign  
7 jurisdiction would be “qualified” as the debtor’s location because there are enough  
8 circumstances involving that type of collateral where a filing is required. The debtor  
9 would be located in the foreign jurisdiction and a filing would occur there.

10 1.3. If 9-307(c) is a rule that is specific to the collateral and the transaction and  
11 if the “generally requires” criterion is interpreted so as to require filing for the type of  
12 collateral and transaction in the foreign jurisdiction only if filing is required for the type  
13 of collateral and transaction under Article 9, then the jurisdiction would qualify as the  
14 debtor’s location and it would not matter whether “generally” means “almost always” or  
15 “a bunch of the time”.

16 1.4. If 9-307(c) is a collateral/deal-specific rule and if “generally” is interpreted  
17 to mean that filing is “required” in the foreign jurisdiction (for the collateral in this deal)  
18 whether or not filing is “required” under Article 9, then the jurisdiction would qualify as  
19 the debtor’s location and it would not matter whether “generally” means “almost always”  
20 or “a bunch of the time”.

21 2. Security interest arising from the sale of a payment intangible. Assume  
22 that the transaction is the sale of a payment intangible and that, under the law of the  
23 foreign jurisdiction, like Article 9, filing is not required for perfection, but other secured  
24 transactions involving the same collateral (such as a security interest securing an  
25 obligation) require a filing:  
26  
27

28 2.1. If 9-307(c) is a collateral-specific (but not transaction-specific) rule and if  
29 “generally” is interpreted to mean something like “almost always”, then the foreign  
30 jurisdiction would be “disqualified” as the debtor’s location (as in scenario #1) because  
31 there are too many secured transactions involving the same property as to which the  
32 foreign jurisdiction does not require a filing (e.g., sale of payment intangibles) and the  
33 debtor would be located in DC, even Article 9, like the foreign jurisdiction does not  
34 require a filing in the context of this transaction.  
35

36 2.2. If 9-307(c) is a collateral-specific (but not transaction-specific) rule and if  
37 “generally” is interpreted to mean something like “a bunch of the time”, then the foreign  
38 jurisdiction would be “qualified” as the debtor’s location because there are enough  
39 transactions in the same property (e.g., security interest in payment intangibles to secure  
40 an obligation) that do require a filing in the foreign jurisdiction. Thus, the debtor would

1 be located in the foreign jurisdiction, which does not require a filing for the transaction at  
2 hand.

3  
4 2.3. If 9-307(c) is a rule that is specific to the collateral and the transaction  
5 and if “generally” is interpreted so as to require filing for the type of collateral and  
6 transaction in the foreign jurisdiction only if filing is required for the type of collateral  
7 and transaction under Article 9, then the jurisdiction would qualify as the debtor’s  
8 location because neither jurisdiction requires filing for the type of transaction. The debtor  
9 would be located in the foreign jurisdiction, which does not require a filing for the  
10 transaction at hand.

11  
12 2.4. If 9-307(c) is a collateral/deal-specific rule and if the “generally requires”  
13 criterion is interpreted to mean that filing is “required” in the foreign jurisdiction (for the  
14 collateral in this deal) whether or not filing is “required” under Article 9, then the  
15 jurisdiction would not qualify as the debtor’s location because there is no filing there.  
16 The debtor would be located in DC, which does not require a filing.

17 3. A foreign jurisdiction whose law is partially like Article 9. Assume that  
18 the transaction is a sale of accounts and the foreign jurisdiction requires filing when there  
19 is a security interest in accounts to secure an obligation, but not for a sale of accounts.:

20 3.1. If 9-307(c) is a collateral-specific specific (but not transaction-specific)  
21 rule and if “generally” is interpreted to mean something like “almost always”, then the  
22 foreign jurisdiction would be “disqualified” as the debtor’s location because there are too  
23 many secured transactions involving the same type of collateral as to the foreign  
24 jurisdiction does not require a filing (e.g., sale of accounts) and the debtor would be  
25 located in DC, where a filing would be required under Article 9.

26 3.2. If 9-307(c) is a collateral-specific specific (but not transaction-specific)  
27 rule and if “generally” is interpreted to mean something like “a bunch of the time”, then  
28 the foreign jurisdiction would be “qualified” as the debtor’s location because there are  
29 enough transactions in the same type of collateral (e.g., security interest in accounts to  
30 secure an obligation) that do require a filing. Thus, the debtor would be located in the  
31 foreign jurisdiction, which does not require a filing in the transaction at hand even though  
32 Article 9 requires a filing.

33 3.3. If 9-307(c) is a rule that is specific to the collateral and the transaction and  
34 if “generally” is interpreted so as to required filing for the type of collateral and  
35 transaction in the foreign jurisdiction only if filing is required for the type of collateral  
36 and transaction under Article 9, then the jurisdiction would not qualify as the debtor’s  
37 location because the Article 9 jurisdiction does require a filing, but the foreign  
38 jurisdiction does not require a filing, for the type of collateral and transaction. The debtor  
39 would be located in DC, where a filing would be required.



