

South Carolina General Assembly
120th Session, 2013-2014

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Bill 323

~~Indicates Matter Stricken~~

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COMMITTEE REPORT

May 15, 2013

S. 323

Introduced by Senator Hayes

S. Printed 5/15/13--H.

Read the first time February 27, 2013.

THE COMMITTEE ON JUDICIARY

To whom was referred a Bill (S. 323) to amend the official comment to Section 36-9-101, Code of Laws of South Carolina, 1976, relating to the Chapter Title "Uniform Commercial Code - Secured Transactions", etc., respectfully

REPORT:

That they have duly and carefully considered the same and recommend that the same do pass:

F. GREGORY DELLENEY, JR. for Committee.

A BILL

TO AMEND THE OFFICIAL COMMENT TO SECTION 36-9-101, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CHAPTER TITLE "UNIFORM COMMERCIAL CODE - SECURED TRANSACTIONS", SO AS TO, INTER ALIA, IDENTIFY THE SPECIFIC VERSION OF

THE UNITED STATES BANKRUPTCY CODE REFERENCED THROUGHOUT THE COMMENTS TO CHAPTER 9, TITLE 36; TO AMEND SECTION 36-9-102, RELATING TO THE DEFINITIONS APPLICABLE TO CHAPTER 9, TITLE 36, SO AS TO REVISE EXISTING OR PROVIDE NEW DEFINITIONS FOR CERTAIN TERMS, AND TO MAKE TECHNICAL CORRECTIONS; TO AMEND SECTION 36-9-105, RELATING TO THE CONTROL OF ELECTRONIC CHATTEL PAPER, SO AS TO CLARIFY THE CONDITIONS UNDER WHICH A SECURED PARTY IS DEEMED TO HAVE CONTROL OF ELECTRONIC CHATTEL PAPER; TO AMEND SECTION 36-9-307, RELATING TO THE DEBTOR'S LOCATION, SO AS TO INCLUDE PROVISIONS FOR DESIGNATING A MAIN OFFICE, HOME OFFICE, OR OTHER COMPATIBLE OFFICE; TO AMEND 36-9-311, RELATING TO THE PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES, SO AS TO MAKE A TECHNICAL CORRECTION; TO AMEND SECTION 36-9-316, RELATING TO THE CONTINUED PERFECTION OF A SECURITY INTEREST FOLLOWING A CHANGE IN THE GOVERNING LAW, SO AS TO PROVIDE RULES THAT APPLY TO COLLATERAL TO WHICH A SECURITY INTEREST ATTACHES WITHIN FOUR MONTHS AFTER A DEBTOR CHANGES LOCATION; TO AMEND SECTION 36-9-317, RELATING TO THE PRIORITY OF INTERESTS, SO AS REVISE THE TERMINOLOGY OF CERTAIN TYPES OF INTERESTS AND PRIORITIES; TO AMEND SECTION 36-9-326, RELATING TO THE PRIORITY OF SECURITY INTERESTS CREATED BY A NEW DEBTOR, SO AS TO CLARIFY PROVISIONS REGARDING THE PERFECTION OF A SECURITY INTEREST; TO AMEND SECTION 36-9-406, RELATING TO THE DISCHARGE OF AN ACCOUNT DEBTOR, SO AS TO CLARIFY PROVISIONS REGARDING A SALE UNDER A DISPOSITION PURSUANT TO SECTION 36-9-610, OR AN ACCEPTANCE OF COLLATERAL PURSUANT TO SECTION 36-9-620; TO AMEND SECTION 36-9-408, RELATING TO RESTRICTIONS ON ASSIGNMENT OF PROMISSORY NOTES, SO AS TO CLARIFY PROVISIONS REGARDING A SALE UNDER A DISPOSITION PURSUANT TO SECTION 36-9-610, OR AN ACCEPTANCE OF COLLATERAL PURSUANT TO SECTION 36-9-620; TO AMEND SECTION 36-9-502, RELATING TO THE CONTENTS OF A FINANCING STATEMENT AND A RECORD OF MORTGAGE AS A FINANCING STATEMENT, SO AS TO CLARIFY PROVISIONS REGARDING THE NAME OF A DEBTOR ON A RECORD OF MORTGAGE AS A FINANCING STATEMENT; TO AMEND SECTION 36-9-503, RELATING TO THE NAME OF A DEBTOR AND SECURED PARTY, SO AS TO REVISE PROVISIONS REGARDING THE PROPER NAME OF A DEBTOR ON A FINANCING STATEMENT; TO AMEND SECTION 36-9-507, RELATING TO THE EFFECT OF CERTAIN EVENTS ON THE EFFECTIVENESS OF A FINANCING STATEMENT, SO AS TO REVISE PROVISIONS REGARDING THE SUFFICIENCY OF THE DEBTOR'S NAME; TO AMEND SECTION 36-9-515, RELATING TO THE DURATION AND EFFECTIVENESS OF A FINANCING STATEMENT, SO AS TO CLARIFY THE EFFECTIVENESS OF CERTAIN INITIALLY FILED FINANCING STATEMENTS; TO AMEND SECTION 36-9-516, AS AMENDED, RELATING TO WHAT CONSTITUTES FILING AND THE EFFECTIVENESS OF FILING, SO AS TO CLARIFY WHEN A DEBTOR IS AN INDIVIDUAL OR AN ORGANIZATION; TO AMEND 36-9-518, AS AMENDED, RELATING TO A CLAIM CONCERNING AN INACCURATE OR WRONGFULLY FILED RECORD, SO AS TO INCLUDE PROVISIONS REGARDING THE FILING OF AN INFORMATION STATEMENT; TO AMEND SECTION 36-9-521, REGARDING THE UNIFORM FORM OF A WRITTEN FINANCING STATEMENT AND AMENDMENT, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 36-9-607, RELATING TO COLLECTION AND ENFORCEMENT BY A SECURED PARTY, SO AS TO REVISE PROVISIONS REGARDING THE SECURED PARTY'S SWORN AFFIDAVIT; BY ADDING PART 8 TO CHAPTER 9, TITLE 36, SO AS TO ENTITLE PART 8 AS "TRANSITION"; AND TO MAKE CORRESPONDING CHANGES TO APPROPRIATE OFFICIAL COMMENTS AS NECESSARY TO REFLECT THE CHANGES TO CHAPTER 9, TITLE 36.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 36-9-101 of the 1976 Code is amended to read:

"Section 36-9-101. This chapter may be cited as 'Uniform Commercial Code-Secured Transactions'."

OFFICIAL COMMENT

1. **Source.** This Article supersedes former Uniform Commercial Code (UCC) Article 9. As did its predecessor, it provides a comprehensive scheme for the regulation of security interests in personal property and fixtures. For the most part this Article follows the general approach and retains much of the terminology of former Article 9. In addition to describing many aspects of the operation and interpretation of this Article, these Comments explain the material changes that this Article makes to former Article 9. Former Article 9 superseded the wide variety of pre-UCC security devices. Unlike the Comments to former Article 9, however, these Comments dwell very little on the pre-UCC state of the law. For that reason, the Comments to former Article 9 will remain of substantial historical value and interest. They also will remain useful in understanding the background and general conceptual approach of this Article.

Citations to the "Bankruptcy Code" in these Comments are to Title 11 of the United States Code as in effect on July 1, 2010.

2. **Background and History.** In 1990, the Permanent Editorial Board for the UCC with the support of its sponsors, The American Law Institute and the National Conference of Commissioners on Uniform State Laws, established a committee to study Article 9 of the UCC. The study committee issued its report as of December 1, 1992, recommending the creation of a drafting committee for the revision of Article 9 and also recommending numerous specific changes to Article 9. Organized in 1993, a drafting committee met fifteen times from 1993 to 1998. This Article was approved by its sponsors in 1998. This Article was conformed to revised Article 1 in 2001 and to amendment to Article 7 in 2003. The sponsors approved amendments to selected section of this Article in 2010.

3. **Reorganization and Renumbering; Captions; Style.** This Article reflects a substantial reorganization of former Article 9 and renumbering of most sections. New Part 4 deals with several aspects of third-party rights and duties that are unrelated to perfection and priority. Some of these were covered by Part 3 of former Article 9. Part 5 deals with filing (covered by former Part 4) and Part 6 deals with default and enforcement (covered by former Part 5). Appendix I contains conforming revisions to other articles of the UCC, and Appendix II contains model provisions for production-money priority.

This Article also includes headings for the subsections as an aid to readers. Unlike Section captions, which are part of the UCC, see Section 1-107, subsection headings are not a part of the official text itself and have not been approved by the sponsors. Each jurisdiction in which this Article is introduced may consider whether to adopt the headings as a part of the statute and whether to adopt a provision clarifying the effect, if any, to be given to the headings. This Article also has been conformed to current style conventions.

4. **Summary of Revisions.** Following is a brief summary of some of the more significant revisions of Article 9 that are included in the 1998 revision of this Article.

a. **Scope of Article 9.** This Article expands the scope of Article 9 in several respects.

Deposit accounts. Section 9-109 includes within this Article's scope deposit accounts as original collateral, except in consumer transactions. Former Article 9 dealt with deposit accounts only as proceeds of other collateral.

Sales of payment intangibles and promissory notes. Section 9-109 also includes within the scope of this Article most sales of "payment intangibles" (defined in Section 9-102 as general intangibles under which an account debtor's principal obligation is monetary) and "promissory notes" (also defined in Section 9-102). Former Article 9 included sales of accounts and chattel paper, but not sales of payment intangibles or promissory notes. In its inclusion of sales of payment intangibles and promissory notes, this Article continues the drafting convention found in former Article 9; it provides that the sale of accounts, chattel paper, payment intangibles, or promissory notes creates a "security interest." The definition of "account" in Section 9-102 also has been expanded to include various rights to payment that were general intangibles under former Article 9.

Health-care-insurance receivables. Section 9-109 narrows Article 9's exclusion of transfers of interests in insurance policies by carving out of the exclusion "health-care-insurance receivables" (defined in Section 9-102). A health-care-insurance receivable is included within the definition of "account" in Section 9-102.

Nonpossessory statutory agricultural liens. Section 9-109 also brings nonpossessory statutory agricultural liens within the scope of Article 9.

Consignments. Section 9-109 provides that "true" consignments-bailments for the purpose of sale by the bailee are security interests covered by Article 9, with certain exceptions. See Section 9-102 (defining "consignment"). Currently, many consignments are subject to Article 9's filing requirements by operation of former Section 2-326.

Supporting obligations and property securing rights to payment. This Article also addresses explicitly (i) obligations, such as guaranties and letters of credit, that support payment or performance of collateral such as accounts, chattel paper, and payment intangibles, and (ii) any property (including real property) that secures a right to payment or performance that is subject to an Article 9 security interest. See Sections 9-203, 9-308.

Commercial tort claims. Section 9-109 expands the scope of Article 9 to include the assignment of commercial tort claims by narrowing the exclusion of tort claims generally. However, this Article continues to exclude tort claims for bodily injury and other nonbusiness tort claims of a natural person. See Section 9-102 (defining "commercial tort claim").

Transfers by States and governmental units of States. Section 9-109 narrows the exclusion of transfers by States and their governmental units. It excludes only transfers covered by another statute (other than a statute generally applicable to security interests) to the extent the statute governs the creation, perfection, priority, or enforcement of security interests.

Nonassignable general intangibles, promissory notes, health-care-insurance receivables, and letter-of-credit rights. This Article enables a security interest to attach to letter-of-credit rights, health-care-insurance receivables, promissory notes, and general intangibles, including contracts, permits, licenses, and franchises, notwithstanding a contractual or statutory prohibition against or limitation on assignment. This Article explicitly protects third parties against any adverse effect of the creation or attempted enforcement of the security interest. See Sections 9-408, 9-409.

Subject to Sections 9-408 and 9-409 and two other exceptions (Sections 9-406, concerning accounts,

chattel paper, and payment intangibles, and 9-407, concerning interests in leased goods), Section 9-401 establishes a baseline rule that the inclusion of transactions and collateral within the scope of Article 9 has no effect on non-Article 9 law dealing with the alienability or inalienability of property. For example, if a commercial tort claim is nonassignable under other applicable law, the fact that a security interest in the claim is within the scope of Article 9 does not override the other applicable law's effective prohibition of assignment.

b. Duties of Secured Party. This Article provides for expanded duties of secured parties.

Release of control. Section 9-208 imposes upon a secured party having control of a deposit account, investment property, or a letter-of-credit right the duty to release control when there is no secured obligation and no commitment to give value. Section 9-209 contains analogous provisions when an account debtor has been notified to pay a secured party.

Information. Section 9-210 expands a secured party's duties to provide the debtor with information concerning collateral and the obligations that it secures.

Default and enforcement. Part 6 also includes some additional duties of secured parties in connection with default and enforcement. See, e.g., Section 9-616 (duty to explain calculation of deficiency or surplus in a consumer-goods transaction).

c. Choice of Law. The choice-of-law rules for the law governing perfection, the effect of perfection or nonperfection, and priority are found in Part 3, Subpart 1 (Sections 9-301 through 9-307). See also Section 9-316.

Where to file: Location of debtor. This Article changes the choice-of-law rule governing perfection (i.e., where to file) for most collateral to the law of the jurisdiction where the debtor is located. See Section 9-301. Under former Article 9, the jurisdiction of the debtor's location governed only perfection and priority of a security interest in accounts, general intangibles, mobile goods, and, for purposes of perfection by filing, chattel paper and investment property.

Determining debtor's location. As a baseline rule, Section 9-307 follows former Section 9-103, under which the location of the debtor is the debtor's place of business (or chief executive office, if the debtor has more than one place of business). Section 9-307 contains three major exceptions. First, a "registered organization," such as a corporation or limited liability company, is located in the State under whose law the debtor is organized, e.g., a corporate debtor's State of incorporation. Second, an individual debtor is located at his or her principal residence. Third, there are special rules for determining the location of the United States and registered organizations organized under the law of the United States.

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

Priority. For tangible collateral such as goods and instruments, Section 9-301 provides that the law applicable to priority and the effect of perfection or nonperfection will remain the law of the jurisdiction where the collateral is located, as under former Section 9-103 (but without the confusing "last event" test). For intangible collateral, such as accounts, the applicable law for priority will be that of the jurisdiction in which the debtor is located.

Possessory security interests; agricultural liens. Perfection, the effect of perfection or nonperfection, and priority of a possessory security interest or an agricultural lien are governed by the law of the jurisdiction where the collateral subject to the security interest or lien is located. See Sections 9-301, 9-302.

Goods covered by certificates of title; deposit accounts; letter-of-credit rights; investment property. This Article includes several refinements to the treatment of choice-of-law matters for goods covered by certificates of title. See Section 9-303. It also provides special choice-of-law rules, similar to those for investment property under current Articles 8 and 9, for deposit accounts (Section 9-304), investment property (Section 9-305), and letter-of-credit rights (Section 9-306).

Change in applicable law. Section 9-316 addresses perfection following a change in applicable law.

d. Perfection. The rules governing perfection of security interests and agricultural liens are found in Part 3, Subpart 2 (Sections 9-308 through 9-316).

Deposit accounts; letter-of-credit rights. With certain exceptions, this Article provides that a security interest in a deposit account or a letter-of-credit right may be perfected only by the secured party's acquiring "control" of the deposit account or letter-of-credit right. See Sections 9-312, 9-314. Under Section 9-104, a secured party has "control" of a deposit account when, with the consent of the debtor, the secured party obtains the depository bank's agreement to act on the secured party's instructions (including when the secured party becomes the account holder) or when the secured party is itself the depository bank. The control requirements are patterned on Section 8-106, which specifies the requirements for control of investment property. Under Section 9-107, "control" of a letter-of-credit right occurs when the issuer or nominated person consents to an assignment of proceeds under Section 5-114.

Electronic chattel paper. Section 9-102 includes a new defined term: "electronic chattel paper." Electronic chattel paper is a record or records consisting of information stored in an electronic medium (i.e., it is not written). Perfection of a security interest in electronic chattel paper may be by control or filing. See Sections 9-105 (sui generis definition of control of electronic chattel paper), 9-312 (perfection by filing), 9-314 (perfection by control).

Investment property. The perfection requirements for "investment property" (defined in Section 9-102), including perfection by control under Section 9-106, remain substantially unchanged. However, a new provision in Section 9-314 is designed to ensure that a secured party retains control in "repledge" transactions that are typical in the securities markets.

Instruments, agricultural liens, and commercial tort claims. This Article expands the types of collateral in which a security interest may be perfected by filing to include instruments. See Section 9-312. Agricultural liens and security interests in commercial tort claims also are perfected by filing, under this Article. See Sections 9-308, 9-310.

Sales of payment intangibles and promissory notes. Although former Article 9 covered the outright sale of accounts and chattel paper, sales of most other types of receivables also are financing transactions to which Article 9 should apply. Accordingly, Section 9-102 expands the definition of "account" to include many types of receivables (including "health-care-insurance receivables," defined in Section 9-102) that former Article 9 classified as "general intangibles." It thereby subjects to Article 9's filing system sales of more types of receivables than did former Article 9. Certain sales of payment intangibles- primarily bank loan participation transactions-should not be subject to the Article 9 filing rules. These transactions fall in a residual category of collateral, "payment intangibles" (general intangibles under which the

account debtor's principal obligation is monetary), the sale of which is exempt from the filing requirements of Article 9. See Sections 9-102, 9-109, 9-309 (perfection upon attachment). The perfection rules for sales of promissory notes are the same as those for sales of payment intangibles.

Possessory security interests. Several provisions of this Article address aspects of security interests involving a secured party or a third party who is in possession of the collateral. In particular, Section 9-313 resolves a number of uncertainties under former Section 9-305. It provides that a security interest in collateral in the possession of a third party is perfected when the third party acknowledges in an authenticated record that it holds for the secured party's benefit. Section 9-313 also provides that a third party need not so acknowledge and that its acknowledgment does not impose any duties on it, unless it otherwise agrees. A special rule in Section 9-313 provides that if a secured party already is in possession of collateral, its security interest remains perfected by possession if it delivers the collateral to a third party and the collateral is accompanied by instructions to hold it for the secured party or to redeliver it to the secured party. Section 9-313 also clarifies the limited circumstances under which a security interest in goods covered by a certificate of title may be perfected by the secured party's taking possession.

Automatic perfection. Section 9-309 lists various types of security interests as to which no public-notice step is required for perfection (e.g., purchase-money security interests in consumer goods other than automobiles). This automatic perfection also extends to a transfer of a health-care- insurance receivable to a health-care provider. Those transfers normally will be made by natural persons who receive health-care services; there is little value in requiring filing for perfection in that context. Automatic perfection also applies to security interests created by sales of payment intangibles and promissory notes. Section 9-308 provides that a perfected security interest in collateral supported by a "supporting obligation" (such as an account supported by a guaranty) also is a perfected security interest in the supporting obligation, and that a perfected security interest in an obligation secured by a security interest or lien on property (e.g., a real-property mortgage) also is a perfected security interest in the security interest or lien.

e. Priority; Special Rules for Banks and Deposit Accounts. The rules governing priority of security interests and agricultural liens are found in Part 3, Subpart 3 (Sections 9-317 through 9-342). This Article includes several new priority rules and some special rules relating to banks and deposit accounts (Sections 9-340 through 9-342).

Purchase-money security interests: General; consumer-goods transactions; inventory. Section 9-103 substantially rewrites the definition of purchase-money security interest (PMSI) (although the term is not formally "defined"). The substantive changes, however, apply only to non-consumer-goods transactions. (Consumer transactions and consumer-goods transactions are discussed below in Comment 4.j.) For non- consumer-goods transactions, Section 9-103 makes clear that a security interest in collateral may be (to some extent) both a PMSI as well as a non- PMSI, in accord with the "dual status" rule applied by some courts under former Article 9 (thereby rejecting the "transformation" rule). The definition provides an even broader conception of a PMSI in inventory, yielding a result that accords with private agreements entered into in response to the uncertainty under former Article 9. It also treats consignments as purchase-money security interests in inventory. Section 9-324 revises the PMSI priority rules, but for the most part without material change in substance. Section 9-324 also clarifies the priority rules for competing PMSIs in the same collateral.

Purchase-money security interests in livestock; agricultural liens. Section 9-324 provides a special PMSI priority, similar to the inventory PMSI priority rule, for livestock. Section 9-322 (which contains the baseline first-to-file-or-perfect priority rule) also recognizes special non-Article 9 priority rules for agricultural liens, which can override the baseline first-in-time rule.

Purchase-money security interests in software. Section 9-324 contains a new priority rule for a software purchase-money security interest. (Section 9-102 includes a definition of "software.") Under Section 9-103, a software PMSI includes a PMSI in software that is used in goods that are also subject to a PMSI. (Note also that the definition of "chattel paper" has been expanded to include records that evidence a monetary obligation and a security interest in specific goods and software used in the goods.)

Investment property. The priority rules for investment property are substantially similar to the priority rules found in former Section 9-115, which was added in conjunction with the 1994 revisions to UCC Article 8. Under Section 9-328, if a secured party has control of investment property (Sections 8-106, 9-106), its security interest is senior to a security interest perfected in another manner (e.g., by filing). Also under Section 9-328, security interests perfected by control generally rank according to the time that control is obtained or, in the case of a security entitlement or a commodity contract carried in a commodity account, the time when the control arrangement is entered into. This is a change from former Section 9-115, under which the security interests ranked equally. However, as between a securities intermediary's security interest in a security entitlement that it maintains for the debtor and a security interest held by another secured party, the securities intermediary's security interest is senior.

Deposit accounts. This Article's priority rules applicable to deposit accounts are found in Section 9-327. They are patterned on and are similar to those for investment property in former Section 9-115 and Section 9-328 of this Article. Under Section 9-327, if a secured party has control of a deposit account, its security interest is senior to a security interest perfected in another manner (i.e., as cash proceeds). Also under Section 9-327, security interests perfected by control rank according to the time that control is obtained, but as between a depository bank's security interest and one held by another secured party, the depository bank's security interest is senior. A corresponding rule in Section 9-340 makes a depository bank's right of set-off generally senior to a security interest held by another secured party. However, if the other secured party becomes the depository bank's customer with respect to the deposit account, then its security interest is senior to the depository bank's security interest and right of set-off. Sections 9-327, 9-340.

Letter-of-credit rights. The priority rules for security interests in letter-of-credit rights are found in Section 9-329. They are somewhat analogous to those for deposit accounts. A security interest perfected by control has priority over one perfected in another manner (i.e., as a supporting obligation for the collateral in which a security interest is perfected). Security interests in a letter-of-credit right perfected by control rank according to the time that control is obtained. However, the rights of a transferee beneficiary or a nominated person are independent and superior to the extent provided in Section 5-114. See Section 9-109(c)(4).

Chattel paper and instruments. Section 9-330 is the successor to former Section 9-308. As under former Section 9-308, differing priority rules apply to purchasers of chattel paper who give new value and take possession (or, in the case of electronic chattel paper, obtain control) of the collateral depending on whether a conflicting security interest in the collateral is claimed merely as proceeds. The principal change relates to the role of knowledge and the effect of an indication of a previous assignment of the collateral. Section 9-330 also affords priority to purchasers of instruments who take possession in good faith and without knowledge that the purchase violates the rights of the competing secured party. In addition, to qualify for priority, purchasers of chattel paper, but not of instruments, must purchase in the ordinary course of business.

Proceeds. Section 9-322 contains new priority rules that clarify when a special priority of a security interest in collateral continues or does not continue with respect to proceeds of the collateral. Other refinements to the priority rules for proceeds are included in Sections 9-324 (purchase-money security interest priority) and 9-330 (priority of certain purchasers of chattel paper and instruments).

Miscellaneous priority provisions. This Article also includes (i) clarifications of selected good-faith-purchase and similar issues (Sections 9-317, 9-331); (ii) new priority rules to deal with the "double debtor" problem arising when a debtor creates a security interest in collateral acquired by the debtor subject to a security interest created by another person (Section 9-325); (iii) new priority rules to deal with the problems created when a change in corporate structure or the like results in a new entity that has become bound by the original debtor's after-acquired property agreement (Section 9-326); (iv) a provision enabling most transferees of funds from a deposit account or money to take free of a security interest (Section 9-332); (v) substantially rewritten and refined priority rules dealing with accessions and commingled goods (Sections 9-335, 9-336); (vi) revised priority rules for security interests in goods covered by a certificate of title (Section 9-337); and (vii) provisions designed to ensure that security interests in deposit accounts will not extend to most transferees of funds on deposit or payees from deposit accounts and will not otherwise "clog" the payments system (Sections 9-341, 9-342).

Model provisions relating to production-money security interests. Appendix II to this Article contains model definitions and priority rules relating to "production-money security interests" held by secured parties who give new value used in the production of crops. Because no consensus emerged on the wisdom of these provisions during the drafting process, the sponsors make no recommendation on whether these model provisions should be enacted.

f. Proceeds. Section 9-102 contains an expanded definition of "proceeds" of collateral which includes additional rights and property that arise out of collateral, such as distributions on account of collateral and claims arising out of the loss or nonconformity of, defects in, or damage to collateral. The term also includes collections on account of "supporting obligations," such as guarantees.

g. Part 4: Additional Provisions Relating to Third-Party Rights. New Part 4 contains several provisions relating to the relationships between certain third parties and the parties to secured transactions. It contains new Sections 9-401 (replacing former Section 9-311) (alienability of debtor's rights), 9-402 (replacing former Section 9-317) (secured party not obligated on debtor's contracts), 9-403 (replacing former Section 9-206) (agreement not to assert defenses against assignee), 9-404, 9-405, and 9-406 (replacing former Section 9-318) (rights acquired by assignee, modification of assigned contract, discharge of account debtor, restrictions on assignment of account, chattel paper, promissory note, or payment intangible ineffective), 9-407 (replacing some provisions of former Section 2A-303) (restrictions on creation or enforcement of security interest in leasehold interest or lessor's residual interest ineffective). It also contains new Sections 9-408 (restrictions on assignment of promissory notes, health-care-insurance receivables ineffective, and certain general intangibles ineffective) and 9-409 (restrictions on assignment of letter-of-credit rights ineffective), which are discussed above.

h. Filing. Part 5 (formerly Part 4) of Article 9 has been substantially rewritten to simplify the statutory text and to deal with numerous problems of interpretation and implementation that have arisen over the years.

Medium-neutrality. This Article is "medium-neutral"; that is, it makes clear that parties may file and otherwise communicate with a filing office by means of records communicated and stored in media other than on paper.

Identity of person who files a record; authorization. Part 5 is largely indifferent as to the person who effects a filing. Instead, it addresses whose authorization is necessary for a person to file a record with a filing office. The filing scheme does not contemplate that the identity of a "filer" will be a part of the searchable records. This approach is consistent with, and a necessary aspect of, eliminating signatures or other evidence of authorization from the system (except to the extent that filing offices may choose to employ authentication procedures in connection with electronic communications). As long as the

appropriate person authorizes the filing, or, in the case of a termination statement, the debtor is entitled to the termination, it is largely insignificant whether the secured party or another person files any given record.

Section 9-509 collects in one place most of the rules that determine when a record may be filed. In general, the debtor's authorization is required for the filing of an initial financing statement or an amendment that adds collateral. With one further exception, a secured party of record's authorization is required for the filing of other amendments. The exception arises if a secured party has failed to provide a termination statement that is required because there is no outstanding secured obligation or commitment to give value. In that situation, a debtor is authorized to file a termination statement indicating that it has been filed by the debtor.

Financing statement formal requisites. The formal requisites for a financing statement are set out in Section 9-502. A financing statement must provide the name of the debtor and the secured party and an indication of the collateral that it covers. Sections 9-503 and 9-506 address the sufficiency of a name provided on a financing statement and clarify when a debtor's name is correct and when an incorrect name is insufficient. Section 9-504 addresses the indication of collateral covered. Under Section 9-504, a super-generic description (e.g., "all assets" or "all personal property") in a financing statement is a sufficient indication of the collateral. (Note, however, that a super-generic description is inadequate for purposes of a security agreement. See Sections 9-108, 9-203.) To facilitate electronic filing, this Article does not require that the debtor's signature or other authorization appear on a financing statement. Instead, it prohibits the filing of unauthorized financing statements and imposes liability upon those who violate the prohibition. See Sections 9-509, 9-626.

Filing-office operations. Part 5 contains several provisions governing filing operations. First, it prohibits the filing office from rejecting an initial financing statement or other record for a reason other than one of the few that are specified. See Sections 9-520, 9-516. Second, the filing office is obliged to link all subsequent records (e.g., assignments, continuation statements, etc.) to the initial financing statement to which they relate. See Section 9-519. Third, the filing office may delete a financing statement and related records from the files no earlier than one year after lapse (lapse normally is five years after the filing date), and then only if a continuation statement has not been filed. See Sections 9-515, 9-519, 9-522. Thus, a financing statement and related records would be discovered by a search of the files even after the filing of a termination statement. This approach helps eliminate filing-office discretion and also eases problems associated with multiple secured parties and multiple partial assignments. Fourth, Part 5 mandates performance standards for filing offices. See Sections 9-519, 9-520, 9-523. Fifth, it provides for the promulgation of filing-office rules to deal with details best left out of the statute and requires the filing office to submit periodic reports. See Sections 9-526, 9-527.

Defaulting or missing secured parties and fraudulent filings: Defaulting or missing secured parties and fraudulent filings. In some areas of the country, serious problems have arisen from fraudulent financing statements that are filed against public officials and other persons. This Article addresses the fraud problem by providing the opportunity for a debtor to file a termination statement when a secured party wrongfully refuses or fails to provide a termination statement. See Section 9-509. This opportunity also addresses the problem of secured parties that simply disappear through mergers or liquidations. In addition, Section 9-518 affords a statutory method by which a debtor who believes that a filed record is inaccurate or was wrongfully filed may indicate that fact in the files, albeit without affecting the efficacy, if any, of the challenged record.

Extended period of effectiveness for certain financing statements. Section 9-515 contains an exception to the usual rule that financing statements are effective for five years unless a continuation statement is filed to continue the effectiveness for another five years. Under that Section, an initial financing

statement filed in connection with a "public- finance transaction" or a "manufactured-home transaction" (terms defined in Section 9-102) is effective for 30 years.

National form of financing statement and related forms. Section 9-521 provides for uniform, national written forms of financing statements and related written records that must be accepted by a filing office that accepts written records.

i. Default and Enforcement. Part 6 of Article 9 extensively revises former Part 5. Provisions relating to enforcement of consumer-goods transactions and consumer transactions are discussed in Comment 4.j.

Debtor, secondary obligor; waiver. Section 9-602 clarifies the identity of persons who have rights and persons to whom a secured party owes specified duties under Part 6. Under that Section, the rights and duties are enjoyed by and run to the "debtor," defined in Section 9-102 to mean any person with a non-lien property interest in collateral, and to any "obligor." However, with one exception (Section 9-616, as it relates to a consumer obligor), the rights and duties concerned affect non-debtor obligors only if they are "secondary obligors." "Secondary obligor" is defined in Section 9-102 to include one who is secondarily obligated on the secured obligation, e.g., a guarantor, or one who has a right of recourse against the debtor or another obligor with respect to an obligation secured by collateral. However, under Section 9-628, the secured party is relieved from any duty or liability to any person unless the secured party knows that the person is a debtor or obligor. Resolving an issue on which courts disagreed under former Article 9, this Article generally prohibits waiver by a secondary obligor of its rights and a secured party's duties under Part 6. See Section 9-602. However, Section 9-624 permits a secondary obligor or debtor to waive the right to notification of disposition of collateral and, in a non-consumer transaction, the right to redeem collateral, if the secondary obligor or debtor agrees to do so after default.

Rights of collection and enforcement of collateral. Section 9-607 explains in greater detail than former 9-502 the rights of a secured party who seeks to collect or enforce collateral, including accounts, chattel paper, and payment intangibles. It also sets forth the enforcement rights of a depository bank holding a security interest in a deposit account maintained with the depository bank. Section 9-607 relates solely to the rights of a secured party vis-a-vis a debtor with respect to collections and enforcement. It does not affect the rights or duties of third parties, such as account debtors on collateral, which are addressed elsewhere (e.g., Section 9-406). Section 9-608 clarifies the manner in which proceeds of collection or enforcement are to be applied.

Disposition of collateral: Warranties of title. Section 9-610 imposes on a secured party who disposes of collateral the warranties of title, quiet possession, and the like that are otherwise applicable under other law. It also provides rules for the exclusion or modification of those warranties.

Disposition of collateral: Notification, application of proceeds, surplus and deficiency, other effects. Section 9-611 requires a secured party to give notification of a disposition of collateral to other secured parties and lienholders who have filed financing statements against the debtor covering the collateral. (That duty was eliminated by the 1972 revisions to Article 9.) However, that Section relieves the secured party from that duty when the secured party undertakes a search of the records and a report of the results is unreasonably delayed. Section 9-613, which applies only to non-consumer transactions, specifies the contents of a sufficient notification of disposition and provides that a notification sent 10 days or more before the earliest time for disposition is sent within a reasonable time. Section 9-615 addresses the application of proceeds of disposition, the entitlement of a debtor to any surplus, and the liability of an obligor for any deficiency. Section 9-619 clarifies the effects of a disposition by a secured party, including the rights of transferees of the collateral.

Rights and duties of secondary obligor. Section 9-618 provides that a secondary obligor obtains the

rights and assumes the duties of a secured party if the secondary obligor receives an assignment of a secured obligation, agrees to assume the secured party's rights and duties upon a transfer to it of collateral, or becomes subrogated to the rights of the secured party with respect to the collateral. The assumption, transfer, or subrogation is not a disposition of collateral under Section 9-610, but it does relieve the former secured party of further duties. Former Section 9-504(5) did not address whether a secured party was relieved of its duties in this situation.

Transfer of record or legal title. Section 9-619 contains a new provision making clear that a transfer of record or legal title to a secured party is not of itself a disposition under Part 6. This rule applies regardless of the circumstances under which the transfer of title occurs.

Strict foreclosure. Section 9-620, unlike former Section 9-505, permits a secured party to accept collateral in partial satisfaction, as well as full satisfaction, of the obligations secured. This right of strict foreclosure extends to intangible as well as tangible property. Section 9-622 clarifies the effects of an acceptance of collateral on the rights of junior claimants. It rejects the approach taken by some courts-deeming a secured party to have constructively retained collateral in satisfaction of the secured obligations-in the case of a secured party's unreasonable delay in the disposition of collateral. Instead, unreasonable delay is relevant when determining whether a disposition under Section 9-610 is commercially reasonable.

Effect of noncompliance: "Rebuttable presumption" test. Section 9-626 adopts the "rebuttable presumption" test for the failure of a secured party to proceed in accordance with certain provisions of Part 6. (As discussed in Comment 4.j., the test does not necessarily apply to consumer transactions.) Under this approach, the deficiency claim of a noncomplying secured party is calculated by crediting the obligor with the greater of the actual net proceeds of a disposition and the amount of net proceeds that would have been realized if the disposition had been conducted in accordance with Part 6 (e.g., in a commercially reasonable manner). For non-consumer transactions, Section 9-626 rejects the "absolute bar" test that some courts have imposed; that approach bars a noncomplying secured party from recovering any deficiency, regardless of the loss (if any) the debtor suffered as a consequence of the noncompliance.

"Low-price" dispositions: Calculation of deficiency and surplus. Section 9-615(f) addresses the problem of procedurally regular dispositions that fetch a low price. Subsection (f) provides a special method for calculating a deficiency if the proceeds of a disposition of collateral to a secured party, a person related to the secured party, or a secondary obligor are "significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought." ("Person related to" is defined in Section 9-102.) In these situations there is reason to suspect that there may be inadequate incentives to obtain a better price. Consequently, instead of calculating a deficiency (or surplus) based on the actual net proceeds, the deficiency (or surplus) would be calculated based on the proceeds that would have been received in a disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor.

j. Consumer Goods, Consumer-Goods Transactions, and Consumer Transactions. This Article (including the accompanying conforming revisions (see Appendix I)) includes several special rules for "consumer goods," "consumer transactions," and "consumer-goods transactions." Each term is defined in Section 9-102.

(i) Revised Sections 2-502 and 2-716 provide a buyer of consumer goods with enhanced rights to possession of the goods, thereby accelerating the opportunity to achieve "buyer in ordinary course of business" status under Section 1-201.

- (ii) Section 9-103(e) (allocation of payments for determining extent of purchase-money status), (f) (purchase-money status not affected by cross-collateralization, refinancing, restructuring, or the like), and (g) (secured party has burden of establishing extent of purchase-money status) do not apply to consumer-goods transactions. Sections 9-103 also provides that the limitation of those provisions to transactions other than consumer-goods transactions leaves to the courts the proper rules for consumer-goods transactions and prohibits the courts from drawing inferences from that limitation.
 - (iii) Section 9-108 provides that in a consumer transaction a description of consumer goods, a security entitlement, securities account, or commodity account "only by [UCC-defined] type of collateral" is not a sufficient collateral description in a security agreement.
 - (iv) Sections 9-403 and 9-404 make effective the Federal Trade Commission's anti-holder-in-due-course rule (when applicable), 16 C.F.R. Part 433, even in the absence of the required legend.
 - (v) The 10-day safe-harbor for notification of a disposition provided by Section 9-612 does not apply in a consumer transaction.
 - (vi) Section 9-613 (contents and form of notice of disposition) does not apply to a consumer-goods transaction.
 - (vii) Section 9-614 contains special requirements for the contents of a notification of disposition and a safe-harbor, "plain English" form of notification, for consumer-goods transactions.
 - (viii) Section 9-616 requires a secured party in a consumer-goods transaction to provide a debtor with a notification of how it calculated a deficiency at the time it first undertakes to collect a deficiency.
 - (ix) Section 9-620 prohibits partial strict foreclosure with respect to consumer goods collateral and, unless the debtor agrees to waive the requirement in an authenticated record after default, in certain cases requires the secured party to dispose of consumer goods collateral which has been repossessed.
 - (x) Section 9-626 ("rebuttable presumption" rule) does not apply to a consumer transaction. Section 9-626 also provides that its limitation to transactions other than consumer transactions leaves to the courts the proper rules for consumer transactions and prohibits the courts from drawing inferences from that limitation.
- k. Good Faith. Section 9-102 contains a new definition of "good faith" that includes not only "honesty in fact" but also "the observance of reasonable commercial standards of fair dealing." The definition is similar to the ones adopted in connection with other, recently completed revisions of the UCC.
- l. Transition Provisions. Part 7 (Sections 9-701 through 9-707) contains transition provisions. Transition from former Article 9 to this Article will be particularly challenging in view of its expanded scope, its modification of choice-of-law rules for perfection and priority, and its expansion of the methods of perfection.
- m. Conforming and Related Amendments to Other UCC Articles. Appendix I contains several proposed revisions to the provisions and Comments of other UCC articles. For the most part the revisions are explained in the Comments to the proposed revisions. Cross-references in other UCC articles to Sections of Article 9 also have been revised.

Article 1. Revised Section 1-201 contains revisions to the definitions of "buyer in ordinary course of

business," "purchaser," and "security interest."

Articles 2 and 2A. Sections 2-210, 2-326, 2-502, 2-716, 2A-303, and 2A-307 have been revised to address the intersection between Articles 2 and 2A and Article 9.

Article 5. New Section 5-118 is patterned on Section 4-210. It provides for a security interest in documents presented under a letter of credit in favor of the issuer and a nominated person on the letter of credit.

Article 8. Revisions to Section 8-106, which deals with "control" of securities and security entitlements, conform it to Section 8-302, which deals with "delivery." Revisions to Section 8-110, which deals with a "securities intermediary's jurisdiction," conform it to the revised treatment of a "commodity intermediary's jurisdiction" in Section 9-305. Sections 8-301 and 8-302 have been revised for clarification. Section 8-510 has been revised to conform it to the revised priority rules of Section 9-328. Several Comments in Article 8 also have been revised.

SOUTH CAROLINA REPORTER'S COMMENT

The South Carolina Reporters Notes to Article 9 do not attempt to explain the substantive provisions of the statute or the changes effected by adopting 1999 Official Text. The Official Comment perform those functions. Rather, the South Carolina Reporters Notes address the effect of the 1999 Official Text upon South Carolina case law interpreted under former Article 9 and upon statutes other than the Uniform Commercial Code. See, e.g. Section 36-9-109, Note 2 addressing agricultural liens. In addition, the South Carolina Reporters Notes address Article 9 provisions enacted in South Carolina that are not consistent with the 1999 Official Text. See, e.g., Sections 36-9-109 and 36-9-317 addressing landlords' liens."

SECTION 2. Section 36-9-102 of the 1976 Code is amended to read:

"Section 36-9-102. (a) In this chapter:

(1) 'Accession' means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) 'Account' except as used in 'account for', means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes health care insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) 'Account debtor' means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument

constitutes part of chattel paper.

(4) 'Accounting', except as used in 'accounting for', means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

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

(5) 'Agricultural lien' means an interest, other than a security interest, in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(6) 'As-extracted collateral' means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) 'Authenticate' means:

(A) to sign; or

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

(8) 'Bank' means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) 'Cash proceeds' means proceeds that are money, checks, deposit accounts, or the like.

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

(11) 'Chattel paper' means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this item, 'monetary obligation' means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods.

The term does not include:

- (i) charters or other contracts involving the use of hire of a vessel; or
- (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) 'Collateral' means the property subject to a security interest or agricultural lien. The term includes:

- (A) proceeds to which a security interest attaches;
- (B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- (C) goods that are the subject of a consignment.

(13) 'Commercial tort claim' means a claim arising in tort with respect to which:

- (A) the claimant is an organization; or
- (B) the claimant is an individual and the claim:
 - (i) arose in the course of the claimant's business or profession; and
 - (ii) does not include damages arising out of personal injury to or the death of an individual.

(14) 'Commodity account' means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) 'Commodity contract' means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

- (A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
 - (B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.
- (16) 'Commodity customer' means a person for which a commodity intermediary carries a commodity contract on its books.
- (17) 'Commodity intermediary' means a person that:
- (A) is registered as a futures commission merchant under federal commodities law; or
 - (B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.
- (18) 'Communicate' means:
- (A) to send a written or other tangible record;
 - (B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or
 - (C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.
- (19) 'Consignee' means a merchant to which goods are delivered in a consignment.
- (20) 'Consignment' means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:
- (A) the merchant:
 - (i) deals in goods of that kind under a name other than the name of the person making delivery;
 - (ii) is not an auctioneer; and
 - (iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;
 - (B) with respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;
 - (C) the goods are not consumer goods immediately before delivery; and
 - (D) the transaction does not create a security interest that secures an obligation.
- (21) 'Consignor' means a person that delivers goods to a consignee in a consignment.
- (22) 'Consumer debtor' means a debtor in a consumer transaction.
- (23) 'Consumer goods' means goods that are used or bought for use primarily for personal, family, or

household purposes.

(24) 'Consumer-goods transaction' means a consumer transaction in which:

- (A) an individual incurs an obligation primarily for personal, family, or household purposes; and
- (B) a security interest in consumer goods secures the obligation.

(25) 'Consumer obligor' means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) 'Consumer transaction' means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) 'Continuation statement' means an amendment of a financing statement which:

- (A) identifies, by its file number, the initial financing statement to which it relates; and
- (B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) 'Debtor' means:

- (A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;
- (B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or
- (C) a consignee.

(29) 'Deposit account' means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) 'Document' means a document of title or a receipt of the type described in Section 36-7-201(2).

(31) 'Electronic chattel paper' means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) 'Encumbrance' means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) 'Equipment' means goods other than inventory, farm products, or consumer goods.

(34) 'Farm products' means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

- (A) crops grown, growing, or to be grown, including:

- (i) crops produced on trees, vines, and bushes; and
 - (ii) aquatic goods produced in aquacultural operations;
 - (B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;
 - (C) supplies used or produced in a farming operation; or
 - (D) products of crops or livestock in their unmanufactured states.
- (35) 'Farming operation' means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.
- (36) 'File number' means the number assigned to an initial financing statement pursuant to Section 36-9-519(a).
- (37) 'Filing office' means an office designated in Section 36-9-501 as the place to file a financing statement.
- (38) 'Filing-office rule' means a rule adopted pursuant to Section 36-9-526.
- (39) 'Financing statement' means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.
- (40) 'Fixture filing' means the filing of a financing statement covering goods that are or are to become fixtures and satisfying Section 36-9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.
- (41) 'Fixtures' means goods that have become so related to particular real property that an interest in them arises under real property law.
- (42) 'General intangible' means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.
- (43) 'Good faith' means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (44) 'Goods' means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas,

or other minerals before extraction.

(45) 'Governmental unit' means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a State, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) 'Health care insurance receivable' means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) 'Instrument' means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) 'Inventory' means goods, other than farm products, which:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) 'Investment property' means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

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

(51) 'Letter-of-credit right' means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) 'Lien creditor' means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) 'Manufactured home' means a structure, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected

on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this item except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) 'Manufactured-home transaction' means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) 'Mortgage' means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) 'New debtor' means a person that becomes bound as debtor under Section 36-9-203(d) by a security agreement previously entered into by another person.

(57) 'New value' means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) 'Noncash proceeds' means proceeds other than cash proceeds.

(59) 'Obligor' means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) 'Original debtor', except as used in Section 36-9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under Section 36-9-203(d).

(61) 'Payment intangible' means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) 'Person related to', with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) 'Person related to', with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subitem (A);

(D) the spouse of an individual described in subitem (A), (B), or (C); or

(E) an individual who is related by blood or marriage to an individual described in subitem (A), (B), (C), or (D) and shares the same home with the individual.

(64) 'Proceeds', except as used in Section 36-9-609(b), means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) 'Promissory note' means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) 'Proposal' means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 36-9-620, 36-9-621, and 36-9-622.

(67) 'Public-finance transaction' means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a State or a governmental unit of a State.

(68) 'Public organic record' means a record that is available to the public for inspection and is:

(A) a record consisting of the record initially filed with or issued by a State or the United States to form or organize an organization and any record filed with or issued by the State or the United States which amends or restates the initial record;

(B) an organic record of a business trust consisting of the record initially filed with a State and any record filed with the State which amends or restates the initial record, if a statute of the State governing business trusts requires that the record be filed with the State; or

(C) a record consisting of legislation enacted by the legislature of a State or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the State or the United States which amends or restates the name of the organization.

~~(68)~~(69) 'Pursuant to commitment', with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

~~(69)~~(70) 'Record', except as used in 'for record', 'of record', 'record or legal title', and 'record owner', means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

~~(70)~~(71) 'Registered organization' means an organization formed or organized solely under the law of a single State or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the State or the United States. The term includes a business trust that is formed or organized under the law of a single State if a statute of the State governing business trusts requires that the business trust's organic record be filed with the State.

~~(71)~~(72) 'Secondary obligor' means an obligor to the extent that the:

(A) ~~the~~ obligor's obligation is secondary; or

(B) ~~the~~ obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

~~(72)~~(73) 'Secured party' means a:

(A) ~~a~~ person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) ~~a~~ person that holds an agricultural lien;

(C) ~~a~~ consignor;

(D) ~~a~~ person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) ~~a~~ trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security

interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under Section 36-2-401, 36-2-505, 36-2-711(3), 36-2A-508(5), 36-4-210, or 36-5-118.

~~(73)~~(74) 'Security agreement' means an agreement that creates or provides for a security interest.

~~(74)~~(75) 'Send', in connection with a record or notification, means to:

(A) ~~to~~ deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) ~~to~~ cause the record or notification to be received within the time that it would have been received if properly sent under subitem (A).

~~(75)~~(76) 'Software' means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

~~(76)~~(77) 'State' means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

~~(77)~~(78) 'Supporting obligation' means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

~~(78)~~(79) 'Tangible chattel paper' means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

~~(79)~~(80) 'Termination statement' means an amendment of a financing statement which:

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

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

~~(80)~~(81) 'Transmitting utility' means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) The following definitions in other chapters apply to this chapter:

'Beneficiary' Section 36-5-102.

'Broker' Section 36-8-102.

'Certificated security' Section 36-8-102.

'Check' Section 36-3-104.

'Clearing corporation' Section 36-8-102.

'Contract for sale' Section 36-2-106.

'Customer' Section 36-4-104.

'Entitlement holder' Section 36-8-102.

'Financial asset' Section 36-8-102.

'Holder in due course' Section 36-3-302.

'Issuer' (with respect to a letter of credit or letter-of-credit right) Section 36-5-103.

'Issuer' (with respect to a security) Section 36-8-201.

'Lease' Section 36-2A-103.

'Lease agreement' Section 36-2A-103.

'Lease contract' Section 36-2A-103.

'Leasehold interest' Section 36-2A-103.

'Lessee' Section 36-2A-103.

'Lessee in ordinary course of business' Section 36-2A-103.

'Lessor' Section 36-2A-103.

'Lessor's residual interest' Section 36-2A-103.

'Letter of credit' Section 36-5-103.

'Merchant' Section 36-2-104.

'Negotiable instrument' Section 36-3-104.

'Note' Section 36-3-104.

'Sale' Section 36-2-106.

'Securities account' Section 36-8-501.

'Securities intermediary' Section 36-8-102.

'Security' Section 36-8-102.

'Security certificate' Section 36-8-102.

'Security entitlement' Section 36-8-102.

'Uncertificated security' Section 36-8-102.

(c) In this chapter:

(1) 'Lease' means a transfer of the right to possession and use of goods for a period in return for consideration. The term includes a sublease unless the context clearly indicates otherwise. The term does include a sale, including a sale on approval or a sale or return, or retention or creation of a security interest.

(2) 'Lease Agreement' means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(3) 'Lease Contract' means the total legal obligation that results from the lease agreement and applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(4) 'Lessor Interest' means the interest of the lessor or the lessee under a lease contract.

(5) 'Lessee' means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(6) 'Lessee in Ordinary Course of Business' means a person that leases goods in good faith, without knowledge that the lease violates the rights of another person, and in the ordinary course from a person, other than a pawn broker, in the business of selling or leasing goods of that kind. A person leases in ordinary course if the lease to the person comports with the usual or customary practices in the kind of business in which the lessor is engaged or with the lessor's own usual or customary practices. A lessee in the ordinary course of business may lease for cash, by exchange of other property, or on security or unsecured credit, and may acquire goods or documents of title under a preexisting contract. Only a lessee that takes possession of the goods or has a right to recover the goods from the lessor may be a lessee in the ordinary course of business. A person that acquires goods in a transfer in bulk or has security for or in total or partial satisfaction of a money debt is not a lessee in the ordinary course of business.

(7) 'Lessor' means the person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes sublessor.

(8) 'Lessor's Residual Interest' means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(9) 'Applicant' means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(10) 'Nominated Person' means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse.

(11) 'Proceeds of a Letter of Credit' means the cash, check accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(12) 'Prove' ~~means~~ with respect to a fact means to meet the burden of establishing the fact (Section 36-1-201(8)).

(d) Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

OFFICIAL COMMENT

1. Source. All terms that are defined in Article 9 and used in more than one Section are consolidated in this Section. Note that the definition of "security interest" is found in Section 1-201, not in this Article, and has been revised. See Appendix I. Many of the definitions in this Section are new; many others derive from those in former Section 9-105. The following Comments also indicate other Sections of former Article 9 that defined (or explained) terms.

2. Parties to Secured Transactions.

a. "Debtor"; "Obligor"; "Secondary Obligor." Determining whether a person was a "debtor" under former Section 9-105(1)(d) required a close examination of the context in which the term was used. To reduce the need for this examination, this Article redefines "debtor" and adds new defined terms, "secondary obligor" and "obligor." In the context of Part 6 (default and enforcement), these definitions distinguish among three classes of persons: (i) those persons who may have a stake in the proper enforcement of a security interest by virtue of their non-lien property interest (typically, an ownership interest) in the collateral, (ii) those persons who may have a stake in the proper enforcement of the security interest because of their obligation to pay the secured debt, and (iii) those persons who have an obligation to pay the secured debt but have no stake in the proper enforcement of the security interest. Persons in the first class are debtors. Persons in the second class are secondary obligors if any portion of the obligation is secondary or if the obligor has a right of recourse against the debtor or another obligor with respect to an obligation secured by collateral. One must consult the law of suretyship to determine whether an obligation is secondary. The Restatement (3d), Suretyship and Guaranty '1 (1996), contains a useful explanation of the concept. Obligor in the third class are neither debtors nor secondary obligors. With one exception (Section 9-616, as it relates to a consumer obligor), the rights and duties provided by Part 6 affect non-debtor obligors only if they are "secondary obligors."

By including in the definition of "debtor" all persons with a property interest (other than a security interest in or other lien on collateral), the definition includes transferees of collateral, whether or not the secured party knows of the transfer or the transferee's identity. Exculpatory provisions in Part 6 protect the secured party in that circumstance. See Sections 9-605 and 9-628. The definition renders unnecessary former Section 9-112, which governed situations in which collateral was not owned by the

debtor. The definition also includes a "consignee," as defined in this Section, as well as a seller of accounts, chattel paper, payment intangibles, or promissory notes.

Secured parties and other lienholders are excluded from the definition of "debtor" because the interests of those parties normally derive from and encumber a debtor's interest. However, if in a separate secured transaction a secured party grants, as debtor, a security interest in its own interest (i.e., its security interest and any obligation that it secures), the secured party is a debtor in that transaction. This typically occurs when a secured party with a security interest in specific goods assigns chattel paper.

Consider the following examples:

Example 1: Behnfeltdt borrows money and grants a security interest in her Miata to secure the debt. Behnfeltdt is a debtor and an obligor.

Example 2: Behnfeltdt borrows money and grants a security interest in her Miata to secure the debt. Bruno co-signs a negotiable note as maker. As before, Behnfeltdt is the debtor and an obligor. As an accommodation party (see Section 3-419), Bruno is a secondary obligor. Bruno has this status even if the note states that her obligation is a primary obligation and that she waives all suretyship defenses.

Example 3: Behnfeltdt borrows money on an unsecured basis. Bruno co-signs the note and grants a security interest in her Honda to secure her obligation. Inasmuch as Behnfeltdt does not have a property interest in the Honda, Behnfeltdt is not a debtor. Having granted the security interest, Bruno is the debtor. Because Behnfeltdt is a principal obligor, she is not a secondary obligor. Whatever the outcome of enforcement of the security interest against the Honda or Bruno's secondary obligation, Bruno will look to Behnfeltdt for her losses. The enforcement will not affect Behnfeltdt's aggregate obligations.

When the principal obligor (borrower) and the secondary obligor (surety) each has granted a security interest in different collateral, the status of each is determined by the collateral involved.

Example 4: Behnfeltdt borrows money and grants a security interest in her Miata to secure the debt. Bruno co-signs the note and grants a security interest in her Honda to secure her obligation. When the secured party enforces the security interest in Behnfeltdt's Miata, Behnfeltdt is the debtor, and Bruno is a secondary obligor. When the secured party enforces the security interest in the Honda, Bruno is the "debtor." As in Example 3, Behnfeltdt is an obligor, but not a secondary obligor.

b. "Secured Party." The secured party is the person in whose favor the security interest has been created, as determined by reference to the security agreement. This definition controls, among other things, which person has the duties and potential liability that Part 6 imposes upon a secured party. The definition of "secured party" also includes a "consignee," a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold, and the holder of an agricultural lien.

The definition of "secured party" clarifies the status of various types of representatives. Consider, for example, a multi-bank facility under which Bank A, Bank B, and Bank C are lenders and Bank A serves as the collateral agent. If the security interest is granted to the banks, then they are the secured parties. If the security interest is granted to Bank A as collateral agent, then Bank A is the secured party.

c. Other Parties. A "consumer obligor" is defined as the obligor in a consumer transaction. Definitions of "new debtor" and "original debtor" are used in the special rules found in Sections 9-326 and 9-508.

3. Definitions Relating to Creation of a Security Interest.

- a. "Collateral." As under former Section 9-105, "collateral" is the property subject to a security interest and includes accounts and chattel paper that have been sold. It has been expanded in this Article. The term now explicitly includes proceeds subject to a security interest. It also reflects the broadened scope of the Article. It includes property subject to an agricultural lien as well as payment intangibles and promissory notes that have been sold.
- b. "Security Agreement." The definition of "security agreement" is substantially the same as under former Section 9-105-an agreement that creates or provides for a security interest. However, the term frequently was used colloquially in former Article 9 to refer to the document or writing that contained a debtor's security agreement. This Article eliminates that usage, reserving the term for the more precise meaning specified in the definition.

Whether an agreement creates a security interest depends not on whether the parties intend that the law characterize the transaction as a security interest but rather on whether the transaction falls within the definition of "security interest" in Section 1-201. Thus, an agreement that the parties characterize as a "lease" of goods may be a "security agreement," notwithstanding the parties' stated intention that the law treat the transaction as a lease and not as a secured transaction.

4. Goods-Related Definitions.

- a. "Goods"; "Consumer Goods"; "Equipment"; "Farm Products"; "Farming Operation"; "Inventory." The definition of "goods" is substantially the same as the definition in former Section 9-105. This Article also retains the four mutually-exclusive "types" of collateral that consist of goods: "consumer goods," "equipment," "farm products," and "inventory." The revisions are primarily for clarification.

The classes of goods are mutually exclusive. For example, the same property cannot simultaneously be both equipment and inventory. In borderline cases-a physician's car or a farmer's truck that might be either consumer goods or equipment-the principal use to which the property is put is determinative. Goods can fall into different classes at different times. For example, a radio may be inventory in the hands of a dealer and consumer goods in the hands of a consumer. As under former Article 9, goods are "equipment" if they do not fall into another category.

The definition of "consumer goods" follows former Section 9-109. The classification turns on whether the debtor uses or bought the goods for use "primarily for personal, family, or household purposes."

Goods are inventory if they are leased by a lessor or held by a person for sale or lease. The revised definition of "inventory" makes clear that the term includes goods leased by the debtor to others as well as goods held for lease. (The same result should have obtained under the former definition.) Goods to be furnished or furnished under a service contract, raw materials, and work in process also are inventory. Implicit in the definition is the criterion that the sales or leases are or will be in the ordinary course of business. For example, machinery used in manufacturing is equipment, not inventory, even though it is the policy of the debtor to sell machinery when it becomes obsolete or worn. Inventory also includes goods that are consumed in a business (e.g., fuel used in operations). In general, goods used in a business are equipment if they are fixed assets or have, as identifiable units, a relatively long period of use, but are inventory, even though not held for sale or lease, if they are used up or consumed in a short period of time in producing a product or providing a service.

Goods are "farm products" if the debtor is engaged in farming operations with respect to the goods. Animals in a herd of livestock are covered whether the debtor acquires them by purchase or as a result of natural increase. Products of crops or livestock remain farm products as long as they have not been subjected to a manufacturing process. The terms "crops" and "livestock" are not defined. The new

definition of "farming operations" is for clarification only.

Crops, livestock, and their products cease to be "farm products" when the debtor ceases to be engaged in farming operations with respect to them. If, for example, they come into the possession of a marketing agency for sale or distribution or of a manufacturer or processor as raw materials, they become inventory. Products of crops or livestock, even though they remain in the possession of a person engaged in farming operations, lose their status as farm products if they are subjected to a manufacturing process. What is and what is not a manufacturing operation is not specified in this Article. At one end of the spectrum, some processes are so closely connected with farming—such as pasteurizing milk or boiling sap to produce maple syrup or sugar—that they would not constitute manufacturing. On the other hand an extensive canning operation would be manufacturing. Once farm products have been subjected to a manufacturing operation, they normally become inventory.

The revised definition of "farm products" clarifies the distinction between crops and standing timber and makes clear that aquatic goods produced in aquacultural operations may be either crops or livestock. Although aquatic goods that are vegetable in nature often would be crops and those that are animal would be livestock, this Article leaves the courts free to classify the goods on a case-by-case basis. See Section 9-324, Comment 11.

b. "Accession"; "Manufactured Home"; "Manufactured-Home Transaction." Other specialized definitions of goods include "accession" (see the special priority and enforcement rules in Section 9-335), and "manufactured home" (see Section 9-515, permitting a financing statement in a "manufactured-home transaction" to be effective for 30 years). The definition of "manufactured home" borrows from the federal Manufactured Housing Act, 42 U.S.C. '5401 et seq., and is intended to have the same meaning.

c. "As-Extracted Collateral." Under this Article, oil, gas, and other minerals that have not been extracted from the ground are treated as real property, to which this Article does not apply. Upon extraction, minerals become personal property (goods) and eligible to be collateral under this Article. See the definition of "goods," which excludes "oil, gas, and other minerals before extraction." To take account of financing practices reflecting the shift from real to personal property, this Article contains special rules for perfecting security interests in minerals which attach upon extraction and in accounts resulting from the sale of minerals at the wellhead or minehead. See, e.g., Sections 9-301(4) (law governing perfection and priority); 9-501 (place of filing), 9-502 (contents of financing statement), 9-519 (indexing of records). The new term, "as-extracted collateral," refers to the minerals and related accounts to which the special rules apply. The term "at the wellhead" encompasses arrangements based on a sale of the produce at the moment that it issues from the ground and is measured, without technical distinctions as to whether title passes at the "Christmas tree" of a well, the far side of a gathering tank, or at some other point. The term "at .. the minehead" is comparable.

The following examples explain the operation of these provisions.

Example 5: Debtor owns an interest in oil that is to be extracted. To secure Debtor's obligations to Lender, Debtor enters into an authenticated agreement granting Lender an interest in the oil. Although Lender may acquire an interest in the oil under real-property law, Lender does not acquire a security interest under this Article until the oil becomes personal property, i.e., until it is extracted and becomes "goods" to which this Article applies. Because Debtor had an interest in the oil before extraction and Lender's security interest attached to the oil as extracted, the oil is "as-extracted collateral."

Example 6: Debtor owns an interest in oil that is to be extracted and contracts to sell the oil to Buyer at the wellhead. In an authenticated agreement, Debtor agrees to sell to Lender the right to payment from

Buyer. This right to payment is an account that constitutes "as-extracted collateral." If Lender then resells the account to Financer, Financer acquires a security interest. However, inasmuch as the debtor-seller in that transaction, Lender, had no interest in the oil before extraction, Financer's collateral (the account it owns) is not "as-extracted collateral."

Example 7: Under the facts of Example 6, before extraction, Buyer grants a security interest in the oil to Bank. Although Bank's security interest attaches when the oil is extracted, Bank's security interest is not in "as-extracted collateral," inasmuch as its debtor, Buyer, did not have an interest in the oil before extraction.