1 \* \* \*

2 **Official Comments**

3 **5. Registered Organizations Organized Under Law of United States; Branches and**  
4 **Agencies of Banks Not Organized Under Law of United States.** Subsection (f) specifies the  
5 location of a debtor that is a registered organization organized under the law of the United States.  
6 It defers to the law of the United States, to the extent that that law determines, or authorizes the  
7 debtor to determine, the debtor’s location. Thus, if the law of the United States designates a  
8 particular State as the debtor’s location, that State is the debtor’s location for purposes of this  
9 Article’s choice-of-law rules. Similarly, if the law of the United States authorizes the registered  
10 organization to designate its State of location, the State that the registered organization  
11 designates is the State in which it is located for purposes of this Article’s choice-of-law rules.  
12 The law of the United States authorizes certain registered organizations to designate a main  
13 office, home office, or other comparable office. See, e.g., 12 U.S.C. Sections 22 and 1464(a); 12  
14 C.F.R. Section 552.3. Where the registered organization designates an office pursuant to such an  
15 authorization, the State in which the designated office is located is the location of the debtor for  
16 purposes of Section 9-307(f). In other cases, the debtor is located in the District of Columbia.

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

21 Subsection (f) also specifies the location of a branch or agency in the United States of a  
22 foreign bank that has one or more branches or agencies in the United States. The law of the  
23 United States ~~authorized~~ authorizes a foreign bank (or, on behalf of the bank, a federal agency) to  
24 designate a single home state for all of the foreign bank’s branches and agencies in the United  
25 States. See 12 U.S.C. Section 3103(c) and 12 C.F.R. Section 211.22. As authorized, the  
26 designation constitutes the State of location for the branch or agency for purposes of Section 9-  
27 307(f), unless all of a foreign bank’s branches or agencies that are in the United States are  
28 licensed in only one State, in which case the branches and agencies are located in that State. See  
29 subsection (i).

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

32 *[Agenda Item XVIII.F.]*

33 *[no draft]*

1 *[Agenda Item XVIII.G]*

2 *[no draft]*

3 *[Agenda Item XVIII.H.]*

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

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

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

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

13 \* \* \*

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

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

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

1 that the debtor authorized it to be filed.

2 \* \* \*

3 **Official Comment**

4 \* \* \*

5 **6. Amendments; Termination Statements Authorized by Debtor.** Most amendments  
6 may not be filed unless the secured party of record, as determined under Section 9-511,  
7 authorizes the filing. See subsection (d)(1). However, under subsection (d)(2), the authorization  
8 of the secured party of record is not required for the filing of a termination statement if the  
9 secured party of record failed to send or file a termination statement as required by Section 9-  
10 513, the debtor authorizes it to be filed, and the termination statement so indicates. Although  
11 prudence usually dictates that an authorization to file be evidenced by an authenticated record, an  
12 authorization under subsection (d) is effective even if it is not in an authenticated record.  
13 Compare subsection (a)(1).

14 \* \* \*

15  
16 *[Agenda Item XIV.I.]*

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

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

22 (1) the filing of an initial financing statement in that office would be effective to  
23 perfect a security interest under this [Act];

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

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

27 \* \* \*

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

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

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

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

9 **Official Comment**

10 \* \* \*

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

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

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

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

\* \* \*

(4) in other cases:

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

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

\* \* \*

**(g) [Exception for individual debtor's name.]** Subject to subsection (h), a financing statement that does not provide the individual name of the debtor nevertheless sufficiently provides the name of a debtor who is an individual if:

(1) it provides the name of the individual which is indicated on a [driver's license] or [identification card] that, at the time the financing statement is filed, has been issued to the individual by this State and has not yet expired or [been cancelled]; and

(2) the filing office indexes the financing statement in such a manner that a search of the records of the filing office under the name indicated, using the filing office's standard search logic, if any, would disclose the financing statement.

**(h) [Multiple licenses or cards.]** If this State has issued to an individual more than one [driver's license] or [identification card] of a kind described in subsection (g)(1), the one that was

1 issued most recently is the one to which the subsection refers.

2  
3 **SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.**

4 (a) **[Minor errors and omissions.]** A financing statement substantially satisfying the  
5 requirements of this part is effective, even if it has minor errors or omissions, unless the errors or  
6 omissions make the financing statement seriously misleading.

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

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

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

17 (e) **[Individual “debtor’s correct name.”]** If a debtor who is an individual changes his  
18 or her name by virtue of Section 9-507(d), the “debtor’s correct name” in subsection (c) means  
19 the name of the debtor indicated on the [driver’s license] or [identification card] that indicates a  
20 name different from the name provided on the financing statement.

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

1 **FINANCING STATEMENT.**

2 \* \* \*

3 (b) **[Information becoming seriously misleading.]** Except as otherwise provided in  
4 subsection (c) and Section 9-508, a financing statement is not rendered ineffective if, after the  
5 financing statement is filed, the information provided in the financing statement becomes  
6 seriously misleading under Section 9-506.