5. Receivables-related Definitions.

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

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

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

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

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

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

c. "Instrument"; "Promissory Note." The definition of "instrument" includes a negotiable instrument. As under former Section 9-105, it also includes any other right to payment of a monetary obligation that is evidenced by a writing of a type that in ordinary course of business is transferred by delivery (and, if necessary, an indorsement or assignment). Except in the case of chattel paper, the fact that an instrument is secured by a security interest or encumbrance on property does not change the character of the instrument as such or convert the combination of the instrument and collateral into a separate classification of personal property. The definition makes clear that rights to payment arising out of credit-card transactions are not instruments. The definition of "promissory note" is new, necessitated by the inclusion of sales of promissory notes within the scope of Article 9. It explicitly excludes obligations arising out of "orders" to pay (e.g., checks) as opposed to "promises" to pay. See Section 3-104.

d. "General Intangible"; "Payment Intangible." "General intangible" is the residual category of personal property, including things in action, that is not included in the other defined types of collateral. Examples are various categories of intellectual property and the right to payment of a loan of funds that is not evidenced by chattel paper or an instrument. The definition has been revised to exclude commercial tort claims, deposit accounts, and letter-of-credit rights. Each of the three is a separate type of collateral. One important consequence of this exclusion is that tortfeasors (commercial tort claims), banks (deposit accounts), and persons obligated on letters of credit (letter-of-credit rights) are not "account debtors" having the rights and obligations set forth in Sections 9-404, 9-405, and 9-406. In particular, tortfeasors, banks, and persons obligated on letters of credit are not obligated to pay an assignee (secured party) upon receipt of the notification described in Section 9-404(a). See Comment 5.h. Another important consequence relates to the adequacy of the description in the security agreement. See Section 9-108.

"Payment intangible" is a subset of the definition of "general intangible." The sale of a payment intangible is subject to this Article. See Section 9-109(a)(3). Virtually any intangible right could give rise to a right to payment of money once one hypothesizes, for example, that the account debtor is in breach of its obligation. The term "payment intangible," however, embraces only those general intangibles "under which the account debtor's *principal* obligation is a monetary obligation." (Emphasis added.) A debtor's right to payment from another person of amounts received by the other person on the debtor's behalf, including the right of a merchant in a credit-card, debit-card, prepaid card, or other payment-card transaction to payment of amounts received by its bank from the card system in settlement of the transaction, is a "payment intangible". (In contrast, the right of a credit-card issuer to payment arising out of the use of a credit card is an "account.")

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

A right to the payment of money is frequently buttressed by ancillary rights, such as rights arising from covenants in a purchase agreement, note, or mortgage requiring insurance on the collateral or forbidding

removal of the collateral, rights arising from covenants to preserve the creditworthiness of the promisor, and the lessor's rights with respect to leased goods that arise upon the lessee's default (see Section 2A-523). This Article does not treat these ancillary rights separately from the rights to payment to which they relate. For example, attachment and perfection of an assignment of a right to payment of a monetary obligation, whether it be an account or payment intangible, also carries these ancillary rights. Thus, an assignment of the lessor's right to payment under a lease also transfers the lessor's rights with respect to the leased goods under Section 2A-523. If, taken together, the lessor's rights to payment and with respect to the leased goods are evidenced by chattel paper, then, contrary to *In re Commercial Money Center, Inc.*, 350 B.R. 465 (Bankr. App. 9th Cir. 2006), an assignment of the lessor's right to payment constitutes an assignment of the chattel paper. Although an agreement excluding the lessor's rights with respect to the leased goods from an assignment of the lessor's right to payment may be effective between the parties, the agreement does not affect the characterization of the collateral to the prejudice of creditors of, and purchasers from the assignor.

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

e. "Letter-of-Credit Right." The term "letter-of-credit right" embraces the rights to payment and performance under a letter of credit (defined in Section 5-102). However, it does not include a beneficiary's right to demand payment or performance. Transfer of those rights to a transferee beneficiary is governed by Article 5. See Sections 9-107, Comment 4, and 9-329, Comments 3 and 4.

f. "Supporting Obligation." This new term covers the most common types of credit enhancements-suretyship obligations (including guarantees) and letter-of-credit rights that support one of the types of collateral specified in the definition. As explained in Comment 2.a., suretyship law determines whether an obligation is "secondary" for purposes of this definition. Section 9-109 generally excludes from this Article transfers of interests in insurance policies. However, the regulation of a secondary obligation as an insurance product does not necessarily mean that it is a "policy of insurance" for purposes of the exclusion in Section 9-109. Thus, this Article may cover a secondary obligation (as a supporting obligation), even if the obligation is issued by a regulated insurance company and the obligation is subject to regulation as an "insurance" product.

This Article contains rules explicitly governing attachment, perfection, and priority of security interests in supporting obligations. See Sections 9-203, 9-308, 9-310, and 9-322. These provisions reflect the principle that a supporting obligation is an incident of the collateral it supports.

Collections of or other distributions under a supporting obligation are "proceeds" of the supported collateral as well as "proceeds" of the supporting obligation itself. See Section 9-102 (defining "proceeds") and Comment 13.b. As such, the collections and distributions are subject to the priority rules applicable to proceeds generally. See Section 9-322. However, under the special rule governing security interests in a letter-of-credit right, a secured party's failure to obtain control (Section 9-107) of a letter-of-credit right supporting collateral may leave its security interest exposed to a priming interest of a party who does take control. See Section 9-329 (security interest in a letter-of-credit right perfected by control has priority over a conflicting security interest).

g. "Commercial Tort Claim." This term is new. A tort claim may serve as original collateral under this Article only if it is a "commercial tort claim." See Section 9-109(d). Although security interests in commercial tort claims are within its scope, this Article does not override other applicable law restricting the assignability of a tort claim. See Section 9-401. A security interest in a tort claim also may exist under this Article if the claim is proceeds of other collateral.

h. "Account Debtor." An "account debtor" is a person obligated on an account, chattel paper, or general intangible. The account debtor's obligation often is a monetary obligation; however, this is not always the case. For example, if a franchisee uses its rights under a franchise agreement (a general intangible) as collateral, then the franchisor is an "account debtor." As a general matter, Article 3, and not Article 9, governs obligations on negotiable instruments. Accordingly, the definition of "account debtor" excludes obligors on negotiable instruments constituting part of chattel paper. The principal effect of this change from the definition in former Article 9 is that the rules in Sections 9-403, 9-404, 9-405, and 9-406, dealing with the rights of an assignee and duties of an account debtor, do not apply to an assignment of chattel paper in which the obligation to pay is evidenced by a negotiable instrument. (Section 9-406(d), however, does apply to promissory notes, including negotiable promissory notes.) Rather, the assignee's rights are governed by Article 3. Similarly, the duties of an obligor on a nonnegotiable instrument are governed by non-Article 9 law unless the nonnegotiable instrument is a part of chattel paper, in which case the obligor is an account debtor.

i. Receivables Under Government Entitlement Programs. This Article does not contain a defined term that encompasses specifically rights to payment or performance under the many and varied government entitlement programs. Depending on the nature of a right under a program, it could be an account, a payment intangible, a general intangible other than a payment intangible, or another type of collateral. The right also might be proceeds of collateral (e.g., crops).

6. Investment-Property-Related Definitions: "Commodity Account"; "Commodity Contract"; "Commodity Customer"; "Commodity Intermediary"; "Investment Property." These definitions are substantially the same as the corresponding definitions in former Section 9-115. "Investment property" includes securities, both certificated and uncertificated, securities accounts, security entitlements, commodity accounts, and commodity contracts. The term investment property includes a "securities account" in order to facilitate transactions in which a debtor wishes to create a security interest in all of the investment positions held through a particular account rather than in particular positions carried in the account. Former Section 9-115 was added in conjunction with Revised Article 8 and contained a variety of rules applicable to security interests in investment property. These rules have been relocated to the appropriate Sections of Article 9. See, e.g., Sections 9-203 (attachment), 9-314 (perfection by control), 9-328 (priority).

The terms "security," "security entitlement," and related terms are defined in Section 8-102, and the term "securities account" is defined in Section 8-501. The terms "commodity account," "commodity contract," "commodity customer," and "commodity intermediary" are defined in this Section. Commodity contracts are not "securities" or "financial assets" under Article 8. See Section 8-103(f). Thus, the relationship between commodity intermediaries and commodity customers is not governed by the indirect-holding-system rules of Part 5 of Article 8. For securities, Article 9 contains rules on security interests, and Article 8 contains rules on the rights of transferees, including secured parties, on such matters as the rights of a transferee if the transfer was itself wrongful and gives rise to an adverse claim. For commodity contracts, Article 9 establishes rules on security interests, but questions of the sort dealt with in Article 8 for securities are left to other law.

The indirect-holding-system rules of Article 8 are sufficiently flexible to be applied to new developments in the securities and financial markets, where that is appropriate. Accordingly, the definition of "commodity contract" is narrowly drafted to ensure that it does not operate as an obstacle to the application of the Article 8 indirect-holding-system rules to new products. The term "commodity contract" covers those contracts that are traded on or subject to the rules of a designated contract market and foreign commodity contracts that are carried on the books of American commodity intermediaries. The effect of this definition is that the category of commodity contracts that are excluded from Article 8 but governed by Article 9 is essentially the same as the category of contracts that fall within the

exclusive regulatory jurisdiction of the federal Commodity Futures Trading Commission.

Commodity contracts are different from securities or other financial assets. A person who enters into a commodity futures contract is not buying an asset having a certain value and holding it in anticipation of increase in value. Rather the person is entering into a contract to buy or sell a commodity at set price for delivery at a future time. That contract may become advantageous or disadvantageous as the price of the commodity fluctuates during the term of the contract. The rules of the commodity exchanges require that the contracts be marked to market on a daily basis; that is, the customer pays or receives any increment attributable to that day's price change. Because commodity customers may incur obligations on their contracts, they are required to provide collateral at the outset, known as "original margin," and may be required to provide additional amounts, known as "variation margin," during the term of the contract.

The most likely setting in which a person would want to take a security interest in a commodity contract is where a lender who is advancing funds to finance an inventory of a physical commodity requires the borrower to enter into a commodity contract as a hedge against the risk of decline in the value of the commodity. The lender will want to take a security interest in both the commodity itself and the hedging commodity contract. Typically, such arrangements are structured as security interests in the entire commodity account in which the borrower carries the hedging contracts, rather than in individual contracts.

One important effect of including commodity contracts and commodity accounts in Article 9 is to provide a clearer legal structure for the analysis of the rights of commodity clearing organizations against their participants and futures commission merchants against their customers. The rules and agreements of commodity clearing organizations generally provide that the clearing organization has the right to liquidate any participant's positions in order to satisfy obligations of the participant to the clearing corporation. Similarly, agreements between futures commission merchants and their customers generally provide that the futures commission merchant has the right to liquidate a customer's positions in order to satisfy obligations of the customer to the futures commission merchant.

The main property that a commodity intermediary holds as collateral for the obligations that the commodity customer may incur under its commodity contracts is not other commodity contracts carried by the customer but the other property that the customer has posted as margin. Typically, this property will be securities. The commodity intermediary's security interest in such securities is governed by the rules of this Article on security interests in securities, not the rules on security interests in commodity contracts or commodity accounts.

Although there are significant analytic and regulatory differences between commodities and securities, the development of commodity contracts on financial products in the past few decades has resulted in a system in which the commodity markets and securities markets are closely linked. The rules on security interests in commodity contracts and commodity accounts provide a structure that may be essential in times of stress in the financial markets. Suppose, for example that a firm has a position in a securities market that is hedged by a position in a commodity market, so that payments that the firm is obligated to make with respect to the securities position will be covered by the receipt of funds from the commodity position. Depending upon the settlement cycles of the different markets, it is possible that the firm could find itself in a position where it is obligated to make the payment with respect to the securities position before it receives the matching funds from the commodity position. If cross-margining arrangements have not been developed between the two markets, the firm may need to borrow funds temporarily to make the earlier payment. The rules on security interests in investment property would facilitate the use of positions in one market as collateral for loans needed to cover obligations in the other market.

7. Consumer-Related Definitions: "Consumer Debtor"; "Consumer Goods"; "Consumer-goods

transaction"; "Consumer Obligor"; "Consumer Transaction." The definition of "consumer goods" (discussed above) is substantially the same as the definition in former Section 9-109. The definitions of "consumer debtor," "consumer obligor," "consumer-goods transaction," and "consumer transaction" have been added in connection with various new (and old) consumer-related provisions and to designate certain provisions that are inapplicable in consumer transactions.

"Consumer-goods transaction" is a subset of "consumer transaction." Under each definition, both the obligation secured and the collateral must have a personal, family, or household purpose. However, "mixed" business and personal transactions also may be characterized as a consumer-goods transaction or consumer transaction. Subparagraph (A) of the definition of consumer-goods transactions and clause (i) of the definition of consumer transaction are primary purposes tests. Under these tests, it is necessary to determine the primary purpose of the obligation or obligations secured. Subparagraph (B) and clause (iii) of these definitions are satisfied if any of the collateral is consumer goods, in the case of a consumer-goods transaction, or "is held or acquired primarily for personal, family, or household purposes," in the case of a consumer transaction. The fact that some of the obligations secured or some of the collateral for the obligation does not satisfy the tests (e.g., some of the collateral is acquired for a business purpose) does not prevent a transaction from being a "consumer transaction" or "consumer-goods transaction."

8. Filing-Related Definitions: "Continuation Statement"; "File Number"; "Filing Office"; "Filing-office Rule"; "Financing Statement"; "Fixture Filing"; "Manufactured-Home Transaction"; "New Debtor"; "Original Debtor"; "Public-Finance Transaction"; "Termination Statement"; "Transmitting Utility." These definitions are used exclusively or primarily in the filing-related provisions in Part 5. Most are self-explanatory and are discussed in the Comments to Part 5. A financing statement filed in a manufactured-home transaction or a public-finance transaction may remain effective for 30 years instead of the 5 years applicable to other financing statements. See Section 9-515(b). The definitions relating to medium neutrality also are significant for the filing provisions. See Comment 9.

The definition of "transmitting utility" has been revised to embrace the business of transmitting communications generally to take account of new and future types of communications technology. The term designates a special class of debtors for whom separate filing rules are provided in Part 5, thereby obviating the many local fixture filings that would be necessary under the rules of Section 9-501 for a far-flung public- utility debtor. A transmitting utility will not necessarily be regulated by or operating as such in a jurisdiction where fixtures are located. For example, a utility might own transmission lines in a jurisdiction, although the utility generates no power and has no customers in the jurisdiction.

9. Definitions Relating to Medium Neutrality.

a. "Record." In many, but not all, instances, the term "record" replaces the term "writing" and "written." A "record" includes information that is in intangible form (e.g., electronically stored) as well as tangible form (e.g., written on paper). Given the rapid development and commercial adoption of modern communication and storage technologies, requirements that documents or communications be "written," "in writing," or otherwise in tangible form do not necessarily reflect or aid commercial practices.

A "record" need not be permanent or indestructible, but the term does not include any oral or other communication that is not stored or preserved by any means. The information must be stored on paper or in some other medium. Information that has not been retained other than through human memory does not qualify as a record. Examples of current technologies commercially used to communicate or store information include, but are not limited to, magnetic media, optical discs, digital voice messaging systems, electronic mail, audio tapes, and photographic media, as well as paper. "Record" is an inclusive

term that includes all of these methods of storing or communicating information. Any "writing" is a record. A record may be authenticated. See Comment 9.b. A record may be created without the knowledge or intent of a particular person.

Like the terms "written" or "in writing," the term "record" does not establish the purposes, permitted uses, or legal effect that a record may have under any particular provision of law. Whatever is filed in the Article 9 filing system, including financing statements, continuation statements, and termination statements, whether transmitted in tangible or intangible form, would fall within the definition. However, in some instances, statutes or filing-office rules may require that a paper record be filed. In such cases, even if this Article permits the filing of an electronic record, compliance with those statutes or rules is necessary. Similarly, a filer must comply with a statute or rule that requires a particular type of encoding or formatting for an electronic record.

This Article sometimes uses the terms "for record," "of record," "record or legal title," and "record owner." Some of these are terms traditionally used in real-property law. The definition of "record" in this Article now explicitly excepts these usages from the defined term. Also, this Article refers to a record that is filed or recorded in real-property recording systems to record a mortgage as a "record of a mortgage." This usage recognizes that the defined term "mortgage" means an interest in real property; it does not mean the record that evidences, or is filed or recorded with respect to, the mortgage.

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

10. Scope-Related Definitions.

a. Expanded Scope of Article: "Agricultural Lien"; "Consignment"; "Payment Intangible"; "Promissory Note." These new definitions reflect the expanded scope of Article 9, as provided in Section 9-109(a).

b. Reduced Scope of Exclusions: "Governmental Unit"; "Health-Care-Insurance Receivable"; "Commercial Tort Claims." These new definitions reflect the reduced scope of the exclusions, provided in Section 9-109(c) and (d), of transfers by governmental debtors and assignments of interests in insurance policies and commercial tort claims.

11. Choice-of-Law-Related Definitions: "Certificate of Title"; "Governmental Unit"; "Jurisdiction of Organization"; "Public Organic Record" "Registered Organization"; "State." These new definitions reflect the changes in the law governing perfection and priority of security interests and agricultural liens provided in Part 3, Subpart 1.

Statutes often require applicants for a certificate of title to identify all security interests on the application and require the issuing agency to indicate the identified security interests on the certificate. Some of these statutes provide that priority over the rights of a lien creditor (i.e., perfection of a security interest) in goods covered by the certificate occurs upon indication of the security interest on the

certificate; that is, they provide for the indication of the security interest on the certificate as a 'condition' of perfection. Other statutes contemplate that perfection is achieved upon the occurrence of another act, e.g., delivery of the application to the issuing agency, that "results" in the indication of the security interest on the certificate. A certificate governed by either type of statute can qualify as a 'certificate of title' under this Article. The statute providing for the indication of a security interest need not expressly state the connection between the indication and perfection. For example, a certificate issued pursuant to a statute that requires applicants to identify security interests, requires the issuing agency to indicate the identified security interests on the certificate, but is silent concerning the legal consequences of the indication would be a 'certificate of title' if, under a judicial interpretation of the statute, perfection of a security interest is a legal consequence of the indication. Likewise, a certificate would be a "certificate of title" if another statute provides, expressly or as interpreted, the requisite connection between the indication and perfection. The first sentence of the definition of "certificate of title" includes certificates consisting of tangible records, or electronic records, and of combinations of tangible and electronic records.

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

Not every organization that may provide information about itself in the public records is a "registered organization." For example, a general partnership is not a "registered organization," even if it files a statement of partnership authority under Section 303 of the Uniform Partnership Act (1994) or an assumed name ("dba") certificate. This is because such a partnership is not formed or organized by the filing of a record with, or the issuance of a record by, a State or the United States. In contrast, corporations, limited liability companies, and limited partnerships *ordinarily* are "registered organizations."

Not every record concerning a registered organization that is filed with, or issued by, a State or the United State is a "public organic record". For example, a certificate of good standing issued with respect to a corporation or a published index of domestic corporations would not be a "public organic record" because its issuance or publication does not form or organize the corporations named.

When collateral is held in a trust, one must look to non-UCC law to determine whether the trust is a 'registered organization.' Non-UCC law typically distinguishes between statutory trusts and common-law trusts. A statutory trust is formed by the filing of a record, commonly referred to as a certificate of trust, in a public office pursuant to a statute. See, e.g., Uniform Statutory Trust Entity Act Section 201 (2009); Delaware Statutory Trust Act, De. Code Ann. tit. 12, Section 3801 et seq. A statutory trust is a juridical entity, separate from its trustee and beneficial owners, that may sue and be sued, own property, and transact business in its own name. Inasmuch as a statutory trust is a "legal or commercial entity", it qualifies as a "person other than an individual", and therefore as an "organization", under Section 1-201. A statutory trust that is formed by the filing of a record in a public office is a 'registered organization,' and the filed record is a 'public organic record' of the statutory trust, if the filed record is available to the public for inspection. (The requirement that a record be "available to the public for inspection" is satisfied if a copy of the relevant record is available for public inspection.)

Unlike a statutory trust, a common-law trust-whether its purpose is donative or commercial-arises from private action without the filing of a record in a public office. See Uniform Trust Code Section 401

(2000); Restatement (Third) of Trusts Section 10 (2003). Moreover, under traditional law, a common-law trust is not itself a juridical entity and therefore must sue and be sued, own property, and transact business in the name of the trustee acting in the capacity of trustee. A common-law trust that is a "business trust", i.e., that has a business or commercial purpose, is an 'organization' under Section 1-201. However, such a trust would not be a "registered organization" if, as is typically the case, the filing of a public record is not needed to form it.

In some states, however, the trustee of a common-law trust that has a commercial or business purpose is required by statute to file a record in a public office following the trust's formation. See, e.g., Mass. Gen. Laws Ch. 182, Section 2; Fla. Stat. Ann. Section 609.02. A business trust that is required to file its organic record in a public office is a "registered organization" under the second sentence of the definition if the filed record is available to the public for inspection. Any organic record required to be filed, and filed, with respect to a common-law business trust after the trust is formed is a "public organic record" of the trust. Some statutes require a trust or other organization to file, after formation or organization, a record other than an organic record. See, e.g., N.Y. Gen. Assn's Law, Section 18 (requiring associations doing business within New York to file a certificate designating the secretary of state as an agent upon process may be served). This requirement does not render the organization a "registered organization" under the second sentence of the definition, and the record is not a "public organic record".

12. Deposit-Account-Related Definitions: "Deposit Account"; "Bank." The revised definition of "deposit account" incorporates the definition of "bank," which is new. The definition derives from the definitions of "bank" in Sections 4-105(1) and 4A-105(a)(2), which focus on whether the organization is "engaged in the business of banking."

Deposit accounts evidenced by Article 9 "instruments" are excluded from the term "deposit account." In contrast, former Section 9-105 excluded from the former definition "an account evidenced by a certificate of deposit." The revised definition clarifies the proper treatment of nonnegotiable or uncertificated certificates of deposit. Under the definition, an uncertificated certificate of deposit would be a deposit account (assuming there is no writing evidencing the bank's obligation to pay) whereas a nonnegotiable certificate of deposit would be a deposit account only if it is not an "instrument" as defined in this Section (a question that turns on whether the nonnegotiable certificate of deposit is "of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment.")

A deposit account evidenced by an instrument is subject to the rules applicable to instruments generally. As a consequence, a security interest in such an instrument cannot be perfected by "control" (see Section 9-104), and the special priority rules applicable to deposit accounts (see Sections 9-327 and 9-340) do not apply.

The term "deposit account" does not include "investment property," such as securities and security entitlements. Thus, the term also does not include shares in a money-market mutual fund, even if the shares are redeemable by check.

13. Proceeds-Related Definitions: "Cash Proceeds"; "Noncash Proceeds"; "Proceeds." The revised definition of "proceeds" expands the definition beyond that contained in former Section 9-306 and resolves ambiguities in the former Section.

a. Distributions on Account of Collateral. The phrase "whatever is collected on, or distributed on account of, collateral," in subparagraph (B), is broad enough to cover cash or stock dividends distributed on account of securities or other investment property that is original collateral. Compare former Section

9-306 ("Any payments or distributions made with respect to investment property collateral are proceeds."). This Section rejects the holding of *Hastie v. FDIC*, 2 F.3d 1042 (10th Cir. 1993) (postpetition cash dividends on stock subject to a prepetition pledge are not "proceeds" under Bankruptcy Code Section 552(b)), to the extent the holding relies on the Article 9 definition of "proceeds."

b. Distributions on Account of Supporting Obligations. Under subparagraph (B), collections on and distributions on account of collateral consisting of various credit-support arrangements ("supporting obligations," as defined in Section 9-102) also are proceeds. Consequently, they are afforded treatment identical to proceeds collected from or distributed by the obligor on the underlying (supported) right to payment or other collateral. Proceeds of supporting obligations also are proceeds of the underlying rights to payment or other collateral.

c. Proceeds of Proceeds. The definition of "proceeds" no longer provides that proceeds of proceeds are themselves proceeds. That idea is expressed in the revised definition of "collateral" in Section 9-102. No change in meaning is intended.

d. Proceeds Received by Person Who Did Not Create Security Interest. When collateral is sold subject to a security interest and the buyer then resells the collateral, a question arose under former Article 9 concerning whether the "debtor" had "received" what the buyer received on resale and, therefore, whether those receipts were "proceeds" under former Section 9-306(2). This Article contains no requirement that property be "received" by the debtor for the property to qualify as proceeds. It is necessary only that the property be traceable, directly or indirectly, to the original collateral.

e. Cash Proceeds and Noncash Proceeds. The definition of "cash proceeds" is substantially the same as the corresponding definition in former Section 9-306. The phrase "and the like" covers property that is functionally equivalent to "money, checks, or deposit accounts," such as some money-market accounts that are securities or part of securities entitlements. Proceeds other than cash proceeds are noncash proceeds.

14. Consignment-Related Definitions: "Consignee"; "Consignment"; "Consignor." The definition of "consignment" excludes, in subparagraphs (B) and (C), transactions for which filing would be inappropriate or of insufficient benefit to justify the costs. A consignment excluded from the application of this Article by one of those subparagraphs may still be a true consignment; however, it is governed by non-Article 9 law. The definition also excludes, in subparagraph (D), what have been called "consignments intended for security." These "consignments" are not bailments but secured transactions. Accordingly, all of Article 9 applies to them. See Sections 1-201(37), 9-109(a)(1). The "consignor" is the person who delivers goods to the "consignee" in a consignment.

The definition of "consignment" requires that the goods be delivered "to a merchant for the purpose of sale." If the goods are delivered for another purpose as well, such as milling or processing, the transaction is a consignment nonetheless because a purpose of the delivery is "sale." On the other hand, if a merchant-processor-bailee will not be selling the goods itself but will be delivering to buyers to which the owner-bailor agreed to sell the goods, the transaction would not be a consignment.

15. "Accounting." This definition describes the record and information that a debtor is entitled to request under Section 9-210.

16. "Document." The definition of "document" is unchanged in substance from the corresponding definitions in former Section 9-105. See Section 1-201(15) and Comment 15.

17. "Encumbrance"; "Mortgage." The definitions of "encumbrance" and "mortgage" are unchanged in substance from the corresponding definitions in former Section 9-105. They are used primarily in the special real-property-related priority and other provisions relating to crops, fixtures, and accessions.
18. "Fixtures." This definition is unchanged in substance from the corresponding definition in former Section 9-313. See Section 9-334 (priority of security interests in fixtures and crops).
19. "Good Faith." This Article expands the definition of "good faith" to include "the observance of reasonable commercial standards of fair dealing." The definition in this Section applies when the term is used in this Article, and the same concept applies in the context of this Article for purposes of the obligation of good faith imposed by Section 1-203. See subsection (c).
20. "Lien Creditor" This definition is unchanged in substance from the corresponding definition in former Section 9-301.
21. "New Value." This Article deletes former Section 9-108. Its broad formulation of new value, which embraced the taking of after-acquired collateral for a pre-existing claim, was unnecessary, counterintuitive, and ineffective for its original purpose of sheltering after-acquired collateral from attack as a voidable preference in bankruptcy. The new definition derives from Bankruptcy Code Section 547(a). The term is used with respect to temporary perfection of security interests in instruments, certificated securities, or negotiable documents under Section 9-312(e) and with respect to chattel paper priority in Section 9-330.
22. "Person Related To." Section 9-615 provides a special method for calculating a deficiency or surplus when "the secured party, a person related to the secured party, or a secondary obligor" acquires the collateral at a foreclosure disposition. Separate definitions of the term are provided with respect to an individual secured party and with respect to a secured party that is an organization. The definitions are patterned on the corresponding definition in Section 1.301(32) of the Uniform Consumer Credit Code (1974).
23. "Proposal." This definition describes a record that is sufficient to propose to retain collateral in full or partial satisfaction of a secured obligation. See Sections 9-620, 9-621, 9-622.
24. "Pursuant to Commitment." This definition is unchanged in substance from the corresponding definition in former Section 9-105. It is used in connection with special priority rules applicable to future advances. See Section 9-323.
25. "Software." The definition of "software" is used in connection with the priority rules applicable to purchase-money security interests. See Sections 9-103, 9-324. Software, like a payment intangible, is a type of general intangible for purposes of this Article.
26. Terminology: "Assignment" and "Transfer." In numerous provisions, this Article refers to the "assignment" or the "transfer" of property interests. These terms and their derivatives are not defined. This Article generally follows common usage by using the terms "assignment" and "assign" to refer to transfers of rights to payment, claims, and liens and other security interests. It generally uses the term "transfer" to refer to other transfers of interests in property. Except when used in connection with a letter-of-credit transaction (see Section 9-107, Comment 4), no significance should be placed on the use of one term or the other. Depending on the context, each term may refer to the assignment or transfer of an outright ownership interest or to the assignment or transfer of a limited interest, such as a security interest.

SOUTH CAROLINA REPORTER'S COMMENTS

The 2013 amendments defined a new term, "public organic record" and revised the definition of "registered organization." These amendments revise and clarify the rules for determining both whether an organization qualifies as a registered organization for purposes of Section 36-9-307(e) and (f) and the name of the registered organization under Section 36-9-503(a)(1). Note that under the amended definition of registered organization a business trust subject to Section 33-53-10 qualifies as a registered organization.

SECTION 3. Section 36-9-105 of the 1976 Code is amended to read:

"Section 36-9-105. (a) A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) A system satisfies subsection (a) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

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

OFFICIAL COMMENT

1. Source. New.
2. "Control" of Electronic Chattel Paper. This Article covers security interests in "electronic chattel paper," a new term defined in Section 9-102. This Section governs how "control" of electronic chattel paper may be obtained. Subsection (a), which derives from Section 16 of the Uniform Electronic Transactions Act, sets forth the general test for control. Subsection (b) sets forth a safe harbor test that, if satisfied, establishes control under the general test in subsection (a). A secured party's control of electronic chattel paper (i) may substitute for an authenticated security agreement for purposes of attachment under Section 9-203, (ii) is a method of perfection under Section 9-314, and (iii) is a condition for obtaining special, nontemporal priority under Section 9-330. Because electronic chattel paper cannot be transferred, assigned, or possessed in the same manner as tangible chattel paper, a special definition of control is necessary. In descriptive terms, this Section provides that control of electronic chattel paper is the functional equivalent of possession of "tangible chattel paper" (a term also

defined in Section 9-102).

3. **Development of Control Systems.** This Article leaves to the marketplace the development of systems and procedures, through a combination of suitable technologies and business practices, for dealing with control of electronic chattel paper in a commercial context. Systems that evolve for control of electronic chattel paper may or may not involve a third party custodian of the relevant records. As under UETA, a system must be shown to reliably establish that the secured party is the assignee of the chattel paper. Reliability is a high standard and encompasses the general principles of uniqueness, identifiability, and unalterability found in subsection (b) without setting forth specific guidelines as to how these principles must be achieved. However, these standards applied to determine whether a party is in control of electronic chattel paper should not be more stringent than the standards now applied to determine whether a party is in possession of tangible chattel paper. For example, just as a secured party does not lose possession of tangible chattel paper merely by virtue of the possibility that a person acting on its behalf could wrongfully redeliver the chattel paper to the debtor, so control of electronic chattel paper would not be defeated by the possibility that the secured party's interest could be subverted by the wrongful conduct of a person (such as a custodian) acting on its behalf. This section and the concept of control of electronic chattel paper are not based on the same concepts as are control of deposit accounts (Section 9-104), security entitlements, a type of investment property (Section 9-106), and a letter of credit rights (Section 9-107). The rules for control of those types of collateral are based on existing market practices and legal and regulatory regimes for institutions such as banks and securities intermediaries. Analogous practices for electronic chattel paper are developing nonetheless. The flexible approach adopted by this section, moreover, should not impede the development of these practices and, eventually legal and regulatory regimes, which may become analogous to those for, e.g., investment property.

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

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-105 sets forth the requirements for control of electronic chattel paper. Section 36-9-102(a)(31) defines electronic chattel paper as chattel paper evidenced by a record or records consisting of information stored in an electronic medium. Under Section 36-9-314(a) a secured party can perfect a security interest in electronic chattel paper by obtaining control.

Definitional Cross :

"Chattel paper" Section 36-9-102(a)(11)

"Communicate" Section 36-9-102(a)(18)

"Electronic chattel paper" Section 36-9-102(a)(31)

"Record" Section 36-9-102(a)(70)

Cross --

1. Control satisfies the evidentiary requirement for the creation of a security interest in electronic chattel paper. Section 36-9-203(b)(3)(D).
2. Control as a method of perfecting a security interest in electronic paper. Section 36-9-314(a).
3. Filing as a method of perfecting a security interest in electronic chattel paper. Section 36-9-312(a).
4. Priority of purchasers of chattel paper. Section 36-9-330.

SECTION 4. Section 36-9-307 of the 1976 Code is amended to read:

"Section 36-9-307. (a) In this section, 'place of business' means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

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

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

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

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

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) A registered organization that is organized under the law of a State is located in that State.

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

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

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

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

(g) A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding the:

(1) ~~the~~ suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) ~~the~~ dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a State is located in the State in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one State.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this part."

OFFICIAL COMMENT

1. Source. Former Section 9-103(3)(d), substantially revised.

2. General Rules. As a general matter, the location of the debtor determines the jurisdiction whose law governs perfection of a security interest. See Sections 9-301(1), 9-305(c). It also governs priority of a security interest in certain types of intangible collateral, such as accounts, electronic chattel paper, and general intangibles. This Section determines the location of the debtor for choice-of-law purposes, but not for other purposes. See subsection (k).

Subsection (b) states the general rules: An individual debtor is deemed to be located at the individual's principal residence with respect to both personal and business assets. Any other debtor is deemed to be located at its place of business if it has only one, or at its chief executive office if it has more than one place of business.

As used in this Section, a "place of business" means a place where the debtor conducts its affairs. See subsection (a). Thus, every organization, even eleemosynary institutions and other organizations that do not conduct "for profit" business activities, has a "place of business." Under subsection (d), a person who ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction determined by subsection (b).

The term "chief executive office" is not defined in this Section or elsewhere in the Uniform Commercial Code. "Chief executive office" means the place from which the debtor manages the main part of its business operations or other affairs. This is the place where persons dealing with the debtor would normally look for credit information, and is the appropriate place for filing. With respect to most multi-state debtors, it will be simple to determine which of the debtor's offices is the "chief executive office." Even when a doubt arises, it would be rare that there could be more than two possibilities. A secured party in such a case may protect itself by perfecting under the law of each possible jurisdiction.

Similarly, the term "principal residence" is not defined. If the security interest in question is a purchase-money security interest in consumer goods which is perfected upon attachment, see Section 9-309(1),

the choice of law may make no difference. In other cases, when a doubt arises, prudence may dictate perfecting under the law of each jurisdiction that might be the debtor's "principal residence."

Questions sometimes arise about the location of the debtor with respect to collateral held in a common-law trust. A typical common-law trust is not itself a juridical entity capable of owning property and so would not be a 'debtor' as defined in Section 9-102. Rather, the debtor with respect to property held in a common-law trust typically is the trustee of the trust acting in the capacity of trustee. (The beneficiary would be a 'debtor' with respect to its beneficial interest in the trust, but not with respect to the property held in the trust). If a common-law trust has multiple trustees located in different jurisdictions, a secured party who perfects by filing would be well advised to file a financing statement in each jurisdiction in which a trustee is located, as determined under Section 9-307. Filing in all relevant jurisdictions would insure perfection and minimize any priority complications that otherwise might arise.

The general rules are subject to several exceptions, each of which is discussed below.

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

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

Example 1: Debtor is an English corporation with 7 offices in the United States and its chief executive office in London, England. Debtor creates a security interest in its accounts. Under subsection (b)(3), Debtor would be located in England. However, subsection (c) provides that subsection (b) applies only if English law generally conditions perfection on giving public notice in a filing, recording, or registration system. Otherwise, Debtor is located in the District of Columbia. Under Section 9-301(1), perfection, the effect of perfection, and priority are governed by the law of the jurisdiction of the debtor's location—here, England or the District of Columbia (depending on the content of English law).

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

The foregoing discussion assumes that each transaction bears an appropriate relation to the forum State. In the absence of an appropriate relation, the forum State's entire UCC, including the choice-of-law

provisions in Article 9 (Sections 9-301 through 9-307), will not apply. See Section 9-109, Comment 9.

4. **Registered Organizations Organized Under Law of a State.** Under subsection (e), a registered organization (defined in Section 9-102 so as to ordinarily include corporations, limited partnerships, limited liability companies, and statutory trusts) organized under the law of a "State" (defined in Section 9-102) is located in its State of organization. The term 'registered organization' includes a business trust described in the second sentence of the term's definition. See Section 9-102. The trust's public organic record, typically the trust agreement, usually will indicate the jurisdiction under whose law the trust is organized. Subsection (g) makes clear that events affecting the status of a registered organization, such as the dissolution of a corporation or revocation of its charter, do not affect its location for purposes of subsection (e). However, certain of these events may result in, or be accompanied by, a transfer of collateral from the registered organization to another debtor. This Section does not determine whether a transfer occurs, nor does it determine the legal consequences of any transfer.

Determining the registered organization-debtor's location by reference to the jurisdiction of organization could provide some important side benefits for the filing systems. A jurisdiction could structure its filing system so that it would be impossible to make a mistake in a registered organization- debtor's name on a financing statement. For example, a filer would be informed if a filed record designated an incorrect corporate name for the debtor. Linking filing to the jurisdiction of organization also could reduce pressure on the system imposed by transactions in which registered organizations cease to exist-as a consequence of merger or consolidation, for example. The jurisdiction of organization might prohibit such transactions unless steps were taken to ensure that existing filings were refiled against a successor or terminated by the secured party.

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

Subsection (f) also determines the location of branches and agencies of banks that are not organized under the law of the United States or a State. However, if all the branches and agencies of the bank are licensed only in one State, then they are located in that State. See subsection (i).

6. **United States.** To the extent that Article 9 governs (see Sections 1-105, 9-109(c)), the United States is located in the District of Columbia for purposes of this Article's choice-of-law rules. See subsection (h).

7. **Foreign Air Carriers.** Subsection (j) follows former Section 9-103(3)(d). To the extent that it is applicable, the Convention on the International Recognition of Rights in Aircraft (Geneva Convention) supersedes state legislation on this subject, as set forth in Section 9-311(b), but some nations are not parties to that Convention.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-307 sets forth the rules for determining the location of the debtor. These rules are critical under current law because in most cases the debtor's location will determine the jurisdiction in which a

secured party must file to perfect a nonpossessory security interest. See Section 36-9-301(1). Perhaps the most significant location of the debtor rule is set forth in Section 36-9-307(e). Under that provision a registered organization, which includes corporations, limited partnerships, and limited liability companies see Section 36-9-102(a)(71) and Official Comment 11, is located in the State under the law of which the entity was organized. For example, a corporation incorporated under the law of South Carolina, but with its chief executive office and all of its equipment in North Carolina, is located in South Carolina. As a result, the law of South Carolina controls the perfection of a nonpossessory security interest upon the equipment and a secured party would be required to file its financing statement in South Carolina.

Definitional Cross :

"Chief executive office" See Section 36-9-307,

Official Comment 2

"Debtor" Section 36-9-102(a)(28)

"Registered Organization" Section 36-9-102(a)(71)

Cross --

Law applicable to perfection of nonpossessory security interest determined by location of the debtor. Section 36-9-301(1) and (3)(c).

SECTION 5. Section 36-9-311 of the 1976 Code is amended to read:

"Section 36-9-311. (a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 36-9-310 (a);

(2) Chapter 19, of Title 56, (Protection of title to and interests in motor vehicles), and Chapter 23, of Title 50, (Filing of watercraft and outboard motors), but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this chapter, (Part 5), apply to a security interest in that collateral created by him as debtor; or

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

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in subsection (d) and Sections 36-9-313 and 36-9-316 (d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use

or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) and Section 36-9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this chapter.

(d) During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person."

OFFICIAL COMMENT

1. Source. Former Section 9-302(3), (4).

2. Federal Statutes, Regulations, and Treaties. Subsection (a)(1) exempts from the filing provisions of this Article transactions as to which a system of filing-state or federal-has been established under federal law. Subsection (b) makes clear that when such a system exists, perfection of a relevant security interest can be achieved only through compliance with that system (i.e., filing under this Article is not a permissible alternative).

An example of the type of federal statute referred to in subsection (a)(1) is 49 U.S.C. 44107-11, for civil aircraft of the United States. The Assignment of Claims Act of 1940, as amended, provides for notice to contracting and disbursing officers and to sureties on bonds but does not establish a national filing system and therefore is not within the scope of subsection (a)(1). An assignee of a claim against the United States may benefit from compliance with the Assignment of Claims Act. But regardless of whether the assignee complies with that Act, the assignee must file under this Article in order to perfect its security interest against creditors and transferees of its assignor.

Subsection (a)(1) provides explicitly that the filing requirement of this Article defers only to federal statutes, regulations, or treaties whose requirements for a security interest's obtaining priority over the rights of a lien creditor preempt Section 9-310(a). The provision eschews reference to the term "perfection," inasmuch as Section 9-308 specifies the meaning of that term and a preemptive rule may use other terminology.

3. State Statutes. Subsections (a)(2) and (3) exempt from the filing requirements of this Article transactions covered by State certificate-of- title statutes covering motor vehicles and the like. The description of certificate-of-title statutes in subsections (a)(2) and (a)(3) tracks the language of the definition of "certificate of title" in Section 9-102. For a discussion of the operation of state certificate-of- title statutes in interstate contexts, see the Comments to Section 9-303.

Some states have enacted central filing statutes with respect to secured transactions in kinds of property that are of special importance in the local economy. Subsection (a)(2) defers to these statutes with respect to filing for that property.

4. Inventory Covered by Certificate of Title. Under subsection (d), perfection of a security interest in the inventory of a dealer is governed by the normal perfection rules, even if the inventory is covered by a certificate of title. Under former Section 9-302(3), a secured party who financed a dealer may have needed to perfect by filing for goods held for sale and by compliance with a certificate-of-title statute for

goods held for lease. In some cases, this may have required notation on thousands of certificates. The problem would have been compounded by the fact that dealers, particularly of automobiles, often do not know whether a particular item of inventory will be sold or leased. Under subsection (d), notation is both unnecessary and ineffective.

The filing and other perfection provisions of this Article apply to goods covered by a certificate of title only "during any period in which collateral is inventory held for sale or lease or leased." If the debtor takes goods of this kind out of inventory and uses them, say, as equipment, a filed financing statement would not remain effective to perfect a security interest.

5. Compliance with Perfection Requirements of Other Statute. Subsection (b) makes clear that compliance with the perfection requirements (i.e., the requirements for obtaining priority over a lien creditor), but not other requirements, of a statute, regulation, or treaty described in subsection (a) is sufficient for perfection under this Article. Perfection of a security interest under such a statute, regulation, or treaty has all the consequences of perfection under this Article.

The interplay of this Section with certain certificate-of-title statutes may create confusion and uncertainty. For example, statutes under which perfection does not occur until a certificate of title is issued will create a gap between the time that the goods are covered by the certificate under Section 9-303 and the time of perfection. If the gap is long enough, it may result in turning some unobjectionable transactions into avoidable preferences under Bankruptcy Code Section 547. (The preference risk arises if more than thirty days passes between the time a security interest attaches (or the debtor receives possession of the collateral, in the case of a purchase-money security interest) and the time it is perfected.) Accordingly, the Legislative Note to this Section instructs the legislature to amend the applicable certificate-of-title statute to provide that perfection occurs upon receipt by the appropriate State official of a properly tendered application for a certificate of title on which the security interest is to be indicated.

Under some certificate-of-title statutes, including the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act, perfection generally occurs upon delivery of specified documents to a state official but may, under certain circumstances, relate back to the time of attachment. This relation-back feature can create great difficulties for the application of the rules in Sections 9-303 and 9-311(b). Accordingly, the Legislative Note also recommends to legislatures that they remove any relation-back provisions from certificate-of-title statutes affecting security interests.

6. Compliance with Perfection Requirements of Other Statute as Equivalent to Filing. Under Subsection (b), compliance with the perfection requirements (i.e., the requirements for obtaining priority over a lien creditor) of a statute, regulation, or treaty described in subsection (a) "is equivalent to the filing of a financing statement."

The quoted phrase appeared in former Section 9-302(3). Its meaning was unclear, and many questions arose concerning the extent to which and manner in which Article 9 rules referring to "filing" were applicable to perfection by compliance with a certificate-of-title statute. This Article takes a variety of approaches for applying Article 9's filing rules to compliance with other statutes and treaties. First, as discussed above in Comment 5, it leaves the determination of some rules, such as the rule establishing time of perfection (Section 9-516(a)), to the other statutes themselves. Second, this Article explicitly applies some Article 9 filing rules to perfection under other statutes or treaties. See, e.g., Section 9-505. Third, this Article makes other Article 9 rules applicable to security interests perfected by compliance with another statute through the "equivalent to... filing" provision in the first sentence of Section 9-311 (b). The third approach is reflected for the most part in occasional Comments explaining how particular rules apply when perfection is accomplished under Section 9-311(b). See, e.g., Section 9-310, Comment

4; Section 9-315, Comment 6; Section 9-317, Comment 8. The absence of a Comment indicating that a particular filing provision applies to perfection pursuant to Section 9-311(b) does not mean the provision is inapplicable.

7. Perfection by Possession of Goods Covered by Certificate-of-Title Statute. A secured party who holds a security interest perfected under the law of State A in goods that subsequently are covered by a State B certificate of title may face a predicament. Ordinarily, the secured party will have four months under State B's Section 9-316(c) and (d) in which to (re)perfect as against a purchaser of the goods by having its security interest noted on a State B certificate. This procedure is likely to require the cooperation of the debtor and any competing secured party whose security interest has been noted on the certificate. Comment 4(e) to former Section 9-103 observed that "that cooperation is not likely to be forthcoming from an owner who wrongfully procured the issuance of a new certificate not showing the out-of-state security interest, or from a local secured party finding himself in a priority contest with the out-of-state secured party." According to that Comment, "[t]he only solution for the out-of-state secured party under present certificate of title statutes seems to be to reperfect by possession, i.e., by repossessing the goods." But the "solution" may not have worked: Former Section 9-302(4) provided that a security interest in property subject to a certificate-of- title statute "can be perfected only by compliance therewith."

Sections 9-316(d) and (e), 9-311(c), and 9-313(b) of this Article resolve the conflict by providing that a security interest that remains perfected solely by virtue of Section 9-316(e) can be (re)perfected by the secured party's taking possession of the collateral. These Sections contemplate only that taking possession of goods covered by a certificate of title will work as a method of perfection. None of these Sections creates a right to take possession. Section 9-609 and the agreement of the parties define the secured party's right to take possession.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-311(a)(1) provides that statutes, regulations, or treaties of the United States which impose requirements for the priority of a security interest over a lien creditor preempt the perfection rules of Article 9. In addition, this sections 36-9-311(a)(2) and (3) provide that state certificate of title statutes govern the perfection of security interests in covered goods. With two exceptions, Section 36-9-311(b) provides that a security interest subject to a statute, regulation, or treaty described in subsection (a) can be perfected only by complying with the requirements of the statute, regulation, or treaty. The first exception to this rule applies when goods covered by a certificate of title statute entered this state subject to a security interest perfected under the law of another state. Section 36-9-311(b), 36-9-313(b), and 36-9-316(d) and (e) provide that the secured party can perfect in this state by taking possession of the goods. The second exception applies when goods covered by a certificate of title statute are inventory held for sale or lease by a person in the business of selling or leasing goods of that kind. Section 36-9-311(d)

South Carolina has two certificate of title statutes that control the perfection of security interests. Sections 56-19-610- 720, S.C. Code Ann. (2006 Revised, as amended) govern the perfection of security interests in motor vehicles. Section 50-23-140, S.C. Code Ann., as amended, governs the perfection of security interests on watercraft and outboard motors.

Article 9 envisions that a state certificate of title statute that provides that perfection occurs when the appropriate state authority receives an application for a certificate of title which discloses the security interest, rather than when the authority issues the certificate. See Section 36-9-311, Official Comment 5. The South Carolina certificate of title statutes conform to this exception. See Sections 56-19-230 and 50-23-140(c) S.C. Code Ann. (1976 and Supp. 1999).

Article 9 further envisions that when certificate of title legislation perfection will not relate back to a point in time earlier than the date upon which the State officials received the application. See Section 36-9-311, Official Comment 5. The current South Carolina certificate of title statutes do not conform to this expectation. Under section 56-19-630 S. C. Code Ann. (1976) the perfection of a security interest in a motor vehicle relates back to the date on which the security interest was created if delivery of the application to the Department of Highways and Public Transportation is completed within ten days after the creation of the security interest. Under section 50-23-140(c) S.C. Code Ann. (Supp. 1999) the perfection of a security interest in a watercraft or an outboard motor relates back to the date the security interest was created if delivery of the application is completed within twenty days after the creation of the security interest. The relation-back for the perfection of non-purchase-money security interests and a twenty day relation back period measured from the date on which the debtor receives delivery of the collateral for purchase- money security interests. See Section 36-9-317(e)

Definitional Cross :

"Certificate of title" Section 36-9-102(a)(10)

"Financing statement" Section 36-9-102(a)(39)

"Inventory" Section 36-9-102(a)(48)

"Lien creditor" Section 36-9-102(a)(52)

"Security interest" Section 36-1-201(37)

Cross

1. Provisions of certificate-of-title statute relating to the perfection of security interests in motor vehicles. Sections 56-19-630 and 650. S.C. Code Ann. (1976 and Supp. 1999).
2. Provisions of certificate-of-title statute relating to the perfection of security interests in watercraft and outboard motors. Section 50-23-140 S. C. Code Ann. (Supp. 1999).
3. Perfection by possession of a security interest on goods subject to a certificate-of-title statute when the goods enter South Carolina subject to a security interest perfected under the law of another jurisdiction. Sections 36-9-313(b), 36-9-316(d) and (e).

SECTION 6. Section 36-9-316 of the 1976 Code is amended to read:

"Section 36-9-316. (a) A security interest perfected pursuant to the law of the jurisdiction designated in Section 36-9-301(1) or 36-9-305(c) remains perfected until the earliest of the:

- (1) ~~the~~ time perfection would have ceased under the law of that jurisdiction;
- (2) ~~the~~ expiration of four months after a change of the debtor's location to another jurisdiction; or
- (3) ~~the~~ expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in subsection (a) becomes perfected under the law of the other

jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

- (1) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
- (2) thereafter the collateral is brought into another jurisdiction; and
- (3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

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

(e) A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under Section 36-9-311(b) or 36-9-313 are not satisfied before the earlier of the:

- (1) ~~the~~ time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this State; or
- (2) ~~the~~ expiration of four months after the goods had become so covered.

(f) A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of the:

- (1) ~~the~~ time the security interest would have become unperfected under the law of that jurisdiction; or
- (2) ~~the~~ expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

- (1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in

Section 36-9-301(1) or 36-9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(2) If a security interest perfected by a financing statement that is effective under item (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 36-9-301(1) or 36-9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in Section 36-9-301(1) or 36-9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 36-9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 36-9-301(1) or 36-9-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value."

OFFICIAL COMMENT

1. Source. Former Section 9-103(1)(d), (2)(b), (3)(e), as modified.
2. Continued Perfection. Subsections a-g deal with continued perfection of security interests that have been perfected under the law of another jurisdiction. The fact that the law of a particular jurisdiction ceases to govern perfection under Sections 9-301 through 9-307 does not necessarily mean that a security interest perfected under that law automatically becomes unperfected. To the contrary: This Section generally provides that a security interest perfected under the law of one jurisdiction remains perfected for a fixed period of time (four months or one year, depending on the circumstances), even though the jurisdiction whose law governs perfection changes. However, cessation of perfection under the law of the original jurisdiction cuts short the fixed period. The four-month and one-year periods are long enough for a secured party to discover in most cases that the law of a different jurisdiction governs perfection and to reperfect (typically by filing) under the law of that jurisdiction. If a secured party properly reperfects a security interest before it becomes unperfected under subsection (a), then the security interest remains perfected continuously thereafter. See subsection (b).

Example 1: Debtor is a general partnership whose chief executive office is in Pennsylvania. Lender perfects a security interest in Debtor's equipment by filing in Pennsylvania on May 15, 2002. On April 1, 2005, without Lender's knowledge, Debtor moves its chief executive office to New Jersey. Lender's security interest remains perfected for four months after the move. See subsection (a)(2).

Example 2: Debtor is a general partnership whose chief executive office is in Pennsylvania. Lender perfects a security interest in Debtor's equipment by filing in Pennsylvania on May 15, 2002. On April 1, 2007, without Lender's knowledge, Debtor moves its chief executive office to New Jersey. Lender's security interest remains perfected only through May 14, 2007, when the effectiveness of the filed financing statement lapses. See subsection (a)(1). Although, under these facts, Lender would have only a short period of time to discover that Debtor had relocated and to reperfect under New Jersey law, Lender could have protected itself by filing a continuation statement in Pennsylvania before Debtor relocated. By doing so, Lender would have prevented lapse and allowed itself the full four months to discover Debtor's new location and refile there or, if Debtor is in default, to perfect by taking possession of the equipment.

Example 3: Under the facts of Example 2, Lender files a financing statement in New Jersey before the effectiveness of the Pennsylvania financing statement lapses. Under subsection (b), Lender's security interest is continuously perfected beyond May 14, 2007, for a period determined by New Jersey's Article 9.

Subsection (a)(3) allows a one-year period in which to reperfect. The longer period is necessary, because, even with the exercise of due diligence, the secured party may be unable to discover that the collateral has been transferred to a person located in another jurisdiction. In any event, the period is cut short if the financing statement becomes ineffective under the law of the jurisdiction in which it is filed.

Example 4: Debtor is a Pennsylvania corporation. On January 1, Lender perfects a security interest in Debtor's equipment by filing in Pennsylvania. Debtor's shareholders decide to "reincorporate" in Delaware. On March 1, they form a Delaware corporation (Newcorp) into which they merge Debtor. The merger effectuates a transfer of the collateral from Debtor to Newcorp, which thereby becomes a debtor and is located in another jurisdiction. Under subsection (a)(3), the security interest remains perfected for one year after the merger. If a financing statement is filed in Delaware against Newcorp within the year following the merger, then the security interest remains perfected thereafter for a period determined by Delaware's Article 9.

Note that although Newcorp is a "new debtor" as defined in Section 9-102, the application of subsection (a)(3) is not limited to transferees who are new debtors. Note also that, under Section 9-507, the financing statement naming Debtor remains effective even though Newcorp has become the debtor.

Subsection (a) addresses security interests that are perfected (i.e., that have attached and as to which any required perfection step has been taken) before the debtor changes its location. Subsection (h) applies to security interests that have not attached before the location changes. See Comment 7.

3. Retroactive Unperfection. Subsection (b) sets forth the consequences of the failure to reperfect before perfection ceases under subsection (a): the security interest becomes unperfected prospectively and, as against purchasers for value, including buyers and secured parties, but not as against donees or lien creditors, retroactively. The rule applies to agricultural liens, as well. See also Section 9-515 (taking the same approach with respect to lapse). Although this approach creates the potential for circular priorities, the alternative-retroactive unperfection against lien creditors-would create substantial and unjustifiable preference risks.

Example 5: Under the facts of Example 4, six months after the merger, Buyer bought from Newcorp some equipment formerly owned by Debtor. At the time of the purchase, Buyer took subject to Lender's perfected security interest, of which Buyer was unaware. See Section 9-315(a)(1). However, subsection (b) provides that if Lender fails to reperfect in Delaware within a year after the merger, its security interest becomes unperfected and is deemed never to have been perfected against Buyer. Having given

value and received delivery of the equipment without knowledge of the security interest and before it was perfected, Buyer would take free of the security interest. See Section 9-317(b).

Example 6: Under the facts of Example 4, one month before the merger, Debtor created a security interest in certain equipment in favor of Financer, who perfected by filing in Pennsylvania. At that time, Financer's security interest is subordinate to Lender's. See Section 9-322(a)(1). Financer reperfects by filing in Delaware within a year after the merger, but Lender fails to do so. Under subsection (b), Lender's security interest is deemed never to have been perfected against Financer, a purchaser for value. Consequently, under Section 9-322(a)(2), Financer's security interest is now senior.

Of course, the expiration of the time period specified in subsection (a) does not of itself prevent the secured party from later reperfecting under the law of the new jurisdiction. If the secured party does so, however, there will be a gap in perfection, and the secured party may lose priority as a result. Thus, in Example 7, if Lender perfects by filing in Delaware more than one year under the merger, it will have a new date of filing and perfection for purposes of Section 9-322(a)(1). Financer's security interest, whose perfection dates back to the filing in Pennsylvania under subsection (b), will remain senior.

4. Possessory Security Interests. Subsection (c) deals with continued perfection of possessory security interests. It applies not only to security interests perfected solely by the secured party's having taken possession of the collateral. It also applies to security interests perfected by a method that includes as an element of perfection the secured party's having taken possession, such as perfection by taking delivery of a certificated security in registered form, see Section 9-313(a), and perfection by obtaining control over a certificated security. See Section 9-314(a).

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

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

Example 8: Under the facts in Example 7, five months after Debtor applies for an Indiana certificate of title, Debtor sells the automobile to Buyer. Under subsection (e)(2), because Lender did not reperfect within the four months after the goods became covered by the Indiana certificate of title, Lender's security interest is deemed never to have been perfected against Buyer. Under Section 9-317(b), Buyer is likely to take free of the security interest. Lender could have protected itself by perfecting its security interest either under Indiana's certificate-of-title statute, see Section 9-311, or, if it had a right to do so under an agreement or Section 9-610, by taking possession of the automobile. See Section 9-313(b).

The results in Examples 7 and 8 do not depend on the fact that the original perfection was achieved by notation on a certificate of title. Subsection (d) applies regardless of the method by which a security interest is perfected under the law of another jurisdiction when the goods became covered by a

certificate of title from this State.

Section 9-337 affords protection to a limited class of persons buying or acquiring a security interest in the goods while a security interest is perfected under the law of another jurisdiction but after this State has issued a clean certificate of title.

6. Deposit Accounts, Letter-of-Credit Rights, and Investment Property. Subsections (f) and (g) address changes in the jurisdiction of a bank, issuer of an uncertificated security, issuer of or nominated person under a letter of credit, securities intermediary, and commodity intermediary. The provisions are analogous to those of subsections (a) and (b).

7. Security Interests that Attach after Debtor Changes Location. In contrast to subsections (a) and (b), which address security interests that are perfected (i.e., that have attached and as to which any required perfection step has been taken) before the debtor changes its location, subsection (h) addresses security interests that attach four months after the debtor changes its location. Under subsection (h), a filed financing statement that would have been effective to perfect a security interest in the collateral if the debtor had not changed its location is effective to perfect a security interest in collateral acquired within four months after the relocation.

Example 9: Debtor, an individual whose principal residence is in Pennsylvania, grants to Lender a security interest in Debtor's existing and after-acquired inventory. Lender perfects the security interest by filing a proper financing statement in Pennsylvania on January 2, 2014. On March 31, 2014, Debtor's principal residence is relocated to New Jersey. Upon the relocation, New Jersey law governs perfection of a security interest in Debtor's inventory. See Sections 9-301, 9-307. Under New Jersey's Section 9-316(a), Lender's security interest in Debtor's inventory on hand at the time of the relocation remains perfected for four months thereafter. Had Debtor not relocated, the financing statement filed in Pennsylvania would have been effective to perfect Lender's security interest in inventory acquired by the Debtor after March 31, 2014. Accordingly, under subsection (h), the financing statement is effective to perfect Lender's security interest in inventory that Debtor acquires within the four months after Debtor's location changed. In Example 9, Lender's security interest in the inventory acquired within the four months after Debtor's relocation will be perfected when it attaches. It will remain perfected if, before the expiration of the four-month period, the security interest is perfected under the law of New Jersey. Otherwise, the security interest will become unperfected at the end of the four-month period and will be considered never to have been perfected as against a purchaser for value. See subsection (h)(2).

8. Collateral Acquired by New Debtor. Subsection (i) is similar to subsection (h). Whereas subsection (h) addresses security interests that attach within four months after a debtor changes its location, subsection (i) addresses security interests that attach within four months after a new debtor becomes bound as debtor by a security agreement entered into by another person. Subsection (i) also addresses collateral acquired by the new debtor before it becomes bound.

Example 10: Debtor, a Pennsylvania corporation, grants to Lender a security interest in Debtor's existing and after-acquired inventory. Lender perfects the security interest by filing a proper financing statement in Pennsylvania on January 2, 2014. On March 31, 2014, Debtor merges into Survivor, a Delaware corporation. Because Survivor is located in Delaware, Delaware law governs perfection of a security interest in Survivor's inventory. See Sections 9-301, 9-307. Under Delaware's Section 9-316(a), Lender's security interest in the inventory that Survivor acquired from Debtor remains perfected for one year after the transfer. See Comment 2. By virtue of the merger, Survivor becomes bound as debtor by Debtor's security agreement. See Section 9-203(d). As a consequence, Lender's security interest attaches to all of Survivor's inventory under Section 9-203, and Lender's collateral now includes inventory in which Debtor never had an interest. The financing statement filed in Pennsylvania against Debtor is effective

under Delaware's Section 9-316(i) to perfect Lender's security interest in inventory that Survivor acquired before, and within the four months after, becoming bound as debtor by Debtor's security agreement. This is because the financing statement filed in Pennsylvania would have been effective to perfect Lender's security interest in this collateral had Debtor, rather than Survivor, acquired it. If the financing statement is effective, Lender's security interest in the collateral that Survivor acquired before, and within four months after, Survivor became bound as debtor will be perfected upon attachment. It will remain perfected if, before the expiration of the four-month period, the security interest is perfected under Delaware law. Otherwise, the security interest will become unperfected at the end of the four-month period and will be considered never to have been perfected as against a purchaser for value.

9. Agricultural Liens. This Section does not apply to agricultural liens.

Example 11: Supplier holds an agricultural lien on corn. The lien arises under an Iowa statute. Supplier perfects by filing a financing statement in Iowa, where the corn is located. See Section 9-302. Debtor stores the corn in Missouri. Assume the Iowa agricultural lien survives or an agricultural lien arises under Missouri law (matters that this Article does not govern). Once the corn is located in Missouri, Missouri becomes the jurisdiction whose law governs perfection. See Section 9-302. Thus, the agricultural lien will not be perfected unless Supplier files a financing statement in Missouri.

SOUTH CAROLINA REPORTER'S COMMENT

Subpart 1 of Part 3, Section 36-9-301 to 36-9-307, provides the choice of law rules for the perfection of security interests. Under Section 36-9-301(1) the law of the jurisdiction in which the debtor is located typically controls the perfection of security interests by filing. Under Section 36-9-301(2) the law of the jurisdiction in which the collateral is located controls the perfection of possessory security interests. Section 36-9-316 determines whether a security interest properly perfected in one jurisdiction continues perfected when there has been a change in the location of the debtor or of the collateral. When there has been a change in the debtor's location, subsections 36-9-316(a)(1) and (2) provide that filing in the initial location is effective to perfect the security interest until the earlier of the time it lapsed in the new jurisdiction or four months. Under Subsection 36-9-316(a)(3) if the collateral is transferred to a "new debtor" located in another jurisdiction, a filing in the debtor's jurisdiction remains effective for one year. Subsection 36-9-312(6) provides for the continuous perfection of possessory security interests when the collateral is relocated to another jurisdiction.