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

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

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

15 (d) **[Name sufficient only under Section 9-503(g).]** If, after the filing of a financing  
16 statement that provides a name that is sufficient only under Section 9-503(g), this State issues to  
17 the debtor a [driver's license] or [identification card] that indicates a name different from the  
18 name provided, the debtor changes his or her name for purposes of subsection (c).

19 **Reporter's Note**

20 1. New Section 9-503(g) would provide an exception to Section 9-503(a)(4): the name  
21 on the debtor's driver's license or identification card would be sufficient as the name of the  
22 debtor on a financing statement. New Section 9-503(h) would cover the case where the State has  
23 issued more than one qualifying license or identification card to the same debtor.

1           2. Different States use different terms for the driver’s licenses and identification cards  
2 they issue. Accordingly, the words “driver’s license” and “identification card” appear in  
3 brackets. If the Joint Review Committee finds the approach of Section 9-503(g) appropriate, a  
4 Legislative Note should be added to explain the brackets.

5           3. The phrase “or [been cancelled]” in Section 9-503(g) is a placeholder. The Joint  
6 Review Committee should consider what events, other than expiration of a license or ID card,  
7 should result in the document’s no longer providing a sufficient name for the debtor.  
8 Possibilities include the State’s confiscation of the document, the State’s taking action that  
9 makes clear on the face of the document that the document no longer is in effect, and the State’s  
10 cancellation of the document (which event may or may not be evidenced on the license).  
11 Inasmuch as different States may use different terms for these events, bracketed language  
12 together with a Legislative Note may be appropriate.

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

25           If the filing office is unable to input the name indicated on the license, the name on the  
26 license would be insufficient under Section 9-503(g) unless the financing statement would be  
27 disclosed by a search under the name indicated on the license, using the filing office’s standard  
28 search logic. Likewise, if the filing office does not allow a search to be conducted under the  
29 name indicated on the license, a financing statement providing that name would be insufficient  
30 under Section 9-503(g), even if the filing office can and does input the exact name provided.

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

36                   Debtor, who resides in Illinois, grants a security interest to SP in certain business  
37 equipment. SP files a financing statement with the Illinois filing office. The  
38 financing statement provides the name appearing on Debtor’s Illinois driver’s

1 license (“Joseph Allan Jones”). Illinois’ Section 9-503(g) would make this filing  
2 sufficient to satisfy subsection (a)(4), even though Debtor’s correct middle name  
3 is Alan, not Allan. As long as Illinois remains Debtor’s principal residence,  
4 Debtor’s acquisition of a driver’s license or ID card from another State would not  
5 affect the effectiveness of the Illinois filing.

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

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

22 In the example, the name on Debtor’s Illinois driver’s license would be irrelevant for  
23 purposes of Indiana’s Section 9-503(g), inasmuch as it was not issued by “this State,” i.e.,  
24 Indiana. (Of course, a financing statement providing that name might satisfy Indiana’s Section 9-  
25 503(a)(4) (i.e., it might be the individual name of the debtor) or might be effective under Section  
26 9-506 (i.e., it might not be seriously misleading).

27 7. A financing statement satisfying Section 9-503(g) would have the same priority as it  
28 would have had, had it provided the individual name of the debtor under Section 9-503(a).

29 8. The rule in Section 9-503(g) has been drafted as an exception to the rule in Section 9-  
30 503(a)(4). The Joint Review Committee may wish to consider whether the rule should appear  
31 instead as an alternative.

32 9. After the filing of a financing statement satisfying Section 9-503(g), the issuing State  
33 may issue a duplicate, substitute, or additional license or ID card to the debtor. Where the name  
34 on the new document differs from that provided by the financing statement, the issuance of the  
35 new document would be constitute a change of the debtor’s name. See new Section 9-507(d).  
36 The effect of a name change under Section 9-507(d) would be the same as if the debtor actually  
37 changed names.

1           The Joint Review Committee may wish to consider whether the effectiveness of a  
2 financing statement should be affected by the cancellation of a license or similar event.

3           10. In some cases, Section 9-503(a) may require a financing statement to provide the  
4 name of an individual as debtor, even if the debtor is not an individual. See Sections 9-503(a)(2)  
5 (debtor that is a decedent’s estate), (a)(3) (debtor that is a trust whose organic documents do not  
6 specify a name for the trust). If the approach of Section 9-503(g) is acceptable, the Joint Review  
7 Committee should consider whether it should be expanded to cover the name of all individuals  
8 shown as debtor, even those that are not themselves the debtor. Any such expansion would  
9 likely require changes to Section 9-503(g) as well as to other sections.

10           Regardless of the approach it decides to take towards specifying the name of an  
11 individual debtor, the Joint Review Committee may wish to consider whether to clarify that,  
12 where the debtor is not an individual but the financing statement must provide the name of an  
13 individual as debtor, the financing statement must provide the name in the field designated for  
14 the name of an individual debtor.

15           11. Adoption of the exception in Section 9-503(g) would change current law. A  
16 financing statement that is effective under Section 9-503(g) and is filed before the subsection’s  
17 effective date should take effect on the effective date, which would be the “time of filing” for  
18 purposes of Section 9-322(a)(1). Additional text will be necessary for implementation.