The 2013 amendments add two subsections to Section 33-9-316. Section 36-9-316(h) addresses the effect of a filed financing statement upon collateral acquired by a debtor within four months after the debtor changes its location to another jurisdiction. Section 36-9-316(i) addresses the effect of a financing statement filed in one jurisdiction against an original debtor upon collateral acquired by a new debtor located in a different jurisdiction. See Sections 36-9-203(d) and (2), 36-9-508, and 36-9-326.

Definitional Cross :

"As-extracted collateral" Section 36-9-102(a)(6)

"Bank's jurisdiction" Section 36-9-304(b)

"Certificate of title" Section 36-9-102(a)(10)

"Collateral" Section 36-9-102(a)(12)

"Commodity intermediary's Section 36-9-305(b)

jurisdiction"

"Debtor" Section 36-9-102(a)(28)

"Debtor's location" Section 36-9-307

"Deposit account" Section 36-9-102(a)(29)

"Goods" Section 36-9-102(a)(44)

"Investment property" Section 36-9-102(a)(49)

"Issuer's jurisdiction" See Section 36-9-306(b),

[Section 36-5-116 1995 Revision]

"Letter-of-credit rights" Section 36-9-102(a)(51)

"New debtor" Section 36-9-102(a)(56)

"Nominated person's jurisdiction" See Section 36-9-306(b), [Section 36-5-116 1995 Revision]

"Purchaser" Section 36-1-201(33)

"Securities intermediary's Section 36-8-110(e)

jurisdiction"

"Security interest" Section 36-1-201(37)

"Value" Section 36-1-201(44)

Cross --

1. Choice of law rules for perfection of security interests by filing. Sections 36-9-301(1), (3), and (4).
2. Choice of rules for perfection of security interests by possession. Section 36-9-301(2).
3. Choice of law rules for perfection of security interests on goods covered by a certificate of title. Section 36-9-303 .
4. Choice of law rules for perfection of security interests in deposit accounts. Section 36-9-304.
5. Choice of law rules for perfection of security interests in investment property. Section 36-9-305.
6. Choice of law rules for perfection of security interests in letter-of- credit rights. Section 36-9-306.
7. Location of the debtor. Section 36-9-307.

8. When a person becomes bound as a "new debtor" Section 36-9-203(d).
9. The effect of being bound as a "new debtor" Section 36-9-203(e).
10. The effectiveness of a financing statement naming the original debtor to perfect a security interest in collateral acquired by the "new debtor" Section 36-9-508.
11. Priority of security interest in collateral of a "new debtor" perfected by a filing effective solely under Section 36-9-508. Section 36-9-326.

SECTION 7. Section 36-9-317 of the 1976 Code is amended to read:

"Section 36-9-317. (a) A security interest or agricultural lien is subordinate to the rights of:

- (1) a person entitled to priority under Section 36-9-322; and
- (2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:
 - (A) the security interest or agricultural lien is perfected; or
 - (B) one of the conditions specified in Section 36-9-203(b)(3) is met and a financing statement covering the collateral is filed.
- (b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a ~~security certificate~~ certified security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
- (c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
- (d) A licensee of a general intangible or a buyer, other than a secured party, of ~~accounts, electronic chattel paper, general intangibles, or investment property~~ collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.
- (e) Except as otherwise provided in Sections 36-9-320 and 36-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing."

OFFICIAL COMMENT

1. Source. Former Sections 9-301, 2A-307(2).
2. Scope of This Section. As did former Section 9-301, this Section lists the classes of persons who take priority over, or take free of, an unperfected security interest. Section 9-308 explains when a security interest or agricultural lien is "perfected." A security interest that has attached (see Section 9-

203) but as to which a required perfection step has not been taken is "unperfected." Certain provisions have been moved from former Section 9-301. The definition of "lien creditor" now appears in Section 9-102, and the rules governing priority in future advances are found in Section 9-323.

3. **Competing Security Interests.** Section 9-322 states general rules for determining priority among conflicting security interests and refers to other Sections that state special rules of priority in a variety of situations. The security interests given priority under Section 9-322 and the other Sections to which it refers take priority in general even over a perfected security interest. A fortiori they take priority over an unperfected security interest.

4. **Filed but Unattached Security Interest vs. Lien Creditor.** Under former Section 9-301(1)(b), a lien creditor's rights had priority over an unperfected security interest. Perfection required attachment (former Section 9-303) and attachment required the giving of value (former Section 9-203). It followed that, if a secured party had filed a financing statement but had not yet given value, an intervening lien creditor whose lien arose after filing but before attachment of the security interest acquired rights that are senior to those of the secured party who later gives value. This result comported with the *nemo dat* concept: When the security interest attached, the collateral was already subject to the judicial lien.

On the other hand, this result treated the first secured advance differently from all other advances. The special rule for future advances in former Section 9-301(4) (substantially reproduced in Section 9-323(b)) afforded priority to a discretionary advance made by a secured party within 45 days after the lien creditor's rights arose as long as the secured party was "perfected" when the lien creditor's lien arose-i.e., as long as the advance was not the first one and an earlier advance had been made.

Subsection (a)(2) revises former Section 9-301(1)(b) and treats the first advance the same as subsequent advances. That is, a judicial lien that arises after a financing statement is filed and before the security interest attaches and becomes perfected is subordinate to all advances secured by the security interest, even the first advance, except as otherwise provided in Section 9-323(b). However, if the security interest becomes unperfected (e.g., because the effectiveness of the filed financing statement lapses) before the judicial lien arises, the security interest is subordinate. If a financing statement is filed but a security interest does not attach, then no priority contest arises. The lien creditor has the only claim to the property.

5. **Security Interest of Consignor or Receivables Buyer vs. Lien Creditor.** Section 1-201 defines "security interest" to include the interest of most true consignors of goods and the interest of most buyers of certain receivables (accounts, chattel paper, payment intangibles, and promissory notes). A consignee of goods or a seller of accounts or chattel paper each is deemed to have rights in the collateral which a lien creditor may reach, as long as the competing security interest of the consignor or buyer is unperfected. This is so even though, as between the consignor and the debtor-consignee, the latter has only limited rights, and, as between the buyer and debtor-seller, the latter does not have any rights in the collateral. See Sections 9-318 (seller), 9-319 (consignee). Security interests arising from sales of payment intangibles and promissory notes are automatically perfected. See Section 9-309. Accordingly, a subsequent judicial lien always would be subordinate to the rights of a buyer of those types of receivables.

6. **Purchasers Other Than Secured Parties.** Subsections (b), (c), and (d) afford priority over an unperfected security interest to certain purchasers (other than secured parties) of collateral. They derive from former Sections 9-301(1)(c), 2A-307(2), and 9-301(d). Former Section 9-301(1)(c) and (1)(d) provided that unperfected security interests are "subordinate" to the rights of certain purchasers. But, as former Comment 9 suggested, the practical effect of subordination in this context is that the purchaser takes free of the security interest. To avoid any possible misinterpretation, subsections (b) and (d) of this

Section use the phrase "takes free."

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

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

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

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

7. Agricultural Liens. Subsections (a), (b), and (c) subordinate unperfected agricultural liens in the same manner in which they subordinate unperfected security interests.

8. Purchase-Money Security Interests. Subsection (e) derives from former Section 9-301(2). It provides that, if a purchase-money security interest is perfected by filing no later than 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of buyers, lessees, or lien creditors which arise between the time the security interest attaches and the time of filing. Subsection (e) differs from former Section 9-301(2) in two significant respects. First, subsection (e) protects a purchase-money security interest against all buyers and lessees, not just against transferees in bulk. Second, subsection (e) conditions this protection on filing within 20, as opposed to ten, days after delivery.

Section 9-311(b) provides that compliance with the perfection requirements of a statute or treaty described in Section 9-311(a) "is equivalent to the filing of a financing statement." It follows that a person who perfects a security interest in goods covered by a certificate of title by complying with the perfection requirements of an applicable certificate-of-title statute "files a financing statement" within the meaning of subsection(e).

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-317 provides the priority rules applicable to unperfected security interests. South Carolina has adopted an inconsistent amendment to the Official Text of Section 9-317.

Section 9-317(a)(2) of the 1999 Official Text provides that an unperfected security interest is subordinate to the rights of a person who becomes a lien creditor before the earlier of (1) the time a security interest is perfected or (2) a financing statement is filed covering the collateral and the parties have satisfied the evidentiary requirement for attachment of a security interest under Section 9-203(b)(3) (D). South Carolina has revised Section 9-317(a)(2) to provide that an unperfected security interest is subordinate to both the holder of an unperfected security interest and a landlord who obtains a lien for distraint before the earlier of the time the secured party perfects or files a financing statement covering the collateral. See also Section 36-9-109(d)(1) (priority conflict between a landlord's lien and a security interest is governed by Section 36-9-317). A landlord does not acquire a lien for distraint until there is actual levy of a distress warrant. *Burnett v. Bourkedes*, 240 S.C. 144, 125 S.C. 2d 10, 15 (1962). Therefore under Section 36-9-317(a)(2) a secured party will be entitled to priority over a landlord seeking to collect rent through distraint if the secured party files a financing statement covering the collateral or perfects its security interest before the actual levy of the distress warrant. The revision in Section 36-9-317(a)(2) was adopted to reaffirm the holding in *In Re J.M. Smith Corp.*, 341 S.C. 442, 535 S.E. 2d 131 (2000).

Definitional Cross :

"Account" Section 36-9-102(a)(2)

"Agricultural lien" Section 36-9-102(a)(5)

"Certificated security" Section 36-9-102(a)(4)

"Collateral" Section 36-9-102(a)(12)

"Delivery" Section 36-1-201(14)

"Document" Sections 36-9-102(a)(30), 36-7-102(1)(e), 36-1-201(15)

"Electronic chattel paper" Section 36-9-102(a)(31)

"Financing statement" Section 36-9-102(a)(39)

"General intangible" Section 36-9-102(a)(42)

"Goods" Section 36-9-102(a)(44)

"Instrument" Section 36-9-102(a)(47)

"Investment property" Section 36-9-102(a)(49)

"Knowledge" Section 36-1-201(25)

"Lessee" Section 36-2A-103(1)(n)

"Licensee" See Section 36-9-321(a)

"Lien creditor" Section 36-9-102(a)(52)

"Purchase-money security interest" Section 36-9-103

"Security interest" Section 36-1-201(37)

"Tangible chattel paper" Section 36-9-102(a)(79)

Cross --

1. A perfected security interest or agricultural lien has priority over an unperfected security interest or agricultural lien. Section 36-9-322(a)(2).
2. When a security interest is perfected. Section 36-9-308(a).
3. When a agricultural lien is perfected. Section 36-9-308(b).
4. Priority of perfected security interest over a lien creditor with respect to future advances. Section 36-9-323(b).
5. Priority of buyers of goods over perfected security interests. Section 36-9-320.
6. Priority of licensees in the ordinary course over perfected security interests. Section 36-9-321(b).
7. Priority of lessees in the ordinary course over perfected security interests. Section 36-9-321(c).

SECTION 8. Section 36-9-326 of the 1976 Code is amended to read:

"Section 36-9-326. (a) Subject to subsection (b), a security interest that is created by a new debtor which is in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that is ~~effective solely under Section 36-9-508 in collateral in which a new debtor has or acquires rights would be ineffective to perfect the security interest but for the application of Section 36-9-316(i)(1) or Section 36-9-508~~ is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement ~~that is effective solely under Section 36-9-508~~.

(b) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements ~~that are effective solely under Section 36-9-508 described in subsection (a)~~. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound."

OFFICIAL COMMENT

1. Source. New.
2. Subordination of Security Interests Created by New Debtor. This Section addresses the priority contests that may arise when a new debtor becomes bound by the security agreement of an original

debtor and each debtor has a secured creditor.

Subsection (a) subordinates the original debtor's secured party's security interest perfected against the new debtor by a filed financing statement that would be ineffective to perfect the security interest but for Section 9-508 or, if the original debtor and new debtor are located in different jurisdictions, Section 9-316(i)(1). The security interest is subordinated to security interests in the same collateral perfected by another method, e.g., by filing against the new debtor. This section does not subordinate a security interest perfected by a new initial financing statement providing the name of the new debtor, even if the initial financing statement is filed to maintain the effectiveness of a financing statement under the circumstances described in Section 9-508(b). Nor does it subordinate a security interest perfected by a financing statement filed against the original debtor which remains effective against collateral transferred by the original debtor to the new debtor. See Section 9-508(c). Concerning priority contests involving transferred collateral, see Sections 9-325 and 9-507.

Example 1: SP-X holds a perfected-by-filing security interest in X Corp's existing and after-acquired inventory, and SP-Z holds a perfected-by-possession security interest in an item of Z Corp's inventory. Both X Corp and Z Corp are located in the same jurisdiction under Section 9-307. Z Corp becomes bound as debtor by X Corp's security agreement (e.g., Z Corp buys X Corp's assets and assumes its security agreement). See Section 9-203(d). But for Section 9-508, SP-X's financing statement would be ineffective to perfect a security interest in the item of inventory in which Z Corp has rights. However, subsection (a) provides that SP-X's perfected security interest is subordinate to SP-Z's, regardless of whether SP-X's financing statement was filed before SP-Z perfected its security interest.

Example 2: SP-X holds a perfected-by-filing security interest in X Corp's existing and after-acquired inventory, and SP-Z holds a perfected-by-filing security interest in Z Corp's existing and after-acquired inventory. Both X Corp and Z Corp are located in the same jurisdiction under Section 9-307. Z Corp becomes bound as debtor by X Corp's security agreement. Immediately thereafter, and before the effectiveness of SP-X's financing statement lapses, Z Corp acquires a new item of inventory. But for Section 9-508, SP-X's financing statement would be ineffective to perfect a security interest in the new item of inventory in which Z Corp has rights. However, because SP-Z's security interest was perfected by a filing whose effectiveness does not depend on Section 9-316(i)(1) or 9-508, subsection (a) subordinates SP-X's perfected security interest to SP-Z's. This would be the case even if SP-Z filed after Z Corp became bound by X Corp's security agreement, and regardless of which financing statement was filed first. The same result would obtain if X Corp and Z Corp were located in different locations. SP-X's security interest would be perfected by a financing statement that would be ineffective but for Section 9-316(i)(1), whereas the effectiveness of SP-Z's filing does not depend on Section 9-316(i)(1) or 9-508.

3. Other Priority Rules. Subsection (b) addresses the priority among security interests created by the original debtor (X Corp). By invoking the other priority rules of this subpart, as applicable, subsection (b) preserves the relative priority of security interests created by the original debtor.

Example 3: Under the facts of Example 2, SP-Y also holds a perfected-by-filing security interest in X Corp's existing and after-acquired inventory. SP-Y filed after SP-X. Inasmuch as both SP-X's and SP-Y's security interests in inventory acquired by Z Corp after it became bound would be unperfected but for the application of Section 9-508, the normal priority rules determine their relative priorities. Under the "first-to-file-or-perfect" rule of Section 9-322(a)(1), SP-X has priority over SP-Y.

Example 4: Under the facts of Example 3, after Z Corp became bound by X Corp's security agreement, SP-Y promptly filed a new initial financing statement against Z Corp. SP-X's security interest remains perfected only by virtue of its original filing against X Corp which "would be ineffective to perfect the

security interest but for the application of Section 9-508." Because SP-Y's security interest is perfected by the filing of a financing statement whose effectiveness does not depend on Section 9-508 or Section 9-316(i)(1), subsection (a) subordinates SP-X's security interest to SP-Y's. If both SP-X and SP-Y file a new initial financing statement against Z Corp, then the "first-to-file-or-perfect" rule of Section 9-322(a)(1) governs their priority inter se as well as their priority against SP-Z.

The second sentence of subsection (b) effectively limits the applicability of the first sentence to situations in which a new debtor has become bound by more than one security agreement entered into by the same original debtor. When the new debtor has become bound by security agreements entered into by different original debtors, the second sentence provides that priority is based on priority in time of the new debtor's becoming bound.

Example 5: Under the facts of Example 2, SP-W holds a perfected-by-filing security interest in W Corp's existing and after-acquired inventory. After Z Corp became bound by X Corp's security agreement in favor of SP-X, Z Corp became bound by W Corp's security agreement. Under subsection (b), SP-W's security interest in inventory acquired by Z Corp is subordinate to that of SP-X, because Z Corp became bound under SP-X's security agreement before it became bound under SP-W's security agreement. This is the result regardless of which financing statement (SP-X's or SP-W's) was filed first.

The second sentence of subsection (b) reflects the generally accepted view that priority based on the first-to-file rule is inappropriate for resolving priority disputes when the filings were made against different debtors. Like subsection (a) and the first sentence of subsection (b), however, the second sentence of subsection (b) relates only to priority conflicts among security interests that would be unperfected but for the application of Section 9-316(i)(1) or Section 9-508.

Example 6: Under the facts of Example 5, after Z Corp became bound by W Corp's security agreement, SP-W promptly filed a new initial financing statement against Z Corp. At that time, SP-X's security interest was perfected only pursuant to its original filing against X Corp which "would be ineffective to perfect the security interest but for the application of Section 9-508." Because SP-W's security interest is perfected by the filing of a financing statement whose effectiveness does not depend on Section 9-316(i)(1) or Section 9-508, subsection (a) subordinates SP-X's security interest to SP-W's. If both SP-X and SP-W file a new initial financing statement against Z Corp, then the "first-to-file-or-perfect" rule of Section 9-322(a)(1) governs their priority inter se as well as their priority against SP-Z.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-326 resolves priority conflicts that arise when a person becomes bound by a security agreement entered into by another person. To illustrate, assume that on February 1, A Corporation entered into a security agreement with SP-1 that granted SP-1 a security interest upon SP-1's current and after acquired inventory. On February 1, SP-1 properly filed a financing statement covering A Corporation's inventory. Effective April 1 A Corporation was merged with B Corporation with B Corporation surviving the merger. Under applicable corporate law B Corporation became generally obligated for A Corporation's obligations including the debt owed to SP-1. Under applicable corporate law B Corporation also acquired all of A Corporation's assets. On May 1 B Corporation entered into a security agreement with SP-2 granting SP-2 a security interest upon B Corporation's current and after acquired inventory. On May 1, SP-2 properly filed a financing statement covering B Corporation's inventory. On July 1, following defaults upon both the security agreement with SP-1 and SP-2 a priority dispute arose over inventory acquired by B Corporation after the effective date of the merger.

Under Section 36-9-203(d)(2) B Corporation qualified as a "new debtor" and was bound by the security agreement entered into by A Corporation and SP-1. As a result, under Section 36-9-203(e) the security

agreement entered into by A Corporation was effective to give SP-1 a security interest in the post-merger inventory acquired by B Corporation. Under Section 36-9-508 SP-1's filed financing statement was effective to perfect SP-1's security interest in inventory acquired by B Corporation for four months following the merger.

Although SP-1 holds a perfected security interest in B Corporation's post-merger inventory and SP-1 filed before SP-2, SP-1's financing statement is effective solely under section 9-508. As a result, Section 36-9-325(a) subordinates SP-1's security interest to the security interest B Corporation granted SP-2.

The 2013 amendments revised Section 36-9-326 to incorporate the amendment to Section 36-9-316(i) and clarifies when a security interest created by a new debtor is subordinated.

Definitional Cross :

"Collateral" Section 36-9-102(a)(12)

"Debtor" Section 36-9-102(a)(28)

"Financing Statement" Section 36-9-102(a)(39)

"New debtor" Section 36-9-102(a)(56)

"Original debtor" Section 36-9-102(a)(60)

"Security interest" Section 36-1-201(37)

Cross --

1. Requirements for becoming bound as a new debtor to a security agreement entered into by an original debtor. Section 36-9-203(d).
2. The effect of becoming bound as a new debtor. Section 36-9-203(e).
3. Effectiveness of a financing statement filed under the name of the original debtor to perfect a security interest in collateral acquired by the new debtor. Section 36-9-508.
4. When a financing statement filed under the name of the original debtor becomes seriously misleading. Section 36-9-506.
5. Effectiveness of financing statement with respect to collateral sold or otherwise disposed of. Section 36-9-325
6. Priority of perfected security interest in collateral sold or otherwise disposed of. Section 36-9-325

SECTION 9. Section 36-9-406 of the 1976 Code is amended to read:

"Section 36-9-406. (a) Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After

receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subsection (h), notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Except as otherwise provided in subsection (e) and Sections 36-2A-303 and 36-9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

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

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

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale under a disposition pursuant to Section 36-9-610 or an acceptance of collateral pursuant to Section 36-9-620.

(f) Except as otherwise provided in Sections 36-2A-303 and 36-9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement

of a security interest in the account or chattel paper; or

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

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b) (3).

(h) This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health care insurance receivable.

(j) Subsection (d) does not apply to the assignment, transfer, or creation of a security interest in a:

(1) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Section 104(a)(1) or (2), as amended; or

(2) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Section 1396p(d)(4), as amended."

OFFICIAL COMMENT

1. Source. Former Section 9-318(3), (4).

2. Account Debtor's Right to Pay Assignor Until Notification. Subsection (a) provides the general rule concerning an account debtor's right to pay the assignor until the account debtor receives appropriate notification. The revision makes clear that once the account debtor receives the notification, the account debtor cannot discharge its obligation by paying the assignor. It also makes explicit that payment to the assignor before notification, or payment to the assignee after notification, discharges the obligation. No change in meaning from former Section 9-318 is intended. Nothing in this Section conditions the effectiveness of a notification on the identity of the person who gives it. An account debtor that doubts whether the right to payment has been assigned may avail itself of the procedures in subsection (c). See Comment 4.

An effective notification under subsection (a) must be authenticated. This requirement normally could be satisfied by sending notification on the notifying person's letterhead or on a form on which the notifying person's name appears. In each case the printed name would be a symbol adopted by the notifying person for the purpose of identifying the person and adopting the notification. See Section 9-102 (defining "authenticate").

Subsection (a) applies only to account debtors on accounts, chattel paper, and payment intangibles. (Section 9-102 defines the term "account debtor" more broadly, to include those obligated on all general intangibles.) Although subsection (a) is more precise than its predecessor, it probably does not change the rule that applied under former Article 9. Former Section 9-318(3) referred to the account debtor's obligation to "pay," indicating that the subsection was limited to account debtors on accounts, chattel paper, and other payment obligations.

3. Limitations on Effectiveness of Notification. Subsection (b) contains some special rules concerning the effectiveness of a notification under subsection (a).

Subsection (b)(1) tracks former Section 9-318(3) by making ineffective a notification that does not reasonably identify the rights assigned. A reasonable identification need not identify the right to payment with specificity, but what is reasonable also is not left to the arbitrary decision of the account debtor. If an account debtor has doubt as to the adequacy of a notification, it may not be safe in disregarding the notification unless it notifies the assignee with reasonable promptness as to the respects in which the account debtor considers the notification defective.

Subsection (b)(2), which is new, applies only to sales of payment intangibles. It makes a notification ineffective to the extent that other law gives effect to an agreement between an account debtor and a seller of a payment intangible that limits the account debtor's duty to pay a person other than the seller. Payment intangibles are substantially less fungible than accounts and chattel paper. In some (e.g., commercial bank loans), account debtors customarily and legitimately expect that they will not be required to pay any person other than the financial institution that has advanced funds.

It has become common in financing transactions to assign interests in a single obligation to more than one assignee. Requiring an account debtor that owes a single obligation to make multiple payments to multiple assignees would be unnecessarily burdensome. Thus, under subsection (b)(3), an account debtor that is notified to pay an assignee less than the full amount of any installment or other periodic payment has the option to treat the notification as ineffective, ignore the notice, and discharge the assigned obligation by paying the assignor. Some account debtors may not realize that the law affords them the right to ignore certain notices of assignment with impunity. By making the notification ineffective at the account debtor's option, subsection (b)(3) permits an account debtor to pay the assignee in accordance with the notice and thereby to satisfy its obligation *pro tanto*. Under subsection (g), the rights and duties created by subsection (b)(3) cannot be waived or varied.

4. Proof of Assignment. Subsection (c) links payment with discharge, as in subsection (a). It follows former Section 9-318(3) in referring to the right of the account debtor to pay the assignor if the requested proof of assignment is not seasonably forthcoming. Even if the proof is not forthcoming, the notification of assignment would remain effective, so that, in the absence of reasonable proof of the assignment, the account debtor could discharge the obligation by paying either the assignee or the assignor. Of course, if the assignee did not in fact receive an assignment, the account debtor cannot discharge its obligation by paying a putative assignee who is a stranger. The observations in Comment 3 concerning the reasonableness of an identification of a right to payment also apply here. An account debtor that questions the adequacy of proof submitted by an assignee would be well advised to promptly inform the assignee of the defects.

An account debtor may face another problem if its obligation becomes due while the account debtor is awaiting reasonable proof of the assignment that it has requested from the assignee. This Section does not excuse the account debtor from timely compliance with its obligations. Consequently, an account debtor that has received a notification of assignment and who has requested reasonable proof of the assignment may discharge its obligation by paying the assignor at the time (or even earlier if reasonably necessary to avoid risk of default) when a payment is due, even if the account debtor has not yet received a response to its request for proof. On the other hand, after requesting reasonable proof of the assignment, an account debtor may not discharge its obligation by paying the assignor substantially in advance of the time that the payment is due unless the assignee has failed to provide the proof seasonably.

5. Contractual Restrictions on Assignment. Former Section 9-318(4) rendered ineffective an

agreement between an account debtor and an assignor which prohibited assignment of an account (whether outright or to secure an obligation) or prohibited a security assignment of a general intangible for the payment of money due or to become due. Subsection (d) essentially follows former Section 9-318(4), but expands the rule of free assignability to chattel paper (subject to Sections 2A-303 and 9-407) and promissory notes and explicitly overrides both restrictions and prohibitions of assignment. The policies underlying the ineffectiveness of contractual restrictions under this Section build on common-law developments that essentially have eliminated legal restrictions on assignments of rights to payment as security and other assignments of rights to payment such as accounts and chattel paper. Any that might linger for accounts and chattel paper are addressed by new subsection (f). See Comment 6.

Former Section 9-318(4) did not apply to a sale of a payment intangible (as described in the former provision, "a general intangible for money due or to become due") but did apply to an assignment of a payment intangible for security. Subsection (e) continues this approach and also makes subsection (d) inapplicable to sales of promissory notes. Section 9-408 addresses anti-assignment clauses with respect to sales of payment intangibles and promissory notes.

Like former Section 9-318(4), subsection (d) provides that anti-assignment clauses are "ineffective." The quoted term means that the clause is of no effect whatsoever; the clause does not prevent the assignment from taking effect between the parties and the prohibited assignment does not constitute a default under the agreement between the account debtor and assignor. However, subsection (d) does not override terms that do not directly prohibit, restrict, or require consent to an assignment but which might, nonetheless, present a practical impairment of the assignment. Properly read, however, subsection (d) reaches only covenants that prohibit, restrict, or require consents to assignments; it does not override all terms that might "impair" an assignment in fact.

Example: Buyer enters into an agreement with Seller to buy equipment that Seller is to manufacture according to Buyer's specifications. Buyer agrees to make a series of prepayments during the construction process. In return, Seller agrees to set aside the prepaid funds in a special account and to use the funds solely for the manufacture of the designated equipment. Seller also agrees that it will not assign any of its rights under the sale agreement with Buyer. Nevertheless, Seller grants to Secured Party a security interest in its accounts. Seller's antiassignment agreement is ineffective under subsection (d); its agreement concerning the use of prepaid funds, which is not a restriction or prohibition on assignment, is not. However, if Secured Party notifies Buyer to make all future payments directly to Secured Party, Buyer will be obliged to do so under subsection (a) if it wishes the payments to discharge its obligation. Unless Secured Party releases the funds to Seller so that Seller can comply with its use-of-funds covenant, Seller will be in breach of that covenant.

In the example, there appears to be a plausible business purpose for the use-of-funds covenant. However, a court may conclude that a covenant with no business purpose other than imposing an impediment to an assignment actually is a direct restriction that is rendered ineffective by subsection (d).

6. **Legal Restrictions on Assignment.** Former Section 9-318(4), like subsection (d) of this Section, addressed only contractual restrictions on assignment. The former Section was grounded on the reality that legal, as opposed to contractual, restrictions on assignments of rights to payment had largely disappeared. New subsection (f) codifies this principle of free assignability for accounts and chattel paper. For the most part the discussion of contractual restrictions in Comment 5 applies as well to legal restrictions rendered ineffective under subsection (f).

7. **Multiple Assignments.** This Section, like former Section 9-318, is not a complete codification of the law of assignments of rights to payment. In particular, it is silent concerning many of the ramifications for an account debtor in cases of multiple assignments of the same right. For example, an assignor might

assign the same receivable to multiple assignees (which assignments could be either inadvertent or wrongful). Or, the assignor could assign the receivable to assignee-1, which then might re-assign it to assignee-2, and so forth. The rights and duties of an account debtor in the face of multiple assignments and in other circumstances not resolved in the statutory text are left to the common-law rules. See, e.g., Restatement (2d), Contracts 338(3), 339. The failure of former Article 9 to codify these rules does not appear to have caused problems.

8. Consumer Account Debtors. Subsection (h) is new. It makes clear that the rules of this Section are subject to other law establishing special rules for consumer account debtors.

9. Account Debtors on Health-Care-Insurance Receivables. Subsection (i) also is new. The obligation of an insurer with respect to a health-care- insurance receivable is governed by other law. Section 9-408 addresses contractual and legal restrictions on the assignment of a health-care-insurance receivable.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-406 addresses two issues. The first issue is to whom an account debtor must make payment in order to discharge its obligation. The second issue is the extent to which certain restrictions upon the assignment of an interest in accounts, chattel paper, payment intangibles, and promissory notes are ineffective.

Subsection (a) provides that an account debtor can discharge its obligation by paying the assignor until the account debtor receives an authenticated notification from the assignor or assignee that the right payment has been assigned. As a general rule, after receipt of the notification of assignment subsection (a) provides that an account debtor can discharge its obligation only by paying the assignee. Under subsection (c), however, the account debtor can request reasonable proof of the assignment from the assignee and until it receives the proof, the account debtor can discharge its obligation by paying the assignor. Subsection (b) sets forth the requirements for an effective notification of assignment.

Subsection (d) and (f) set forth the rules for determining whether restrictions upon certain assignments are ineffective. Subsection (d) addresses contractual restrictions and subsection (f) addresses restrictions imposed by a rule of law, statute, or regulation.

Under subsection (d)(1) terms in an agreement between an account debtor and assignor or in a promissory note are ineffective to the extent they prohibit, restrict, or require the account debtor or person obligated on a note to consent to an assignment transfer, or creation, perfection, or enforcement of a security interest in accounts, chattel paper, payment intangibles, or promissory notes. Subsection (d) (2) renders ineffective a contractual provision under which an assignment or transfer or creation, perfection, or enforcement of security interest in accounts,, chattel paper, payment intangibles, or promissory notes a breach or event of default. The scope of subsection (d), however, is limited by subsections (e) and (i). Subsection (e) provides that subsection (d) does not apply to sales of payment intangibles and promissory notes. Moreover, subsection (i) provides that subsection (d) does not apply to assignments of accounts that constitute health-care-insurance receivables.

Subsection (f) renders ineffective a rule of law, statute, or regulation that prohibits, restricts, or requires a government official or the account debtor to consent to the assignment or transfer of, or creation of a security interest in an account or chattel paper. Under subsection (f)(1) such restrictions are ineffective to prevent the assignment or transfer of, or the creation, perfection, or enforcement of a security interest in an account or chattel paper. Under subsection (f)(2) such restrictions are ineffective to establish a default, breach, right to terminate, or provide remedy under the account or chattel paper. Subsection (i) limits the scope of subsection (f) by rendering it inapplicable to assignments of health-care- insurance

receivables. An example of a statutory restriction on assignments may be ineffective under subsection (f) is prohibition upon the assignment of a right to benefits under the Employment Security Law. Section 41-3920, S.C. Code Ann. (1976). One could argue, however, that such assignments are excluded from Article 9 under Section 36-9-109(d)(3) and that Subsection 36-9-406(f) does not apply to render the restriction ineffective.

Definitional Cross :

"Account" Section 36-9-102(a)(2)

"Account debtor" Section 36-9-102(a)(3)

"Agreement" Section 36-1-201(3)

"Authenticate" Section 36-9-102(a)(7)

"Chattel paper" Section 36-9-102(a)(11)

"Health-care-insurance receivable" Section 36-9-102(a)(46)

"Notification" Section 36-1-201(26)

"Payment intangible" Section 36-9-102(a)(61)

"Promissory note" Section 36-9-102(a)(65)

SECTION 10. Section 36-9-408 of the 1976 Code is amended to read:

"Section 36-9-408. (a) Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health care insurance receivable, or general intangible, is ineffective to the extent that the term:

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

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

(b) Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale under a disposition pursuant to Section 36-9-610 or an acceptance of collateral pursuant to Section 36-9-620.

(c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health care

insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

- (1) would impair the creation, attachment, or perfection of a security interest; or
 - (2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.
- (d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this chapter but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health care insurance receivable, or general intangible:
- (1) is not enforceable against the person obligated on the promissory note or the account debtor;
 - (2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;
 - (3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;
 - (4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health care insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health care insurance receivable, or general intangible;
 - (5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and
 - (6) does not entitle the secured party to enforce the security interest in the promissory note, health care insurance receivable, or general intangible.
- (e) Subsections (a) and (c) do not apply to the assignment, transfer, or creation of a security interest in a:
- (1) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Section 104(a)(1) or (2), as amended; or
 - (2) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Section 1396p(d)(4), as amended."

OFFICIAL COMMENT

1. Source. New.
2. Free Assignability. This Section makes ineffective any attempt to restrict the assignment of a

general intangible, health-care-insurance receivable, or promissory note, whether the restriction appears in the terms of a promissory note or the agreement between an account debtor and a debtor (subsection (a)) or in a rule of law, including a statute or governmental rule or regulation (subsection (c)). This result allows the creation, attachment, and perfection of a security interest in a general intangible, such as an agreement for the nonexclusive license of software, as well as sales of certain receivables, such as a health-care-insurance receivable (which is an "account"), payment intangible, or promissory note, without giving rise to a default or breach by the assignor or from triggering a remedy of the account debtor or person obligated on a promissory note. This enhances the ability of certain debtors to obtain credit. On the other hand, subsection (d) protects the other party-the "account debtor" on a general intangible or the person obligated on a promissory note-from adverse effects arising from the security interest. It leaves the account debtor's or obligated person's rights and obligations unaffected in all material respects if a restriction rendered ineffective by subsection (a) or (c) would be effective under law other than Article 9.

Example 1: A term of an agreement for the nonexclusive license of computer software prohibits the licensee from assigning any of its rights as licensee with respect to the software. The agreement also provides that an attempt to assign rights in violation of the restriction is a default entitling the licensor to terminate the license agreement. The licensee, as debtor, grants to a secured party a security interest in its rights under the license and in the computers in which it is installed. Under this Section, the term prohibiting assignment and providing for a default upon an attempted assignment is ineffective to prevent the creation, attachment, or perfection of the security interest or entitle the licensor to terminate the license agreement. However, under subsection (d), the secured party (absent the licensor's agreement) is not entitled to enforce the license or to use, assign, or otherwise enjoy the benefits of the licensed software, and the licensor need not recognize (or pay any attention to) the secured party. Even if the secured party takes possession of the computers on the debtor's default, the debtor would remain free to remove the software from the computer, load it on another computer, and continue to use it, if the license so permits. If the debtor does not remove the software, other law may require the secured party to remove it before disposing of the computer. Disposition of the software with the computer could violate an effective prohibition on enforcement of the security interest. See subsection (d).

3. Nature of Debtor's Interest. Neither this Section nor any other provision of this Article determines whether a debtor has a property interest. The definition of the term "security interest" provides that it is an "interest in personal property." See Section 1-201(37). Ordinarily, a debtor can create a security interest in collateral only if it has "rights in the collateral." See Section 9-203(b). Other law determines whether a debtor has a property interest ("rights in the collateral") and the nature of that interest. For example, the nonexclusive license addressed in Example 1 may not create any property interest whatsoever in the intellectual property (e.g., copyright) that underlies the license and that effectively enables the licensor to grant the license. The debtor's property interest may be confined solely to its interest in the promises made by the licensor in the license agreement (e.g., a promise not to sue the debtor for its use of the software).

4. Scope: Sales of Payment Intangibles and Other General Intangibles; Assignments Unaffected by this Section. Subsections (a) and (c) render ineffective restrictions on assignments only "to the extent" that the assignments restrict the "creation, attachment, or perfection of a security interest," including sales of payment intangibles and promissory notes. This Section does not render ineffective a restriction on an assignment that does not create a security interest. For example, if the debtor in Comment 2, Example 1 purported to assign the license to another entity that would use the computer software itself, other law would govern the effectiveness of the anti-assignment provisions.

Subsection (a) applies to a security interest in payment intangibles only if the security interest arises out of sale of the payment intangibles. Contractual restrictions directed to security interests in payment

intangibles which secure an obligation are subject to Section 9-406(d). Subsection (a) also deals with sales of promissory notes which also create security interests. See Section 9-109(a). Subsection (c) deals with all security interests in payment intangibles or promissory notes, whether or not arising out of a sale.

Subsection (a) does not render ineffective any term, and subsection (c) does not render ineffective any law, statute or regulation, that restricts outright sales of general intangibles other than payment intangibles. They deal only with restrictions on security interests. The only sales of general intangibles that create security interests are sales of payment intangibles.

5. Terminology: "Account Debtor"; "Person Obligated on a Promissory Note." This Section uses the term "account debtor" as it is defined in Section 9-102. The term refers to the party, other than the debtor, to a general intangible, including a permit, license, franchise, or the like, and the person obligated on a health-care-insurance receivable, which is a type of account. The definition of "account debtor" does not limit the term to persons who are obligated to pay under a general intangible. Rather, the term includes all persons who are obligated on a general intangible, including those who are obligated to render performance in exchange for payment. In some cases, e.g., the creation of a security interest in a franchisee's rights under a franchise agreement, the principal payment obligation may be owed by the debtor (franchisee) to the account debtor (franchisor). This Section also refers to a "person obligated on a promissory note," inasmuch as those persons do not fall within the definition of "account debtor."

Example 2: A licensor and licensee enter into an agreement for the nonexclusive license of computer software. The licensee's interest in the license agreement is a general intangible. If the licensee grants to a secured party a security interest in its rights under the license agreement, the licensee is the debtor and the licensor is the account debtor. On the other hand, if the licensor grants to a secured party a security interest in its right to payment (an account) under the license agreement, the licensor is the debtor and the licensee is the account debtor. (This Section applies to the security interest in the general intangible but not to the security interest in the account, which is not a health-care-insurance receivable.)

6. Effects on Account Debtors and Persons Obligated on Promissory Notes. Subsections (a) and (c) affect two classes of persons. These subsections affect account debtors on general intangibles and health-care-insurance receivables and persons obligated on promissory notes. Subsection (c) also affects governmental entities that enact or determine rules of law. However, subsection (d) ensures that these affected persons are not affected adversely. That provision removes any burdens or adverse effects on these persons for which any rational basis could exist to restrict the effectiveness of an assignment or to exercise any remedies. For this reason, the effects of subsections (a) and (c) are immaterial insofar as those persons are concerned.

Subsection (a) does not override terms that do not directly prohibit, restrict, or require consent to an assignment but which might, nonetheless, present a practical impairment of the assignment. Properly read, however, this Section, like Section 9-406(d), reaches only covenants that prohibit, restrict, or require consents to assignments; it does not override all terms that might "impair" an assignment in fact.

Example 3: A licensor and licensee enter into an agreement for the nonexclusive license of valuable business software. The license agreement includes terms (i) prohibiting the licensee from assigning its rights under the license, (ii) prohibiting the licensee from disclosing to anyone certain information relating to the software and the licensor, and (iii) deeming prohibited assignments and prohibited disclosures to be defaults. The licensee wishes to obtain financing and, in exchange, is willing to grant a security interest in its rights under the license agreement. The secured party, reasonably, refuses to extend credit unless the licensee discloses the information that it is prohibited from disclosing under the license agreement. The secured party cannot determine the value of the proposed collateral in the

absence of this information. Under this Section, the terms of the license prohibiting the assignment (grant of the security interest) and making the assignment a default are ineffective. However, the nondisclosure covenant is not a term that prohibits the assignment or creation of a security interest in the license. Consequently, the nondisclosure term is enforceable even though the practical effect is to restrict the licensee's ability to use its rights under the license agreement as collateral.

The nondisclosure term also would be effective in the factual setting of Comment 2, Example 1. If the secured party's possession of the computers loaded with software would put it in a position to discover confidential information that the debtor was prohibited from disclosing, the licensor should be entitled to enforce its rights against the secured party. Moreover, the licensor could have required the debtor to obtain the secured party's agreement that (i) it would immediately return all copies of software loaded on the computers and that (ii) it would not examine or otherwise acquire any information contained in the software. This Section does not prevent an account debtor from protecting by agreement its independent interests that are unrelated to the "creation, attachment, or perfection" of a security interest. In Example 1, moreover, the secured party is not in possession of copies of software by virtue of its security interest or in connection with enforcing its security interest in the debtor's license of the software. Its possession is incidental to its possession of the computers, in which it has a security interest. Enforcing against the secured party a restriction relating to the software in no way interferes with its security interest in the computers.

7. **Effect in Assignor's Bankruptcy.** This Section could have a substantial effect if the assignor enters bankruptcy. Roughly speaking, Bankruptcy Code Section 552 invalidates security interests in property acquired after a bankruptcy petition is filed, except to the extent that the postpetition property constitutes proceeds of prepetition collateral.

Example 4: A debtor is the owner of a cable television franchise that, under applicable law, cannot be assigned without the consent of the municipal franchisor. A lender wishes to extend credit to the debtor, provided that the credit is secured by the debtor's "going business" value. To secure the loan, the debtor grants a security interest in all its existing and after-acquired property. The franchise represents the principal value of the business. The municipality refuses to consent to any assignment for collateral purposes. If other law were given effect, the security interest in the franchise would not attach; and if the debtor were to enter bankruptcy and sell the business, the secured party would receive but a fraction of the business's value. Under this Section, however, the security interest would attach to the franchise. As a result, the security interest would attach to the proceeds of any sale of the franchise while a bankruptcy is pending. However, this Section would protect the interests of the municipality by preventing the secured party from enforcing its security interest to the detriment of the municipality.

8. **Effect Outside of Bankruptcy.** The principal effects of this Section will take place outside of bankruptcy. Compared to the relatively few debtors that enter bankruptcy, there are many more that do not. By making available previously unavailable property as collateral, this Section should enable debtors to obtain additional credit. For purposes of determining whether to extend credit, under some circumstances a secured party may ascribe value to the collateral to which its security interest has attached, even if this Section precludes the secured party from enforcing the security interest without the agreement of the account debtor or person obligated on the promissory note. This may be the case where the secured party sees a likelihood of obtaining that agreement in the future. This may also be the case where the secured party anticipates that the collateral will give rise to a type of proceeds as to which this Section would not apply.

Example 5: Under the facts of Example 4, the debtor does not enter bankruptcy. Perhaps in exchange for a fee, the municipality agrees that the debtor may transfer the franchise to a buyer. As consideration for the transfer, the debtor receives from the buyer its check for part of the purchase price and its

promissory note for the balance. The security interest attaches to the check and promissory note as proceeds. See Section 9-315(a)(2). This Section does not apply to the security interest in the check, which is not a promissory note, health-care-insurance receivable, or general intangible. Nor does it apply to the security interest in the promissory note, inasmuch as it was not sold to the secured party.

9. Contrary Federal Law. This Section does not override federal law to the contrary. However, it does reflect an important policy judgment that should provide a template for future federal law reforms.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-408 renders certain restrictions upon the assignment of promissory notes, health-care-insurance receivables, and general intangibles ineffective for limited purposes. Under Section 36-9-408 covered restrictions are ineffective to prevent the creation or perfection of a security interest, but remain effective to prevent the enforcement of the security interest. In this regard, Section 36-9-408 contrasts sharply with Section 36-9-406.

Subsection (a) addresses contractual restrictions upon alienation. It applies to terms that prohibit, restrict, or require consent to assign or transfer, or create or perfect a security interest in a promissory note, health-care-insurance receivable or general intangible. Subsection (b), however, limits the scope of subsection (a) by providing that subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arose from a sale of the payment intangible or note. Under subsection (a)(1) such restrictions are ineffective to give rise to a default or breach.

Subsection (c) address restraints on alienation that arise from a rule of law, statute, or regulation. Subsection (c) applies to legal restraints that prohibit, restrict, or require the consent of a government official or account debtor to assign or transfer, or create a security interest in a promissory note, health-care-insurance receivable, or general intangible. Under subsection (c)(1) such restraints are ineffective to the extent they impair the creation, attachment, or perfection of a security interest. Under subsection (c) (2) the restraints are ineffective to give rise to a default or breach under the promissory note, health-care-insurance receivable, or general intangible. An example of a statutory restriction that is ineffective under subsection (c) is the prohibition against transferring a license to operate a cemetery company set forth in Section 39-55-205, S.C. Code Ann. (1976).

Subsection (d) makes clear the limited effect of finding a restraint ineffective under subsection (a) or (c). The intent of subsection (d) is to insure account debtors and persons obligated on promissory notes are not adversely affected. For example, although subsection (c)(1) renders Section 39-55-205 ineffective to prevent a secured party from taking a security interest in a debtor's cemetery license, subsection (d)(6) precludes the secured party from enforcing the security interest.

Definitional Cross :

"Account debtor" Section 36-9-102(a)(3)

"Agreement" Section 36-1-201(3)

"General intangible" Section 36-9-102(a)(42)

"Health-care-insurance receivable" Section 36-9-102(a)(46)

"Promissory note" Section 36-9-102(a)(65)

"Security interest" Section 36-1-201(37)

Cross --

Contractual and legal restrictions upon alienation of interests in accounts, chattel paper, payment intangibles, and promissory notes. Section 36-9-406(d)--(j).

SECTION 11. Section 36-9-502 of the 1976 Code is amended to read:

"Section 36-9-502. (a) Subject to subsection (b), a financing statement is sufficient only if it:

- (1) provides the name of the debtor;
- (2) provides the name of the secured party or a representative of the secured party; and
- (3) indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in Section 36-9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

- (1) indicate that it covers this type of collateral;
- (2) indicate that it is to be filed for record in the real property records;
- (3) provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this State if the description were contained in a record of the mortgage of the real property; and
- (4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if the:

- (1) ~~the~~ record indicates the goods or accounts that it covers;
- (2) ~~the~~ goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
- (3) ~~the~~ record satisfies the requirements for a financing statement in this section, but the:

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

(B) record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom Section 36-9-503(a)(6) applies; and

(4) ~~the~~ record is duly recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches."

OFFICIAL COMMENT

1. Source. Former Section 9-402(1), (5), (6).

2. "Notice Filing." This Section adopts the system of "notice filing." What is required to be filed is not, as under pre-UCC chattel mortgage and conditional sales acts, the security agreement itself, but only a simple record providing a limited amount of information (financing statement). The financing statement may be filed before the security interest attaches or thereafter. See subsection (d). See also Section 9-308 (a) (contemplating situations in which a financing statement is filed before a security interest attaches).

The notice itself indicates merely that a person may have a security interest in the collateral indicated. Further inquiry from the parties concerned will be necessary to disclose the complete state of affairs. Section 9-210 provides a statutory procedure under which the secured party, at the debtor's request, may be required to make disclosure. However, in many cases, information may be forthcoming without the need to resort to the formalities of that Section.

Notice filing has proved to be of great use in financing transactions involving inventory, accounts, and chattel paper, because it obviates the necessity of refileing on each of a series of transactions in a continuing arrangement under which the collateral changes from day to day. However, even in the case of filings that do not necessarily involve a series of transactions (e.g., a loan secured by a single item of equipment), a financing statement is effective to encompass transactions under a security agreement not in existence and not contemplated at the time the notice was filed, if the indication of collateral in the financing statement is sufficient to cover the collateral concerned. Similarly, a financing statement is effective to cover after-acquired property of the type indicated and to perfect with respect to future advances under security agreements, regardless of whether after-acquired property or future advances are mentioned in the financing statement and even if not in the contemplation of the parties at the time the financing statement was authorized to be filed.

3. Debtor's Signature; Required Authorization. Subsection (a) sets forth the simple formal requirements for an effective financing statement. These requirements are: (1) the debtor's name; (2) the name of a secured party or representative of the secured party; and (3) an indication of the collateral.

Whereas former Section 9-402(1) required the debtor's signature to appear on a financing statement, this Article contains no signature requirement. The elimination of the signature requirement facilitates paperless filing. (However, as PEB Commentary No. 15 indicates, a paperless financing statement was sufficient under former Article 9.) Elimination of the signature requirement also makes the exceptions provided by former Section 9-402(2) unnecessary.

The fact that this Article does not require that an authenticating symbol be contained in the public record does not mean that all filings are authorized. Rather, Section 9-509(a) entitles a person to file an initial financing statement, an amendment that adds collateral, or an amendment that adds a debtor only if the debtor authorizes the filing, and Section 9-509(d) entitles a person other than the debtor to file a termination statement only if the secured party of record authorizes the filing. Of course, a filing has legal effect only to the extent it is authorized. See Section 9-510.

Law other than this Article, including the law with respect to ratification of past acts, generally determines whether a person has the requisite authority to file a record under this Article. See Section 1-103. However, under Section 9-509(b), the debtor's authentication of (or becoming bound by) a security agreement ipso facto constitutes the debtor's authorization of the filing of a financing statement covering the collateral described in the security agreement. The secured party need not obtain a separate authorization.

Section 9-625 provides a remedy for unauthorized filings. Making an unauthorized filing also may give rise to civil or criminal liability under other law. In addition, this Article contains provisions that assist in the discovery of unauthorized filings and the amelioration of their practical effect. For example, Section 9-518 provides a procedure whereby a person may add to the public record a statement to the effect that a financing statement indexed under the person's name was wrongfully filed, and Section 9-509(d) entitles any person to file a termination statement if the secured party of record fails to comply with its obligation to file or send one to the debtor, the debtor authorizes the filing, and the termination statement so indicates. However, the filing office is neither obligated nor permitted to inquire into issues of authorization. See Section 9-520(a).

4. **Certain Other Requirements.** Subsection (a) deletes other provisions of former Section 9-402(1) because they seem unwise (real-property description for financing statements covering crops), unnecessary (adequacy of copies of financing statements), or both (copy of security agreement as financing statement). In addition, the filing office must reject a financing statement lacking certain other information formerly required as a condition of perfection (e.g., an address for the debtor or secured party). See Sections 9-516(b), 9-520(a). However, if the filing office accepts the record, it is effective nevertheless. See Section 9-520(c).

5. **Real-Property-Related Filings.** Subsection (b) contains the requirements for financing statements filed as fixture filings and financing statements covering timber to be cut or minerals and minerals-related accounts constituting as-extracted collateral. A description of the related real property must be sufficient to reasonably identify it. See Section 9-108. This formulation rejects the view that the real property description must be by metes and bounds, or otherwise conforming to traditional real-property practice in conveyancing, but, of course, the incorporation of such a description by reference to the recording data of a deed, mortgage or other instrument containing the description should suffice under the most stringent standards. The proper test is that a description of real property must be sufficient so that the financing statement will fit into the real-property search system and be found by a real-property searcher. Under the optional language in subsection (b)(3), the test of adequacy of the description is whether it would be adequate in a record of a mortgage of the real property. As suggested in the Legislative Note, more detail may be required if there is a tract indexing system or a land registration system.

If the debtor does not have an interest of record in the real property, a real-property-related financing statement must show the name of a record owner, and Section 9-519(d) requires the financing statement to be indexed in the name of that owner. This requirement also enables financing statements covering as-extracted collateral or timber to be cut and financing statements filed as fixture filings to fit into the real-property search system.

6. **Record of Mortgage Effective as Financing Statement.** Subsection (c) explains when a record of a mortgage is effective as a financing statement filed as a fixture filing or to cover timber to be cut or as-extracted collateral. Use of the term "record of a mortgage" recognizes that in some systems the record actually filed is not the record pursuant to which a mortgage is created. Moreover, "mortgage" is defined in Section 9-102 as an "interest in real property," not as the record that creates or evidences the mortgage or the record that is filed in the public recording systems. A record creating a mortgage may also create a

security interest with respect to fixtures (or other goods) in conformity with this Article. A single agreement creating a mortgage on real property and a security interest in chattels is common and useful for certain purposes. Under subsection (c), the recording of the record evidencing a mortgage (if it satisfies the requirements for a financing statement) constitutes the filing of a financing statement as to the fixtures (but not, of course, as to other goods). Section 9-515(g) makes the usual five-year maximum life for financing statements inapplicable to mortgages that operate as fixture filings under Section 9-502 (c). Such mortgages are effective for the duration of the real-property recording.

Of course, if a combined mortgage covers chattels that are not fixtures, a regular financing statement filing is necessary with respect to the chattels, and subsection (c) is inapplicable. Likewise, a financing statement filed as a "fixture filing" is not effective to perfect a security interest in personal property other than fixtures.

In some cases it may be difficult to determine whether goods are or will become fixtures. Nothing in this Part prohibits the filing of a "precautionary" fixture filing, which would provide protection in the event goods are determined to be fixtures. The fact of filing should not be a factor in the determining whether goods are fixtures. Cf. Section 9-505(b).

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-502 sets forth the requirements for a sufficient financing statement. Subsection (a) states the requirements all financing statements must meet. Subsection (b) sets forth additional requirements for fixture filings and financing statements covering as-extracted collateral and timber to be cut.

Subsection (a) provides that a financing statement is sufficient only if it provides the name of the debtor, provides the name of the secured party or representative of the secured party, and indicates the collateral covered. Note that in contrast to former Section 36-9-402(1), current law does not condition the effectiveness of a financing statement upon its being signed by the debtor. Subsection (a), however, must be read in conjunction with Section 36-9-516(b) and Section 36-9-520(a). Under Section 36-9-520 (a) a filing office is required to refuse to accept a financing statement for filing if the financing statement fails to meet the requirements of Section 36-9-516(b). Therefore, a filing office must refuse to accept a financing statement that meets the requirements of Section 36-9-502(a) but fails to meet the requirements of Section 36-9-516(b). If the filing office refuses to accept such a financing statement for filing, the financing statement will not be effective to perfect a security interest. Nevertheless, if the filing office accepts such a financing statement for filing, under Section 36-9-520(c) the financing statement is effective. The priority of a security interest perfected by a filed financing statement that does not meet the requirements of Section 36-9-516(b) may be subordinated under Section 36-9-338.

The 2013 amendments amended the provisions of Section 36-9-502(c) that define the requirements that a mortgage recorded in the office of the register of deeds must meet in order to be effective as a financing statement filed as a fixture filing or covering as extracted collateral. Under revised Section 36-9-502(c)(3)(B), if the debtor is an individual, a mortgage sufficiently provides the name of the debtor if it provides that individual name of the debtor or the debtor's surname and first personal name, even if the debtor is an individual subject to the "drivers license" rule of Section 36-9-504(a)(4).

Definitional Cross :

"Account" Section 36-9-102(a)(2)

"As-extracted collateral" Section 36-9-102(a)(6)

"Collateral" Section 36-9-102(a)(12)

"Debtor" Section 36-9-102(a)(28)

"Financing statement" Section 36-9-102(a)(39)

"Fixture filing" Section 36-9-102(a)(40)

"Fixtures" Section 36-9-102(a)(41)

"Goods" Section 36-9-102(a)(44)

"Mortgage" Section 36-9-102(a)(55)

"Secured party" Section 36-9-102(a)(73)

"Security agreement" Section 36-9-102(a)(74)

Cross --

1. Sufficiency of the name of the debtor. Section 36-9-503(a)--(c).
2. Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement. Section 36-9-503(d).
3. Sufficiency of indication of type of collateral covered. Section 36-9-504.
4. Effect of errors and omissions upon the sufficiency of a financing statement. Section 36-9-505.
5. Duration of the effectiveness of a financing statement. Section 36-9-515.
6. Grounds upon which a filing office is required to refuse to accept a financing statement for filing. Sections 36-9-516(b) and 36-9-520(a).
7. Priority of security interests perfected by filing a financing statement which was effective under Section 36-9-502, but failed to meet the requirements of Section 36-9-516(b). Section 36-9-338.
8. Form of a financing statement. Section 36-9-521.

SECTION 12. Section 36-9-503 of the 1976 Code is amended to read:

"Section 36-9-503. (a) A financing statement sufficiently provides the name of the debtor:

(1) except as otherwise provided in item (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name of the debtor indicated that is stated to be the registered organization's name on the public organic record of most recently filed with or issued or enacted by the debtor's registered organization's jurisdiction of organization which shows the debtor to have been organized purports to state, amend, or restate the registered organization's name;

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

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

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

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

collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) provides, as the name of the debtor, if:

(i) the organic record of the trust specifies a name for the trust, the name specified; or

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

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

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

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

(4) subject to subsection (g), if the debtor is an individual to whom this State has issued a driver's license or identification card that has not expired, only if the financing statement provides the name of the individual that is indicated on the driver's license or identification card;

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

~~(4)~~(6) in other cases:

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

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

(b) A financing statement that provides the name of the debtor in accordance with subsection (a) is not

rendered ineffective by the absence of:

- (1) a trade name or other name of the debtor; or
- (2) unless required under subsection ~~(a)(4)(B)~~ (a)(6)(B), names of partners, members, associates, or other persons comprising the debtor.
- (c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.
- (d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.
- (e) A financing statement may provide the name of more than one debtor and the name of more than one secured party.
- (f) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the 'name of the decedent' under subsection (a)(2).
- (g) If this state has issued to an individual more than one driver's license or identification card of a kind described in subsection (a)(4), the one that was issued most recently is the one to which subsection (a)(4) refers.
- (h) In this section, the 'name of the settlor or testator' means:
 - (1) if the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name; or
 - (2) in other cases, the name of the settlor or testator indicated in the trust's organic record."

OFFICIAL COMMENT

1. Source. Subsections (a)(6)(A), (b), and (c) derive from former Section 9-402(7); otherwise, new.
2. Debtor's Name. The requirement that a financing statement provide the debtor's name is particularly important. Financing statements are indexed under the name of the debtor, and those who wish to find financing statements search for them under the debtor's name. Subsection (a) explains what the debtor's name is for purposes of a financing statement.
 - a. Registered Organizations. As a general matters, if the debtor is a "registered organization" (defined in Section 9-102 so as to ordinarily include corporations, limited partnerships, limited liability companies, and statutory trusts), then the debtor's name is the name shown on the "public organic record" of the debtor's "jurisdiction of organization" (both also defined in Section 9-102). Subsections (a)(2) and (a)(3) contain special rules for decedent's estates and common-law trusts. (Subsection (a)(1) applies to business trusts that are registered organizations.) Note that, even if the name provided in an initial financing statement is correct, the filing office nevertheless must reject the financing statement if it does not identify an individual debtor's last name (e.g., if it is not clear whether the debtor's name is Perry Mason or Mason Perry). See Section 9-516(b)(3)(C).

b. Collateral Held in a Trust. When a financing statement covers collateral that is held in a trust that is a registered organization, subsection (a)(1) governs the name of the debtor. If, however, the collateral is held in a trust that is not a registered organization, subsection (a)(3) applies. (As used in this Article, collateral "held in a trust" includes collateral as to which the trust is the debtor as well as collateral as to which the trustee is the debtor.) This subsection adopts a convention that generally results in the name of the trust or the name of the trust's settlor being provided as the name of the debtor on the financing statement, even if, as typically is the case with common-law trusts, the "debtor" (defined in Section 9-102) is a trustee acting with respect to the collateral. This convention provides more accurate information and eases the burden for searchers, who otherwise would have difficulty with respect to debtor trustees that are large financial institutions. More specifically, if a trust's organic record specifies a name for the trust, subsection (a)(3) requires the financing statement to provide, as the name of the debtor, the name for the trust specified in the organic record. In addition, the financing statement must indicate, in a separate part of the financing statement, that the collateral is held in a trust. If the organic record of the trust does not specify a name for the trust, the name required for the financing statement is the name of the settlor or, in the case of a testamentary trust, the testator, in each case as determined under subsection (h). In addition, the financing statement must provide sufficient additional information to distinguish the trust from other trusts having one or more of the same settlors or the same testator. In many cases, an indication of the date on which the trust was settled will satisfy this requirement. If neither the name nor the additional information indicates that the collateral is held in a trust, the financing statement must indicate that fact, but not as part of the debtor's name. Neither the indication that the collateral held in a trust nor the additional information that distinguishes the trust from other trusts having one or more of the same settlors or the same testator is part of the debtor's name. Nevertheless, a financing statement that fails to provide, in a separate part of the financing statement, any required indication or additional information does not sufficiently provide the name of the debtor under Sections 9-502(a) and 9-503(a)(3), does not "substantially satisfy the requirements" of Part 5 within the meaning of Section 9-506(a) and so is ineffective.

d. Individuals. This Article provides alternative approaches towards the requirement for providing the name of a debtor who is an individual.

Alternative A. Alternative A distinguishes between two groups of individual debtors. For debtors holding an unexpired driver's license issued by the State where the financing statement is filed (ordinarily the State where the debtor maintains the debtor's principal residence), Alternative A requires that a financing statement provide the name indicated on the license. When a debtor does not hold an unexpired driver's license issued by the relevant State, the requirement can be satisfied in either of two ways. A financing statement is sufficient if it provides the "individual name" of the debtor. Alternatively, a financing statement is sufficient if it provides the debtor's surname (i.e., family name) and first personal name (i.e., first name other than the surname).

Alternative B. Alternative B provides three ways in which a financing statement may sufficiently provide the name of an individual who is a debtor. The "individual name" of the debtor is sufficient, as is the debtor's surname and first personal name. If the individual holds an unexpired driver's license issued by the State where the financing statement is filed (ordinarily the State of the debtor's principal residence), the name indicated on the driver's license also is sufficient.

Name indicated on the driver's license. A financing statement does not "provide the name of the individual which is indicated" on the debtor's driver's license unless the name it provides is the same as the name indicated on the license. This is the case even if the name indicated on the debtor's driver's license contains an error.

Example 1: Debtor, an individual whose principal residence is in Illinois, grants a security interest to SP

in certain business equipment. SP files a financing statement with the Illinois filing office. The financing statement provides the name appearing on Debtor's Illinois driver's license, "Joseph Allan Jones." Regardless of which Alternative is in effect in Illinois, this filing would be sufficient under Illinois' Section 9-503(a), even if Debtor's correct middle name is Alan, not Allan. A filing against "Joseph A. Jones" or "Joseph Jones" would not "provide the name of the individual which is indicated" on the debtor's driver's license. However, these filings might be sufficient if Alternative A is in effect in Illinois and Jones has no current (i.e., unexpired) Illinois driver's license, or if Illinois has enacted Alternative B.

Determining the name that should be provided on the financing statement must not be done mechanically. The order in which the components of an individual's name appear on a driver's license differs among the States. Had the debtor in Example 1 obtained a driver's license from a different State, the license might have indicated the name as "Jones Joseph Allan." Regardless of the order on the driver's license, the debtor's surname must be provided in the part of the financing statement designated for the surname.

Alternatives A and B both refer to a license issued by "this State." Perfection of a security interest by filing ordinarily is determined by the law of the jurisdiction in which the debtor is located. See Section 9-301(1). (Exceptions to the general rule are found in Section 9-301(3) and (4), concerning fixture filings, timber to be cut, and as-extracted collateral.) A debtor who is an individual ordinarily is located at the individual's principal residence. See Section 9-307(b). (An exception appears in Section 9-307(c).) Thus, a given State's Section 9-503 ordinarily will apply during any period when the debtor's principal residence is located in that State, even if during that time the debtor holds or acquires a driver's license from another State. When a debtor's principal residence changes, the location of the debtor under Section 9-307 also changes and perfection by filing ordinarily will be governed by the law of the debtor's new location. As a consequence of the application of that jurisdiction's Section 9-316, a security interest that is perfected by filing under the law of the debtor's former location will remain perfected for four months after the relocation, and thereafter if the secured party perfects under the law of the debtor's new location. Likewise, a financing statement filed in the former location may be effective to perfect a security interest that attaches after the debtor relocates. See Section 9-316(h).

Individual name of the debtor. Article 9 does not determine the "individual name" of a debtor. Nor does it determine which element or elements in a debtor's name constitute the surname. In some cases, determining the "individual name" of a debtor may be difficult, as may determining the debtor's surname. This is because in the case of individuals, unlike registered organizations, there is no public organic record to which reference can be made and from which the name and its components can be definitively determined. Names can take many forms in the United States. For example, whereas a surname is often colloquially referred to as a "last name," the sequence in which the elements of a name are presented is not determinative. In some cultures, the surname appears first, while in others it may appear in a location that is neither first nor last. In addition, some surnames are composed of multiple elements that, taken together, constitute a single surname. These elements may or may not be separated by a space or connected by a hyphen, "i," or "y." In other instances, some or all of the same elements may not be part of the surname. In some cases, a debtor's entire name might be composed of only a single element, which should be provided in the part of the financing statement designated for the surname.

In disputes as to whether a financing statement sufficiently provides the "individual name" of a debtor, a court should refer to any non-UCC law concerning names. However, case law about names may have developed in contexts that implicate policies different from those of Article 9. A court considering an individual's name for purposes of determining the sufficiency of a financing statement is not necessarily bound by cases that were decided in other contexts and for other purposes. Individuals are asked to provide their names on official documents such as tax returns and bankruptcy petitions. An individual

may provide a particular name on an official document in response to instructions relating to the document rather than because the name is actually the individual's name. Accordingly, a court should not assume that the name an individual provides on an official document necessarily constitutes the "individual name" for purposes of the sufficiency of the debtor's name on a financing statement. Likewise, a court should not assume that the name as presented on an individual's birth certificate is necessarily the individual's current name.

In applying nonUCC law for purposes of determining the sufficiency of a debtor's name on a financing statement, a court should give effect to the instruction in Section 1-103(a)(1) that the UCC "must be liberally construed and applied to promote its underlying purposes and policies," which include simplifying and clarifying the law governing commercial transactions. Thus, determination of a debtor's name in the context of the Article 9 filing system must take into account the needs of both filers and searchers. Filers need a simple and predictable system in which they can have a reasonable degree of confidence that, without undue burden, they can determine a name that will be sufficient so as to permit their financing statements to be effective. Likewise, searchers need a simple and predictable system in which they can have a reasonable degree of confidence that, without undue burden, they will discover all financing statements pertaining to the debtor in question. The court also should take into account the purpose of the UCC to make the law uniform among the various jurisdictions. See Section 1-103(a)(3). Of course, once an individual debtor's name has been determined to be sufficient for purposes of Section 9-503, a financing statement that provides a variation of that name, such as a "nickname" that does not constitute the debtor's name, does not sufficiently provide the name of the debtor under this section. Cf. Section 9-503(c) (a financing statement providing only a debtor's trade name is not sufficient). If there is any doubt about an individual debtor's name, a secured party may choose to file one or more financing statements that provide a number of possible names for the debtor and a searcher may similarly choose to search under a number of possible names. Note that, even if the name provided in an initial financing statement is correct, the filing office nevertheless must reject the financing statement if it does not identify an individual debtor's surname (e.g., if it is not clear whether the debtor's surname is Perry or Mason). See Section 9-516(b)(3)(C).

3. Secured Party's Name. New subsection (d) makes clear that when the secured party is a representative, a financing statement is sufficient if it names the secured party, whether or not it indicates any representative capacity. Similarly, a financing statement that names a representative of the secured party is sufficient, even if it does not indicate the representative capacity.

Example 2: Debtor creates a security interest in favor of Bank X, Bank Y, and Bank Z, but not to their representative, the collateral agent (Bank A). The collateral agent is not itself a secured party. See Section 9-102. Under Sections 9-502(a) and 9-503(d), however, a financing statement is effective if it names as secured party Bank A and not the actual secured parties, even if it omits Bank A's representative capacity.

Each person whose name is provided in an initial financing statement as the name of the secured party or representative of the secured party is a secured party of record. See Section 9-511.

4. Multiple Names. Subsection (e) makes explicit what is implicit under former Article 9: a financing statement may provide the name of more than one debtor and secured party. See Section 1-102(5)(a) (words in the singular include the plural). With respect to records relating to more than one debtor, see Section 9-520(d). With respect to financing statements providing the name of more than one secured party, see Sections 9-509(e) and 9-510(b).

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-503 sets forth the standards for determining whether a financing statement sufficiently provides the name of the debtor. Subsection (a)(1) provides that if a debtor is a registered corporation, such as a corporation, limited partnership, or limited liability company, the financing statement is sufficient only if it provides the name of the debtor indicated on the public record which establishes that debtor was organized. Subsection (c) clarifies former law by expressly providing that a financing statement that provides only the debtor's trade name is not sufficient.

The 2013 amendments substantially revised the requirements in Section 36-9-503 that a financing statement must meet to sufficiently provide the name of the debtor. The amendments utilize Alternative A from the Uniform Code Commissioners for determining the requirements for providing the name of a debtor who is an individual.

Definitional Cross :

"Debtor" Section 36-9-102(a)(28)

"Financing statement" Section 36-9-102(a)(39)

"Organization" Section 36-1-201(28)

"Registered organization" Section 36-9-102(a)(71)

"Secured party" Section 36-9-102(a)(73)

SECTION 13. Section 36-9-507 of the 1976 Code is amended to read:

"Section 36-9-507. (a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subsection (c) and Section 36-9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under Section 36-9-506.

(c) ~~If a debtor so changes its~~ the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor pursuant to Section 36-9-503(a) so that the financing statement becomes seriously misleading under ~~pursuant to~~ Section 36-9-506:

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

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

OFFICIAL COMMENT

1. Source. Former Section 9-402(7).
2. Scope of Section. This Section deals with situations in which the information in a proper financing statement becomes inaccurate after the financing statement is filed. Compare Section 9-338, which deals with situations in which a financing statement contains a particular kind of information concerning the debtor (i.e., the information described in Section 9-516(b)(5)) that is incorrect at the time it is filed.
3. Post-Filing Disposition of Collateral. Under subsection (a), a financing statement remains effective even if the collateral is sold or otherwise disposed of. This subsection clarifies the third sentence of former Section 9-402(7) by providing that a financing statement remains effective following the disposition of collateral only when the security interest or agricultural lien continues in that collateral. This result is consistent with the conclusion of PEB Commentary No. 3. Normally, a security interest does continue after disposition of the collateral. See Section 9-315(a). Law other than this Article determines whether an agricultural lien survives disposition of the collateral.

As a consequence of the disposition, the collateral may be owned by a person other than the debtor against whom the financing statement was filed. Under subsection (a), the secured party remains perfected even if it does not correct the public record. For this reason, any person seeking to determine whether a debtor owns collateral free of security interests must inquire as to the debtor's source of title and, if circumstances seem to require it, search in the name of a former owner. Subsection (a) addresses only the sufficiency of the information contained in the financing statement. A disposition of collateral may result in loss of perfection for other reasons. See Section 9-316.

Example: Dee Corp. is an Illinois corporation. It creates a security interest in its equipment in favor of Secured Party. Secured Party files a proper financing statement in Illinois. Dee Corp. sells an item of equipment to Bee Corp., a Pennsylvania corporation, subject to the security interest. The security interest continues, see Section 9-315(a), and remains perfected, see Section 9-507(a), notwithstanding that the financing statement is filed under "D" (for Dee Corp.) and not under "B." However, because Bee Corp. is located in Pennsylvania and not Illinois, see Section 9-307, unless Secured Party perfects under Pennsylvania law within one year after the transfer, its security interest will become unperfected and will be deemed to have been unperfected against purchasers of the collateral. See Section 9-316.

4. Other Post-Filing Changes. Subsection (b) provides that, as a general matter, post-filing changes that render a financing statement seriously misleading have no effect on a financing statement. The financing statement remains effective. It is subject to two exceptions: Section 9-508 and Section 9-507(c). Section 9-508 addresses the effectiveness of a financing statement filed against an original debtor when a new debtor becomes bound by the original debtor's security agreement. It is discussed in the Comments to that Section. Section 9-507(c) addresses cases in which a filed financing statement provides a name that, at the time of filing, satisfies the requirements of Section 9-503(a) with respect to the named debtor but, at a later time, no longer does so.

Example 1: Debtor, an individual whose principal residence is in California, grants a security interest to SP in certain business equipment. SP files a financing statement with the California filing office. Alternative A is in effect in California. The financing statement provides the name appearing on Debtor's California driver's license, "James McGinty," Debtor obtains a court order changing his name to "Roger McGuinn" but does not change his driver's license. Even after the court order issues, the name provided for the debtor in the financing statement is sufficient under Section 9-503(a). Accordingly, Section 9-507(c) does not apply.

The same result would follow if Alternative B is in effect in California.

Under Section 9-503(a)(6) (Alternative A), if the debtor holds a current (i.e., unexpired) driver's license issued by the State where the financing statement is filed, the name required for the financing statement is the name indicated on the license that was issued most recently by that State. If the debtor does not have a current driver's license issued by that State, then the debtor's name is determined under subsection (a)(5). It follows that a debtor's name may change, and a financing statement providing the name on the debtor's then-current driver's license may become seriously misleading, if the license expires and the debtor's name under subsection (a)(5) is different. The same consequences may follow if a debtor's driver's license is renewed and the names on the licenses differ.

Example 2: The facts are as in Example I. Debtor's driver's license expires one year after the entry of the court order changing Debtor's name. Debtor does not renew the license. Upon expiration of the license, the name required for sufficiency by Section 9-503(a) is the individual name of the debtor or the debtor's surname and first personal name. The name "James McGinty" has become insufficient.

Example 3: The facts are as in Example I. Before the license expires, Debtor renews the license. The name indicated on the new license is "Roger McGuinn." Upon issuance of the new license, "James McGinty" becomes insufficient as the debtor's name under Section 9-503(a).

The same results would follow if Alternative B is in effect in California (assuming that, following the issuance of the court order, "James McGinty" is neither the individual name of the debtor nor the debtor's surname and first personal name).

Even if the name provided as the name of the debtor becomes insufficient under Section 9-503(a), the filed financing statement does not become seriously misleading, and Section 9-507(c) does not apply, if the financing statement can be found by searching under the debtor's "correct" name, using the filing office's standard search logic. See Section 9-506. Any name that satisfies Section 9-503(a) at the time of the search is a "correct name" for these purposes. Thus, assuming that a search of the records of the California filing office under "Roger McGuinn," using the filing office's standard search logic, would not disclose a financing statement naming "James McGinty," the financing statement in Examples 2 and 3 has become seriously misleading and Section 9-507(c) applies.

If a filed financing statement becomes seriously misleading because the name it provides for a debtor becomes insufficient, the financing statement, unless amended to provide a sufficient name for the debtor, is effective only to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change. If an amendment that provides a sufficient name is filed within four months after the change, the financing statement as amended would be effective also with respect to collateral acquired more than four months after the change. If an amendment that provides a sufficient name is filed more than four months after the change, the financing statement as amended would be effective also with respect to collateral acquired more than four months after the change, but only from the time of the filing of the amendment.

If a name change renders a filed financing statement seriously misleading, the financing statement is not effective as to collateral acquired more than four months after the change, unless before the expiration of the four months an amendment is filed that specifies the debtor's new correct name (or provides an incorrect name that renders the financing statement not seriously misleading under Section 9-506). As under former Section 9-402(7), the original financing statement would continue to be effective with respect to collateral acquired before the name change as well as collateral acquired within the four-month period.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-507 addresses the effect that certain post-filing events have upon the continued effectiveness of a filed financing statement. Subsection (a) provides that a financing statement remains effective to perfect a security interest that continues in collateral that a debtor has sold or otherwise disposed of. With two exceptions, subsection (b) provides that a filed financing statement is not rendered ineffective because after the filing the information provided in the financing statement became seriously misleading. The first exception arises when a debtor so changes its name that it filed financing statement becomes seriously misleading under Section 36-9-506. In that situation the filed financing statement is not effective to perfect a security interest in collateral acquired more than four months after the name change. The second exception can arise when a new debtor becomes bound by a security agreement entered into by the original debtor and the secured party has filed under the name of the original debtor. Section 36-9-508(b) provides that if the difference between the names of original debtor and the new debtor causes the filed financing statement to be seriously misleading, that financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after it became bound as a new debtor.

Definitional Cross :

"Agricultural lien" Section 36-9-102(a)(5)

"Collateral" Section 36-9-102(a)(12)

"Debtor" Section 36-9-102(a)(28)

"Financing statement" Section 36-9-102(a)(39)

"New debtor" Section 36-9-102(a)(56)

"Original debtor" Section 36-9-102(a)(60)

"Security interest" Section 36-1-201(37)

Cross --

1. A security interest or agricultural lien continues in collateral notwithstanding a sale or other disposition unless the secured party has authorized the disposition free of the security interest or agricultural lien. Section 36-9-315(a).
2. If the collateral is transferred to a person located in another jurisdiction a secured party who filed against the transferor in the jurisdiction where the transferor was located must file against the transferee in the jurisdiction where the transferee is located within one year of the transfer in order to retain a perfected security interest in the transferred collateral. Section 36-9-316(a)(3). Note that a transferee who takes subject to a security interest under Section 36-9-315(a)(1) becomes a debtor. See Section 36-9-315(a)(1) Section 36-9-102, Official Comment 2.a. As a debtor, the transferee authorized the secured party to file an initial financing statement against the transferee. Section 36-9-509(c).
3. Buyer in ordinary course of business takes free of a perfected security interest created by the buyer's seller. Section 36-9-320(a).
4. A licensee in ordinary course of business takes its rights in a nonexclusive license free of a security interest created by the licensor. Section 36-9-321(b).

5. A lessee in ordinary course of business takes free of a perfected security interest created by the lessor. Section 36-9-321(c).
6. Priority of security interests in transferred collateral. Section 36-9-325.
7. Rules for determining whether a change in the debtor's name renders a filed financing statement seriously misleading. Section 36-9-506(b) and (c).
8. When a new debtor becomes bound by a security agreement entered into by an original debtor. Section 36-9-203(d) and (e).
9. When a filing against an original debtor perfects a security interest in collateral acquired by a new debtor. Section 36-9-508.
10. Priority of security interests created by a new debtor. Section 36-9-326.

SECTION 14. Section 36-9-515 of the 1976 Code is amended to read:

"Section 36-9-515. (a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five years after the date of filing.

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

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) or the thirty-year period specified in subsection (b), whichever is applicable.

(e) Except as otherwise provided in Section 36-9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

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

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under Section 36-9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage

is released or satisfied of record or its effectiveness otherwise terminates as to the real property."

OFFICIAL COMMENT

1. Source. Former Section 9-403(2), (3), (6).
2. Period of Financing Statement's Effectiveness. Subsection (a) states the general rule: a financing statement is effective for a five-year period unless its effectiveness is continued under this Section or terminated under Section 9-513. Subsection (b) provides that if the financing statement relates to a public-finance transaction or a manufactured-home transaction and so indicates, the financing statement is effective for 30 years. These financings typically extend well beyond the standard, five-year period. Under subsection (f), a financing statement filed against a transmitting utility remains effective indefinitely, until a termination statement is filed. Likewise, under subsection (g), a mortgage effective as a fixture filing remains effective until its effectiveness terminates under real-property law.
3. Lapse. When the period of effectiveness under subsection (a) or (b) expires, the effectiveness of the financing statement lapses. The last sentence of subsection (c) addresses the effect of lapse. The deemed retroactive unperfection applies only with respect to purchasers for value; unlike former Section 9-403 (2), it does not apply with respect to lien creditors.

Example 1: SP-1 and SP-2 both hold security interests in the same collateral. Both security interests are perfected by filing. SP-1 filed first and has priority under Section 9-322(a)(1). The effectiveness of SP-1's filing lapses. As long as SP-2's security interest remains perfected thereafter, SP-2 is entitled to priority over SP-1's security interest, which is deemed never to have been perfected as against a purchaser for value (SP-2). See Section 9-322(a)(2).

Example 2: SP holds a security interest perfected by filing. On July 1, LC acquires a judicial lien on the collateral. Two weeks later, the effectiveness of the financing statement lapses. Although the security interest becomes unperfected upon lapse, it was perfected when LC acquired its lien. Accordingly, notwithstanding the lapse, the perfected security interest has priority over the rights of LC, who is not a purchaser. See Section 9-317(a)(2).

4. Effect of Debtor's Bankruptcy. Under former Section 9-403(2), lapse was tolled if the debtor entered bankruptcy or another insolvency proceeding. Nevertheless, being unaware that insolvency proceedings had been commenced, filing offices routinely removed records from the files as if lapse had not been tolled. Subsection (c) deletes the former tolling provision and thereby imposes a new burden on the secured party: to be sure that a financing statement does not lapse during the debtor's bankruptcy. The secured party can prevent lapse by filing a continuation statement, even without first obtaining relief from the automatic stay. See Bankruptcy Code Section 362(b)(3). Of course, if the debtor enters bankruptcy before lapse, the provisions of this Article with respect to lapse would be of no effect to the extent that federal bankruptcy law dictates a contrary result (e.g., to the extent that the Bankruptcy Code determines rights as of the date of the filing of the bankruptcy petition).
5. Continuation Statements. Subsection (d) explains when a continuation statement may be filed. A continuation statement filed at a time other than that prescribed by subsection (d) is ineffective, see Section 9-510(c), and the filing office may not accept it. See Sections 9-520(a), 9-516(b). Subsection (e) specifies the effect of a continuation statement and provides for successive continuation statements.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-515 addresses issues concerning the duration of the effectiveness of a filed financing statement. As a general rule, subsection (a) provides that a financing statement remains effective for five years from the date of filing. This rule, however, is subject to a number of exceptions. Under subsection (b) an initial financing statement filed in a public-financing transactions or a manufactured-home transaction is effective for 30 years. Moreover, in a manufactured-home transaction a secured party would typically perfect under the certificate of title statute in which case that statute rather than Article 9 would control the duration of the perfected status of the security interest. See Section 36-9-311(c). Under subsection (f) if a debtor is a transmitting utility, a filed financing statement remains effective until a termination statement is filed. Under subsection (g) a mortgage recorded in lieu of a fixture filing remains effective until the mortgage is released or satisfied of record.

Subsection (c) provides that the effectiveness of a filed financing statement lapses upon the expiration of its period of effectiveness unless a continuation statement is properly filed. Upon the lapse of its financing statement a secured party's security interest or agricultural lien becomes unperfected. Moreover, a security interest or agricultural lien that becomes unperfected upon lapse, is deemed to have never been perfected against a purchaser of the collateral for value.

Under subsections (d) and (e) a secured party can avoid lapse by filing a continuation statement. The continuation statement must be filed within the final six months of the effective period of the financing statement. The continuation statement will extend the effectiveness of the financing statement for five years. Succeeding continuation statements may be filed.

Section 36-9-515 does not include a provision comparable to former Section 36-9-403(2) that tolled the lapse of a financing statement when a debtor entered a bankruptcy or insolvency proceeding.

Definitional Cross :

"Agricultural lien" Section 36-9-102(a)(5)

"Collateral" Section 36-9-102(a)(12)

"Continuation statement" Section 36-9-102(a)(27)

"Financing statement" Section 36-9-102(a)(39)

"Fixture filing" Section 36-9-102(a)(40)

"Manufactured-home transaction" Sections 36-9-102(a)(54)

"Mortgage" Section 36-9-102(a)(55)

"Public-finance transaction" Section 36-9-102(a)(67)

"Purchaser" Section 36-1-201(33)

"Termination statement" Section 36-9-102(a)(80)

"Transmitting utility" Section 36-9-102(a)(81)

"Value" Section 36-1-201(44)

Cross --

1. A continuation statement not filed within the six-month period proscribed by Section 36-9-515(d) is ineffective. Section 36-9-510(c).
2. A "manufactured home" as defined in Section 36-9-102(a)(53) would qualify as either a "house trailer" under Section 56-19-10(10), S.C. Code Ann. (Supp. 1999) or as a "mobile home" under Section 56-19-10(30), S.C. Code Ann. (Supp. 1999). In either case, a security interest would be perfected under the Certificate of Title Statute. See Section 56-19-620, S.C. Code Ann. (1976). As a result, under Section 36-9-311(c) the Certificate of Title Statute rather than Section 36-9-515(b) would control the duration of the perfection of a security interest in a manufactured home. The Certificate of Title Statute does not limit the duration of a perfected security interest.

SECTION 15. Section 36-9-516 of the 1976 Code, as last amended by Act 161 of 2005, is further amended to read:

"Section 36-9-516. (a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

- (1) the record is not communicated by a method or medium of communication authorized by the filing office;
- (2) an amount equal to or greater than the applicable filing fee is not tendered;
- (3) the filing office is unable to index the record because:
 - (A) in the case of an initial financing statement, the record does not provide a name for the debtor;
 - (B) in the case of an amendment or ~~correction~~ information statement, the record:
 - (i) does not identify the initial financing statement as required by Section 36-9-512 or 36-9-518, as applicable; or
 - (ii) identifies an initial financing statement whose effectiveness has lapsed under Section 36-9-515;
 - (C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's ~~last name~~ surname; or
 - (D) in the case of a record filed or recorded in the filing office described in Section 36-9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;
- (4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;
- (5) in the case of an initial financing statement or an amendment that provides a name of a debtor

which was not previously provided in the financing statement to which the amendment relates, the record does not:

- (A) provide a mailing address for the debtor;
 - (B) indicate whether the name provided as the name of the debtor is the name of an individual or an organization; ~~or~~
 - ~~(C) if the financing statement indicates that the debtor is an organization, provide:~~
 - ~~(i) a type of organization for the debtor;~~
 - ~~(ii) a jurisdiction of organization for the debtor; or~~
 - ~~(iii) an organizational identification number for the debtor or indicate that the debtor has none;~~
 - (6) in the case of an assignment reflected in an initial financing statement under Section 36-9-514(a) or an amendment filed under Section 36-9-514(b), the record does not provide a name and mailing address for the assignee;
 - (7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by Section 36-9-515(d);
 - (8) in the case of a record presented for filing at the Office of the Secretary of State, the Secretary of State determines that the record is not created pursuant to this chapter or is otherwise intended for an improper purpose, such as to defraud, hinder, harass, or otherwise wrongfully interfere with a person; or
 - (9) in the case of a record presented for filing at the Office of the Secretary of State, the same person or entity is listed as both debtor and secured party, the collateral described is not within the scope of this chapter, or that the record is being filed for a purpose other than a transaction that is within the scope of this chapter.
- (c) For purposes of subsection (b):
- (1) a record does not provide information if the filing office is unable to read or decipher the information; and
 - (2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by Section 36-9-512, 36-9-514, or 36-9-518, is an initial financing statement.
- (d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files."

OFFICIAL COMMENT

1. Source. Subsection (a): former Section 9-403(1); the remainder is new.

2. **What Constitutes Filing.** Subsection (a) deals generically with what constitutes filing of a record, including an initial financing statement and amendments of all kinds (e.g., assignments, termination statements, and continuation statements). It follows former Section 9-403(1), under which either acceptance of a record by the filing office or presentation of the record and tender of the filing fee constitutes filing.

3. **Effectiveness of Rejected Record.** Subsection (b) provides an exclusive list of grounds upon which the filing office may reject a record. See Section 9-520(a). Although some of these grounds would also be grounds for rendering a filed record ineffective (e.g., an initial financing statement does not provide a name for the debtor), many others would not be (e.g., an initial financing statement does not provide a mailing address for the debtor or secured party of record). Neither this Section nor Section 9-520 requires or authorizes the filing office to determine, or even consider, the accuracy of information provided in a record.

A financing statement or other record that is communicated to the filing office but which the filing office refuses to accept provides no public notice, regardless of the reason for the rejection. However, this Section distinguishes between records that the filing office rightfully rejects and those that it wrongfully rejects. A filer is able to prevent a rightful rejection by complying with the requirements of subsection (b). No purpose is served by giving effect to records that justifiably never find their way into the system, and subsection (b) so provides.

Subsection (d) deals with the filing office's unjustified refusal to accept a record. Here, the filer is in no position to prevent the rejection and as a general matter should not be prejudiced by it. Although wrongfully rejected records generally are effective, subsection (d) contains a special rule to protect a third-party purchaser of the collateral (e.g., a buyer or competing secured party) who gives value in reliance upon the apparent absence of the record from the files. As against a person who searches the public record and reasonably relies on what the public record shows, subsection (d) imposes upon the filer the risk that a record failed to make its way into the filing system because of the filing office's wrongful rejection of it. (Compare Section 9-517, under which a misindexed financing statement is fully effective.) This risk is likely to be small, particularly when a record is presented electronically, and the filer can guard against this risk by conducting a postfiling search of the records. Moreover, Section 9-520(b) requires the filing office to give prompt notice of its refusal to accept a record for filing.

4. **Method or Medium of Communication.** Rejection pursuant to subsection (b)(1) for failure to communicate a record properly should be understood to mean noncompliance with procedures relating to security, authentication, or other communication-related requirements that the filing office may impose. Subsection (b)(1) does not authorize a filing office to impose additional substantive requirements. See Section 9-520, Comment 2.

5. **Address for Secured Party of Record.** Under subsection (b)(4) and Section 9-520(a), the lack of a mailing address for the secured party of record requires the filing office to reject an initial financing statement. The failure to include an address for the secured party of record no longer renders a financing statement ineffective. See Section 9-502(a). The function of the address is not to identify the secured party of record but rather to provide an address to which others can send required notifications, e.g., of a purchase-money security interest in inventory or of the disposition of collateral. Inasmuch as the address shown on a filed financing statement is an "address that is reasonable under the circumstances," a person required to send a notification to the secured party may satisfy the requirement by sending a notification to that address, even if the address is or becomes incorrect. See Section 9-102 (definition of "send"). Similarly, because the address is "held out by [the secured party] as the place for receipt of such communications [i.e., communications relating to security interests]," the secured party is deemed to have received a notification delivered to that address. See Section 1-201(26).

6. **Uncertainty Concerning Individual Debtor's Surname.** Subsection (b)(3)(C) requires the filing office to reject an initial financing statement or amendment adding an individual debtor if the office cannot index the record because it does not identify the debtor's surname (e.g., it is unclear whether the debtor's name is Elton or John).
7. **Inability of Filing Office to Read or Decipher Information.** Under subsection (c)(1), if the filing office cannot read or decipher information, the information is not provided by a record for purposes of subsection (b).
8. **Classification of Records.** For purposes of subsection (b), a record that does not indicate it is an amendment or identify an initial financing statement to which it relates is deemed to be an initial financing statement. See subsection (c)(2).
9. **Effectiveness of Rejectable But Unrejected Record.** Section 9-520(a) requires the filing office to refuse to accept an initial financing statement for a reason set forth in subsection (b). However, if the filing office accepts such a financing statement nevertheless, the financing statement generally is effective if it complies with the requirements of Section 9-502(a) and (b). See Section 9-520(c). Similarly, an otherwise effective financing statement generally remains so even though the information in the financing statement becomes incorrect. See Section 9-507(b). (Note that if the information required by subsection (b)(5) is incorrect when the financing statement is filed, Section 9-338 applies.)

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-516(b) sets forth the requirements an initial financing statement or other record must meet in order to be accepted for filing. Section 36-9-520 (a) provides that a filing office must refuse to accept for filing a record that fails to meet those requirements. Section 36-9-520(a) further provides that the filing office can refuse to accept a record for filing only for the reasons listed in Section 36-9-516(b).

The requirements of Section 36-9-516(b) are more demanding than the requirements for a sufficient financing statement under Section 36-9-502(a). If a filing office accepts and files a financing statement which is sufficient under Section 36-9-502(a) but fails to meet the requirements of Section 36-9-516(b), Section 36-9-520(c) provides that the filing is effective.

Section 36-9-516(d) applies when a filing office wrongfully refuses to accept a sufficient financing statement or other record for filing for a reason other than one listed in subsection (b). Under subsection (d) the financing statement or other record is effective as a filed record except against a purchaser which gave value in reasonable reliance upon the absence of a filed record.

Definitional Cross :

"Collateral" Section 36-9-102(a)(12)

"Continuation statement" Section 36-9-102(a)(27)

"Debtor" Section 36-9-102(a)(28)

"Filing office" Section 36-9-102(a)(37)

"Financing statement" Section 36-9-102(a)(39)

"Jurisdiction of organization" Section 36-9-102(a)(50)

"Organization" Section 36-1-201(28)

"Purchaser" Section 36-1-201(33)

"Record" Section 36-9-102(a)(70)

"Secured party of record" Section 36-9-511

"Value" Section 36-9-201(44)

Cross --

1. Requirements for a sufficient financing statement. Section 36-9-502(a) and (b).
2. A filing office is required to refuse to file a record that fails to meet the requirements of Section 36-9-516(b). Section 36-9-520(a).
3. A filing office is required to accept for filing a sufficient record which meets the requirements of Section 36-9-516(b). Section 36-9-520(a).
4. Limitations on priority afforded to a security interest perfected by a financing statement which failed to meet the requirements of Section 36-9-516(b) but was accepted for filing. Sections 36-9-520(c) and 36-9-338.

SECTION 16. Section 36-9-518 of the 1976 Code, as last amended by Act 161 of 2005, is further amended to read:

"Section 36-9-518. (a) A person may file in the filing office ~~a correction~~ an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) ~~A correction~~ An information statement under subsection (a) must:

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

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

(B) if the ~~correction~~ information statement relates to a record filed or recorded in a filing office described in Section 36-9-501(a)(1), the date and time that the initial financing statement was filed or recorded and the information specified in Section 36-9-502(b);

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

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

(c) A person may file in the filing office an information statement with respect to a record filed there if

the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under Section 36-9-509(d). The filing of a ~~correction~~ an information statement does not affect the effectiveness of an initial financing statement or other filed record.

(d) An information statement under subsection (c) must:

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

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

(B) if the information statement relates to a record filed or recorded in a filing office described in Section 36-9-501(a)(1), the date and time that the initial financing statement was filed or recorded and the information specified in Section 36-9-502(b);

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

(3) provide the basis for the person's belief that the person that filed the record was not entitled to do so pursuant to Section 36-9-509(d).

~~(d)~~(e) In the case of a ~~correction~~ an information statement alleging that a previously filed record was filed wrongfully and that it should have been rejected pursuant to Section 36-9-516(b)(8) or (9), the Secretary of State, without undue delay, shall determine if the contested record was filed wrongfully and should have been rejected. To determine if the record was filed wrongfully, the Secretary of State may require the person filing the ~~correction~~ information statement and the secured party to provide additional relevant information requested by the Secretary of State including an original or a copy of a security agreement that is related to the record. If the Secretary of State finds that the record was filed wrongfully and should have been rejected pursuant to Section 36-9-516(b)(8) or (9), the Secretary of State shall cancel the record and it is void and of no effect."

OFFICIAL COMMENT

1. Source. New.

2. Information Statements. Former Article 9 did not afford a nonjudicial means for a debtor to indicate that a financing statement or other record was inaccurate or wrongfully filed. Subsection (a) affords the debtor the right to file an information statement. Among other requirements, the information statement must provide the basis for the debtor's belief that the public record should be corrected. See subsection (b). These provisions, which resemble the analogous remedy in the Fair Credit Reporting Act, 15 U.S.C. '1681i, afford an aggrieved person the opportunity to state its position on the public record. They do not permit an aggrieved person to change the legal effect of the public record. Thus, although a filed information statement becomes part of the "financing statement," as defined in Section 9-102, the filing does not affect the effectiveness of the initial financing statement or any other filed record. See subsection (e). Sometimes a person files a termination statement or other record relating to a filed financing statement without being entitled to do so. A secured party of record with respect to the financing statement who believes that such a record has been filed may, but need not, file an information statement indicating that the person that filed the record was not entitled to do so. See subsection (c). An information statement has no legal effect. Its sole purpose is to provide some limited public notice that the efficacy of a filed record is disputed. If the person that filed the record was not entitled to do so, the filed record is ineffective, regardless of whether the secured party of record files an information

statement. Likewise, if the person that filed the record was entitled to do so, the filed record is effective, even if the secured party of record—even one who is aware of the unauthorized filing of a record—has no duty to file one. Just as searchers bear the burden of determining whether the filing of initial financing statement was authorized, searchers bear the burden of determining whether the filing of every subsequent record was authorized. Inasmuch as the filing of an information statement has no legal effect, this section does not provide a mechanism by which a secured party can correct an error that it discovers in its own financing statement.

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

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

SOUTH CAROLINA REPORTER'S COMMENT

Under Section 36-9-518 a person who believes that a record indexed under the person's name is inaccurate or was wrongfully filed can file a correction statement. A correction statement sets forth the basis for the person's belief that the filed record is inaccurate or improperly filed. The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

The 2013 amendments provide for the filing of "information statements" instead of "correction statements." Under revised Section 36-9-518, both debtors and secured parties of record may file information statements.

Definitional Cross :

"Correction statement" Section 36-9-518(b)

"File number" Section 36-9-102(a)(36)

"Filing office" Section 36-9-102(a)(37)

"Financing statement" Section 36-9-102(a)(39)

"Person" Section 36-1-201(3)

"Record" Section 36-9-102(a)(70)

Cross --

Grounds on which filing office is required to refuse to accept a record for filing. Section 36-9-516(b).

Debtor's right to recover damages for an unauthorized filing or the refusal to send or file a termination

statement. Section 36-9-625(b), (c)(3), and (4).

SECTION 17. Section 36-9-521 of the 1976 Code is amended to read:

~~"Section 36-9-521. (a) A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in Section 36-9-516(b):~~

~~UCC FINANCING STATEMENT~~

~~Follow instructions (front and back) CAREFULLY~~

~~=====~~

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

~~=====~~

~~B. SEND ACKNOWLEDGEMENT TO: (name and address)~~

~~=====~~

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

~~1. DEBTOR'S EXACT FULL LEGAL NAME: insert only one debtor's name 1(a) or 1(b)--do not abbreviate or combine names.~~

~~=====~~

~~1a. ORGANIZATION'S~~

~~NAME~~

~~OR~~

~~=====~~

~~1b. INDIVIDUAL'S LAST FIRST NAME MIDDLE NAME SUFFIX~~

~~NAME~~

~~=====~~

~~1c. MAILING ADDRESS CITY STATE POSTAL COUNTY~~

~~CODE~~

~~=====~~

~~1d. TAX ID#: SSN OR Additional 1e. TYPE OF 1f. JURISDI- 1g. ORGANIZ-
EIN Info Re Or- ORGANIZATI- CTION OF ATIONAL
ganization ON ORGANIZAT- ID, if any~~

~~Debtor ION~~

~~[] NONE~~

~~2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME: insert only one debtor's name 2
(a) or 2(b)--do not abbreviate or combine names~~

~~2a. ORGANIZATION'S~~

~~NAME~~

~~OR~~

~~2b. INDIVIDUAL'S LAST FIRST NAME MIDDLE NAME SUFFIX~~

~~NAME~~

~~2c. MAILING ADDRESS CITY STATE POSTAL COUNTY~~

~~CODE~~

~~2d. TAX ID#: SSN OR Additional 2e. TYPE OF 2f. JURISDI- 2g. ORGANIZ-
EIN Info Re Or- ORGANIZATI- CTION OF ATIONAL
ganization ON ORGANIZAT- ID, if any~~

~~Debtor ION~~

~~[] NONE~~

~~3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE or ASSIGNOR S/P)--insert
only one secured party name 3(a) or 3(b)~~

~~3a. ORGANIZATION'S~~

~~NAME~~

~~OR~~

~~3b. INDIVIDUAL'S LAST FIRST NAME MIDDLE NAME SUFFIX~~

~~NAME~~

~~3c. MAILING ADDRESS CITY STATE POSTAL COUNTY~~

~~CODE~~

~~4. This FINANCING STATEMENT covers the following collateral:~~

~~5. ALTERNATIVE DESIGNATION (if applicable) LESSEE/LESSOR~~

~~CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLOR/BUYER AG. LIEN~~

~~NON-UCC FILING~~

~~6. This FINANCING STATEMENT IS TO BE FILED (for record) (or recorded) in~~

~~the REAL ESTATE RECORDS. Attach Addendum (if applicable)~~

~~7. Check to request SEARCH REPORT(S) on Debtors ADDITIONAL FEE Optional All~~

~~Debtors Debtor 1 Debtor 2~~

~~8. OPTIONAL FILER REFERENCE DATA~~

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

~~9a. ORGANIZATION'S NAME~~

OR

=====

~~9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME, SUFFIX~~

=====

10. MISCELLANEOUS

=====

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

~~11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME: Insert only one name: 11(a) or~~

~~11(b) do not abbreviate or combine names~~

=====

11a. ORGANIZATION'S NAME

OR

=====

~~11b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX~~

=====

~~11c. MAILING ADDRESS CITY STATE POSTAL COUNTY~~

~~CODE~~

=====

~~11d. TAX ID#: SSN OR EIN Additional 11e. TYPE OF 11f. JURI- 11g. ORGA-~~

~~Info Re ORGANIZATI- SDICTION NIZATIO-~~

~~Organiza- ON OF ORGA- NAL ID,~~

~~tion NIZATION if any~~

Debtor

NONE

=====

~~12a. ORGANIZATION'S NAME~~

~~OR~~

~~12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX~~

~~12c. MAILING ADDRESS CITY STATE POSTAL COUNTY~~

~~CODE~~

~~13. This FINANCING STATEMENT 16. Additional collateral description~~

~~covers timber to be cut~~

~~or as extracted~~

~~collateral, or is filed as a~~

~~fixture filing~~

14. Description of real estate

15. Name and address of a

~~RECORD OWNER of~~

~~above-described real estate~~

~~(if Debtor does not have a~~

~~record interest):~~

~~17. Check only if applicable and check only~~

~~one box. Debtor is a Trust or~~

~~Trustee acting with respect to property held~~

in a trust of Decedent's Estate

=====

~~18. Check only if applicable and check only one box~~

Debtor is a TRANSMITTING UTILITY

Filed in connection with a Manufactured

Home Transaction--effective 30 years

Filed in connection with a Public Finance

Transaction--effective 30 years

=====

~~(b) A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in Section 36-9-516(b):~~

=====

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

=====

~~B. SEND ACKNOWLEDGEMENT TO: (name and address)~~

=====

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

=====

~~1a. INITIAL FINANCING STATEMENT FILE # 1b. This FINANCING STATEMENT~~

~~AMENDMENT is to be filed (for~~

~~record) (or recorded) in the~~

~~REAL ESTATE RECORDS:~~

=====

~~2. TERMINATION: Effectiveness of the Financing Statement identified above~~

~~is terminated with respect to security of the Secured Party authorizing the~~

Termination Statement:

=====

3. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

=====

4. ASSIGNMENT (full or partial): Give names of assignee in Item 7a or 7B and address of assignee in Item 7c, and also give name of assignor in Item 9.

=====

5. AMENDMENT (PARTY INFORMATION): This Amendment affects Debtor or Secured Party or record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in Items 6 and/or 7:

Change name and/or address. Give current record name in Item 6a or 6b; also give new name (if name change) in Item 7a or 7b and/or new address (if address change in Item 7c.

DELETE name. Give record name to be deleted in Item 6a or 6b.

ADD name: Complete Item 7a or 7b and also Item 7c; also complete Items 7d-7g (if applicable)

=====

6. CURRENT RECORD INFORMATION

=====

~~6a. ORGANIZATION'S NAME~~

~~OR~~

~~6b. INDIVIDUAL'S LAST FIRST NAME MIDDLE NAME SUFFIX~~

~~NAME~~

~~7. CHANGED (NEW) OR ADDED INFORMATION:~~

~~7a. ORGANIZATION'S NAME~~

~~OR~~

~~7b. INDIVIDUAL'S LAST FIRST NAME MIDDLE NAME SUFFIX~~

~~NAME~~

~~7c. MAILING ADDRESS CITY STATE POSTAL COUNTY~~

~~CODE~~

~~7d. TAX ID#: SSN OR EIN Additional 7e. TYPE OF 7f. JURISDI- 7g. ORGANI-~~

~~Info Re O- ORGANIZATI- CTION OF ZATIONAL~~

~~rganizati- ON ORGANIZAT- ID, if~~

~~on Debtor ION any~~

~~[] NONE~~

~~8. AMENDED (COLLATERAL CHANGE) check only one box:~~

~~Describe collateral [] deleted or [] added or give [] restated collateral~~

description, or describe collateral [] assigned.

~~9. NAME OF SECURED PARTY of RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here [] and enter name of DEBTOR authorizing this Amendment.~~

=====

~~9a. ORGANIZATION'S NAME~~

~~OR~~

=====

~~9b. INDIVIDUAL'S LAST FIRST NAME MIDDLE NAME SUFFIX
NAME~~

=====

~~10. OPTIONAL FILER REFERENCE DATA~~

~~UCC FINANCING STATEMENT AMENDMENT ADDENDUM~~

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

~~11. INITIAL FINANCING STATEMENT FILE # (same as Item 1a on Amendment form)~~

~~12. NAME of PARTY AUTHORIZING THIS AMENDMENT (same as Item 9 on Amendment form)~~

=====

~~12a. ORGANIZATION'S~~

~~NAME~~

~~OR~~

=====

~~12b. INDIVIDUAL'S LAST FIRST NAME MIDDLE NAME SUFFIX
NAME~~

=====

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

~~13. Use this space for additional information.~~

(a) A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in Section 36-9-516(b):

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

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

=====

B. E-MAIL CONTACT AT FILER (optional)

=====

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

=====

THE ABOVE SPACE IS FOR

FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here [] and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME

=====

OR

1b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

=====

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

=====

1c. MAILING ADDRESS

CITY STATE POSTAL CODE COUNTRY

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here [] and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

2c. MAILING ADDRESS

CITY STATE POSTAL CODE COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

3c. MAILING ADDRESS

CITY STATE POSTAL CODE COUNTRY

4. COLLATERAL: This financing statement covers the following collateral:

5. Check only if applicable and check only one box:

Collateral is held in a Trust (see UCC1Ad, Item 17 and Instructions)

being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

Public-Finance Transaction o Manufactured-Home Transaction

A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

Agricultural Lien Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

[UCC FINANCING STATEMENT (Form UCC1)]

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as item 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

THE ABOVE SPACE IS FOR

FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1)(use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR
SUFFIX

10c. MAILING ADDRESS

CITY STATE POSTAL CODE COUNTRY

11. ADDITIONAL SECURED PARTY'S NAME or ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

11c. MAILING ADDRESS

CITY STATE POSTAL CODE COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral)

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

14. This FINANCING STATEMENT:

covers timber to be cut covers as-extracted collateral is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

17. MISCELLANEOUS:

[UCC FINANCING STATEMENT ADDENDUM (Form UCC1Ad)]

(b) A filing office that accepts written records may not refuse to accept a written record in the following

form and format except for a reason set forth in Section 36-9-516(b):

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

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

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR

FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER

1b. This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS

Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13.

2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of

Assignor in item 9 For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured

Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. PARTY INFORMATION CHANGE:

Check one of these two boxes:

This Change affects [] Debtor or [] Secured Party of record.

AND

Check one of these three boxes to:

[] CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c

[] ADD name: Complete item 7a or 7b, and item 7c

[] DELETE name: Give record name to be deleted in item 6a or 6b

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

=====

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or

7b) (use exact full name; do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR
SUFFIX

=====

7c. MAILING ADDRESS

CITY STATE POSTAL CODE COUNTRY

8. COLLATERAL CHANGE:

Also check one of these four boxes:

ADD collateral DELETE collateral RESTATE covered collateral

ASSIGN collateral

Indicate collateral:

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of

Assignor, if this is an Assignment)

If this is an Amendment authorized by a DEBTOR, check here and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

10. OPTIONAL FILER REFERENCE DATA:

[UCC FINANCING STATEMENT AMENDMENT (Form UCC3)]

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

THE ABOVE SPACE IS FOR

FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some

filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or

abbreviate any part of the Debtor's name); see Instructions if name does not fit

13a. ORGANIZATION'S NAME

OR

13b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral):

15. This FINANCING STATEMENT AMENDMENT: [] covers timber to be cut

[] covers as-extracted collateral [] is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):

17. Description of real estate:

18. MISCELLANEOUS:

[UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad)]

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

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

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR

FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER

1b. [] This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS

Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13.

2. [] TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of

Assignor in item 9 For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured

Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. PARTY INFORMATION CHANGE:

Check one of these two boxes:

This Change affects Debtor or Secured Party of record.

AND

Check one of these three boxes to:

CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c

ADD name: Complete item 7a or 7b, and item 7c

DELETE name: Give record name to be deleted in item 6a or 6b

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or

7b) (use exact full name; do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

7c. MAILING ADDRESS

CITY STATE POSTAL CODE COUNTRY

8. COLLATERAL CHANGE:

Also check one of these four boxes:

ADD collateral DELETE collateral RESTATE covered collateral

ASSIGN collateral

Indicate collateral:

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of

Assignor, if this is an Assignment)

If this is an Amendment authorized by a DEBTOR, check here and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

10. OPTIONAL FILER REFERENCE DATA:

[UCC FINANCING STATEMENT AMENDMENT (Form UCC3)]

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

THE ABOVE SPACE IS FOR

FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some

filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or

abbreviate any part of the Debtor's name); see Instructions if name does not fit

13a. ORGANIZATION'S NAME

OR

13b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral):

15. This FINANCING STATEMENT AMENDMENT: covers timber to be cut

covers as-extracted collateral is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):

17. Description of real estate:

18. MISCELLANEOUS:

[UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad)]"

OFFICIAL COMMENT

1. Source. New.
2. "Safe Harbor" Written Forms. Although Section 9-520 limits the bases upon which the filing office can refuse to accept records, this Section provides sample written forms that must be accepted in every filing office in the country, as long as the filing office's rules permit it to accept written communications. By completing one of the forms in this Section, a secured party can be certain that the filing office is obligated to accept it.

The forms in this Section are based upon national financing statement forms that were in use under former Article 9. Those forms were developed over an extended period and reflect the comments and suggestions of filing officers, secured parties and their counsel, and service companies. The formatting of those forms and of the ones in this Section has been designed to reduce error by both filers and filing offices.

A filing office that accepts written communications may not reject, on grounds of form or format, a filing using these forms. Although filers are not required to use the forms, they are encouraged and can be expected to do so, inasmuch as the forms are well designed and avoid the risk of rejection on the basis of form or format. As their use expands, the forms will rapidly become familiar to both filers and filing-office personnel. Filing offices may and should encourage the use of these forms by declaring them to be the "standard" (but not exclusive) forms for each jurisdiction, albeit without in any way suggesting that alternative forms are unacceptable.

The multi-purpose form in subsection (b) covers changes with respect to the debtor, the secured party, the collateral, and the status of the financing statement (termination and continuation). A single form may be used for several different types of amendments at once (e.g., both to change a debtor's name and continue the effectiveness of the financing statement).

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-521 sets forth forms that a filing office is required to accept provided that the office accepts written records and the forms include the information required under Section 36-9-516(b).

SECTION 18. Section 36-9-607 of the 1976 Code is amended to read:

"Section 36-9-607. (a) If so agreed, and in any event after default, a secured party:

- (1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
- (2) may take any proceeds to which the secured party is entitled under Section 36-9-315;
- (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;
- (4) if it holds a security interest in a deposit account perfected by control under Section 36-9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and
- (5) if it holds a security interest in a deposit account perfected by control under Section 36-9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

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

- (1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and
- (2) the secured party's sworn affidavit in recordable form stating that:
 - (A) a default has occurred with respect to the obligation secured by the mortgage; and

- (B) the secured party is entitled to enforce the mortgage nonjudicially.
- (c) A secured party shall proceed in a commercially reasonable manner if the secured party:
- (1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and
 - (2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.
- (d) A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.
- (e) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party."

OFFICIAL COMMENT

1. Source. Former Section 9-502; subsections (b), (d), and (e) are new.
2. Collections: In General. Collateral consisting of rights to payment is not only the most liquid asset of a typical debtor's business but also is property that may be collected without any interruption of the debtor's business. This situation is far different from that in which collateral is inventory or equipment, whose removal may bring the business to a halt. Furthermore, problems of valuation and identification, present with collateral that is tangible personal property, frequently are not as serious in the case of rights to payment and other intangible collateral. Consequently, this Section, like former Section 9-502, recognizes that financing through assignments of intangibles lacks many of the complexities that arise after default in other types of financing. This Section allows the assignee to liquidate collateral by collecting whatever may become due on the collateral, whether or not the method of collection contemplated by the security arrangement before default was direct (i.e., payment by the account debtor to the assignee, "notification" financing) or indirect (i.e., payment by the account debtor to the assignor, "nonnotification" financing).
3. Scope. The scope of this Section is broader than that of former Section 9-502. It applies not only to collections from account debtors and obligors on instruments but also to enforcement more generally against all persons obligated on collateral. It explicitly provides for the secured party's enforcement of the debtor's rights in respect of the account debtor's (and other third parties') obligations and for the secured party's enforcement of supporting obligations with respect to those obligations. (Supporting obligations are components of the collateral under Section 9-203(f).) The rights of a secured party under subsection (a) include the right to enforce claims that the debtor may enjoy against others. For example, the claims might include a breach-of-warranty claim arising out of a defect in equipment that is collateral or a secured party's action for an injunction against infringement of a patent that is collateral. Those claims typically would be proceeds of original collateral under Section 9-315.
4. Collection and Enforcement Before Default. Like Part 6 generally, this Section deals with the rights and duties of secured parties following default. However, as did former Section 9-502 with respect to collection rights, this Section also applies to the collection and enforcement rights of secured parties even if a default has not occurred, as long as the debtor has so agreed. It is not unusual for debtors to agree that secured parties are entitled to collect and enforce rights against account debtors prior to

default.

5. Collections by Junior Secured Party. A secured party who holds a security interest in a right to payment may exercise the right to collect and enforce under this Section, even if the security interest is subordinate to a conflicting security interest in the same right to payment. Whether the junior secured party has priority in the collected proceeds depends on whether the junior secured party qualifies for priority as a purchaser of an instrument (e.g., the account debtor's check) under Section 9-330(d), as a holder in due course of an instrument under Sections 3-305 and 9-331(a), or as a transferee of money under Section 9-332(a). See Sections 9-330, Comment 7; 9-331, Comment 5; and 9-332.

6. Relationship to Rights and Duties of Persons Obligated on Collateral. This Section permits a secured party to collect and enforce obligations included in collateral in its capacity as a secured party. It is not necessary for a secured party first to become the owner of the collateral pursuant to a disposition or acceptance. However, the secured party's rights, as between it and the debtor, to collect from and enforce collateral against account debtors and others obligated on collateral under subsection (a) are subject to Section 9-341, Part 4, and other applicable law. Neither this Section nor former Section 9-502 should be understood to regulate the duties of an account debtor or other person obligated on collateral. Subsection (e) makes this explicit. For example, the secured party may be unable to exercise the debtor's rights under an instrument if the debtor is in possession of the instrument, or under a non-transferable letter of credit if the debtor is the beneficiary. Unless a secured party has control over a letter-of-credit right and is entitled to receive payment or performance from the issuer or a nominated person under Article 5, its remedies with respect to the letter-of-credit right may be limited to the recovery of any identifiable proceeds from the debtor. This Section establishes only the baseline rights of the secured party vis-a-vis the debtor-the secured party is entitled to enforce and collect after default or earlier if so agreed.

7. Deposit Account Collateral. Subsections (a)(4) and (5) set forth the self-help remedy for a secured party whose collateral is a deposit account. Subsection (a)(4) addresses the rights of a secured party that is the bank with which the deposit account is maintained. That secured party automatically has control of the deposit account under Section 9-104(a)(1). After default, and otherwise if so agreed, the bank/secured party may apply the funds on deposit to the secured obligation.

If a security interest of a third party is perfected by control (Section 9-104(a)(2) or (a)(3)), then after default, and otherwise if so agreed, the secured party may instruct the bank to pay out the funds in the account. If the third party has control under Section 9-104(a)(3), the depository institution is obliged to obey the instruction because the secured party is its customer. See Section 4-401. If the third party has control under Section 9-104(a)(2), the control agreement determines the depository institution's obligation to obey.

If a security interest in a deposit account is unperfected, or is perfected by filing by virtue of the proceeds rules of Section 9-315, the depository institution ordinarily owes no obligation to obey the secured party's instructions. See Section 9-341. To reach the funds without the debtor's cooperation, the secured party must use an available judicial procedure.

8. Rights Against Mortgagor of Real Property. Subsection (b) addresses the situation in which the collateral consists of a mortgage note (or other obligation secured by a mortgage on real property). After the debtor's (mortgagee's) default, the secured party (assignee) may wish to proceed with a nonjudicial foreclosure of the mortgage securing the note but may be unable to do so because it has not become the assignee of record. The assignee/ secured party may not have taken a recordable assignment at the commencement of the transaction (perhaps the mortgage note in question was one of hundreds assigned to the secured party as collateral). Having defaulted, the mortgagee may be unwilling to sign a

recordable assignment. This Section enables the secured party (assignee) to become the assignee of record by recording in the applicable real-property records the security agreement and an affidavit certifying default. Of course, the secured party's rights derive from those of its debtor. Subsection (b) would not entitle the secured party to proceed with a foreclosure unless the mortgagor also were in default or the debtor (mortgagee) otherwise enjoyed the right to foreclose.

9. Commercial Reasonableness. Subsection (c) provides that the secured party's collection and enforcement rights under subsection (a) must be exercised in a commercially reasonable manner. These rights include the right to settle and compromise claims against the account debtor. The secured party's failure to observe the standard of commercial reasonableness could render it liable to an aggrieved person under Section 9-625, and the secured party's recovery of a deficiency would be subject to Section 9-626. Subsection (c) does not apply if, as is characteristic of most sales of accounts, chattel paper, payment intangibles, and promissory notes, the secured party (buyer) has no right of recourse against the debtor (seller) or a secondary obligor. However, if the secured party does have a right of recourse, the commercial-reasonableness standard applies to collection and enforcement even though the assignment to the secured party was a "true" sale. The obligation to proceed in a commercially reasonable manner arises because the collection process affects the extent of the seller's recourse liability, not because the seller retains an interest in the sold collateral (the seller does not).

10. Attorney's Fees and Legal Expenses. The phrase "reasonable attorney's fees and legal expenses," which appears in subsection (d), includes only those fees and expenses incurred in proceeding against account debtors or other third parties. The secured party's right to recover these expenses from the collections arises automatically under this Section. The secured party also may incur other attorney's fees and legal expenses in proceeding against the debtor or obligor. Whether the secured party has a right to recover those fees and expenses depends on whether the debtor or obligor has agreed to pay them, as is the case with respect to attorney's fees and legal expenses under Sections 9-608(a)(1)(A) and 9-615(a)(1). The parties also may agree to allocate a portion of the secured party's overhead to collection and enforcement under subsection (d) or Section 9-608(a).

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-607 addresses a secured party's rights on default when the collateral consists of accounts, payment intangibles, promissory notes, and deposit accounts and when the secured party has a security interest in a supporting obligation. Under subsection (a)(1) the secured party is authorized to instruct an account debtor or other person obligated upon the collateral to make payment to or for the benefit of the secured party. Under subsection (a)(2) the secured party is authorized to take any proceeds to which it is entitled under Section 36-9-315. Under subsection (a)(3) the secured party is entitled to enforce the obligations of the account debtor or other person obligated upon the collateral. Under subsections (a)(4) and (5) a secured party with control of a deposit account may apply the balance of the deposit account toward the secured obligation or instruct the bank at which the account is maintained to pay the balance to or for the benefit of the secured party.

Subsection (b) provides a method by which a secured party holding a security interest in a promissory note secured by a real estate mortgage can obtain a nonjudicial foreclosure of the mortgage without obtaining and recording an assignment of the mortgage. The provision does not extend to a judicial foreclosure and to obtain that remedy the secured party would have to obtain an assignment of the mortgage.

Subsection (c) requires a secured party to proceed in commercially reasonable manner in collecting or enforcing an obligation of an account debtor or other person obligated upon the collateral unless the secured party has no right of recourse against the debtor or a secondary obligor.

Subsection (e) provides that Section 36-9-607 does not determine whether an account debtor, bank, or person obligated on the collateral owes a duty to the secured party. For example, a secured party who obtains a security interest in a letter of credit supporting a debtor's accounts receivable because the letter of credit is a supporting obligation may not be entitled to receive payment from the issuer.

Definitional Cross :

"Account debtor" Section 36-9-102(a)(3)

"Collateral" Section 36-9-102(a)(12)

"Debtor" Section 36-9-102(a)(28)

"Deposit account" Section 36-9-102(a)(29)

"Mortgage" Section 36-9-102(a)(55)

"Obligor" Section 36-9-102(a)(59)

"Notifies" Section 36-1-201(26)

"Proceeds" Section 36-9-102(a)(64)

"Secured party" Section 36-9-102(a)(73)

"Security agreement" Section 36-9-102(a)(74)

Cross --

1. The attachment of a security interest in collateral gives the secured party a security interest in a supporting obligation for the collateral. Section 36-9-203(f).
2. Perfection of a security interest in collateral also perfects a security interest in a supporting obligation. Section 36-9-308(d).
3. A security interest attaches to identifiable proceeds of collateral. Sections 36-9-203(f) and 36-9-315(a)(2).
4. Perfection of a security interest in proceeds. Section 36-9-315(c)--(e).
5. Requirements for control of deposit accounts. Section 36-9-104.
6. The rights of an assignee of an account against an account debtor. Sections 36-9-403, 36-9-404, and 36-9-405.
7. Limits upon the rights of secured party with a security interest in a letter-of-credit right perfected by control to enforce the drawing rights of the beneficiary against the issuer or nominated person. See Section 36-9-329, Official Comment 3 and 4.
8. Application of proceeds realized upon enforcement or collection from account debtor's or other

persons obligated on the collateral. Section 36-9-608.

SECTION 19. Chapter 9, Title 36 of the 1976 Code is amended by adding:

"Part 8

Transition

Section 36-9-802. (a) Except as otherwise provided in this part, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this act takes effect.

(b) This act does not affect an action, case, or proceeding commenced before this act takes effect.

Section 36-9-803. (a) A security interest that is a perfected security interest immediately before this act takes effect is a perfected security interest under Chapter 9, Title 36 as amended by this act if, when this act takes effect, the applicable requirements for attachment and perfection under Chapter 9, Title 36 as amended by this act are satisfied without further action.

(b) Except as otherwise provided in Section 36-9-805, if, immediately before this act takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under Chapter 9, Title 36 as amended by this act are not satisfied when this act takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under Chapter 9, Title 36 as amended by this act are satisfied within one year after this act takes effect.

Section 36-9-804. A security interest that is an unperfected security interest immediately before this act takes effect becomes a perfected security interest:

(1) without further action, when this act takes effect if the applicable requirements for perfection under Chapter 9, Title 36 as amended by this act are satisfied before or at that time; or

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

Section 36-9-805. (a) The filing of a financing statement before this act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under Chapter 9, Title 36, as amended by this act.

(b) This act does not render ineffective an effective financing statement that, before this act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Chapter 9, Title 36 as it existed before this act. However, except as otherwise provided in subsections (c) and (d) and Section 36-9-806, the financing statement ceases to be effective:

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

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

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

jurisdiction; or

(B) June 30, 2018.

(c) The filing of a continuation statement after this act takes effect does not continue the effectiveness of a financing statement filed before this act takes effect. However, upon the timely filing of a continuation statement after this act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this act takes effect continues for the period provided by the law of that jurisdiction.

(d) Subsection (b)(2)(B) applies to a financing statement that, before this act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Chapter 9, Title 36 as it existed before this act, only to the extent that Chapter 9, Title 36, as amended by this act provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) A financing statement that includes a financing statement filed before this act takes effect and a continuation statement filed after this act takes effect is effective only to the extent that it satisfies the requirements of Part 5 as amended by this act for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of Section 36-9-503(a)(2) as amended by this act. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of Section 36-9-503(a)(3) as amended by this act.

Section 36-9-806. (a) The filing of an initial financing statement in the office specified in Section 36-9-501 continues the effectiveness of a financing statement filed before this act takes effect if:

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

(2) the preeffective-date financing statement was filed in an office in another State; and

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

(b) The filing of an initial financing statement under subsection (a) continues the effectiveness of the preeffective-date financing statement:

(1) if the initial financing statement is filed before this act takes effect, for the period provided in former Section 36-9-515 with respect to an initial financing statement; and

(2) if the initial financing statement is filed after this act takes effect, for the period provided in Section 36-9-515 as amended by this act with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a), an initial financing statement must:

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

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

Section 36-9-807. (a) In this section, 'preeffective-date financing statement' means a financing statement filed before this act takes effect.

(b) After this act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a preeffective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Chapter 9, Title 36, as amended by this act. However, the effectiveness of a preeffective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d), if the law of this State governs perfection of a security interest, the information in a preeffective-date financing statement may be amended after this act takes effect only if:

- (1) the preeffective-date financing statement and an amendment are filed in the office specified in Section 36-9-501;
 - (2) an amendment is filed in the office specified in Section 36-9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Section 36-9-806(c); or
 - (3) an initial financing statement that provides the information as amended and satisfies Section 36-9-806(c) is filed in the office specified in Section 36-9-501.
- (d) If the law of this State governs perfection of a security interest, the effectiveness of a preeffective-date financing statement may be continued only under Section 36-9-805(c) and (e) or 36-9-806.

(e) Whether or not the law of this State governs perfection of a security interest, the effectiveness of a preeffective-date financing statement filed in this State may be terminated after this act takes effect by filing a termination statement in the office in which the preeffective-date financing statement is filed, unless an initial financing statement that satisfies Section 36-9-806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 as the office in which to file a financing statement.

Section 36-9-808. A person may file an initial financing statement or a continuation statement under this part if the:

- (1) secured party of record authorizes the filing; and
- (2) filing is necessary under this part to:
 - (A) continue the effectiveness of a financing statement filed before this act takes effect; or
 - (B) perfect or continue the perfection of a security interest.

Section 36-9-809. This act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this act takes effect, former Chapter 9, Title 36 determines priority."

SECTION 20. This act takes effect on July 1, 2013.

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