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## SECTION 9-301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS.

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### Comment

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2. **Scope of This Subpart.** Part 3, Subpart 1 (Sections 9-301 through 9-307) contains choice-of-law rules similar to those of former Section 9-103. Former Section 9-103 generally addresses which State's law governs "perfection and the effect of perfection or non-perfection of" security interests. See, e.g., former Section 9-103(1)(b). This Article follows the broader and more precise formulation in former Section 9-103(6)(b), which was revised in connection with the promulgation of Revised Article 8 in 1994: "perfection, the effect of perfection or non-perfection, and the priority of" security interests. Priority, in this context, subsumes all of the rules in Part 3, including "cut off" or "take free" rules such as Sections 9-317(b), (c), and (d), 9-320(a), (b), and (d), and 9-332. This subpart does not address choice of law for other purposes. For example, the law applicable to issues such as attachment, validity, characterization (e.g., true lease or security interest), and enforcement is governed by the rules in Section ~~1-105~~; 1-301; that governing law typically is specified in the same agreement that contains the security agreement. And, another jurisdiction's law may govern other third-party matters addressed in this Article. See Section 9-401, Comment 3.

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

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b. ~~Fixtures~~ **Fixture Filings.** ~~Application of~~ Under the general rule in paragraph (1), a security interest in fixtures may be perfected by filing in the office specified by Section 9-501(a) as enacted in the jurisdiction in which the debtor is located. However, application of this rule to perfection of a security interest in fixtures would by filing a fixture filing could yield

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

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

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## SECTION 9-302. LAW GOVERNING PERFECTION AND PRIORITY OF AGRICULTURAL LIENS.

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### Comment

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2. **Agricultural Liens.** This section provides choice-of-law rules for agricultural liens on farm products. Perfection, the effect of perfection or nonperfection, and priority all are governed by the law of the jurisdiction in which the farm products are located. Other choice-of-law rules, including Section ~~1-105~~, 1-301, determine which jurisdiction’s law governs other matters, such as the secured party’s rights on default. See Section 9-301, Comment 2. Inasmuch as no agricultural lien on proceeds arises under this Article, this section does not expressly apply to proceeds of agricultural liens. However, if another statute creates an agricultural lien on proceeds, it may be appropriate for courts to apply the choice-of-law rule in this section to determine priority in the proceeds.

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**SECTION 9-305. LAW GOVERNING PERFECTION AND PRIORITY OF  
SECURITY INTERESTS IN INVESTMENT PROPERTY.**

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**Comment**

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5. **Change in Law Governing Perfection.** When the issuer's jurisdiction, the securities intermediary's jurisdiction, or commodity intermediary's jurisdiction changes, the jurisdiction whose law governs perfection under subsection (a) changes, as well. Similarly, the law governing perfection of a possessory security interest in a certificated security changes when the collateral is removed to another jurisdiction, see subsection (a)(1), and the law governing perfection by filing changes when the debtor changes its location. See subsection (c). Nevertheless, these changes will not result in an immediate loss of perfection. See Section 9-316(f), (g).

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**PART 3**

**PERFECTION AND PRIORITY**

[SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY]

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

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

(b) [**Debtor's location: general rules.**] 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) **[Limitation of applicability of subsection (b).]** 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) **[Continuation of location: cessation of existence, etc.]** 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) **[Location of registered organization organized under State law.]** A registered organization that is organized under the law of a State is located in that State.

(f) **[Location of registered organization organized under federal law; bank branches and agencies.]** 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:

(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 comparable office; or

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

(g) **[Continuation of location: change in status of registered organization.]** A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(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) **[Location of United States.]** The United States is located in the District of Columbia.

(i) **[Location of foreign bank branch or agency if licensed in only one state.]** 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) **[Location of foreign air carrier.]** 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) **[Section applies only to this part.]** This section applies only for purposes of this part.

#### **Comment**

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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 ~~rule is~~ 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 often 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.

**4. Registered Organizations Organized Under Law of a State.** Under subsection (e), a “registered organization” ~~(e.g., a corporation or limited partnership)~~ (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 the 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.

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

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

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

6. **United States.** To the extent that Article 9 governs (see Sections ~~1-105~~, 1-301, 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).

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## [SUBPART 2. PERFECTION]

### **SECTION 9-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY**

#### **SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES.**

(a) [Security interest subject to other law.] 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 9-310(a);

(2) [list any ~~certificate-of-title~~ statute covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on ~~the~~ a certificate of title as a condition or result of perfection, and any non-Uniform Commercial Code central filing statute]; 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 other law.**] 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 article. Except as otherwise provided in subsection (d) and Sections 9-313 and 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) [**Duration and renewal of perfection.**] Except as otherwise provided in subsection (d) and Section 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 article.

(d) [**Inapplicability to certain inventory.**] 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.

**Legislative Note:** *This Article contemplates that perfection of a security interest in goods covered by a certificate of title occurs upon receipt by appropriate State officials of a properly tendered application for a certificate of title on which the security interest is to be indicated, without a relation back to an earlier time. States whose certificate-of-title statutes provide for perfection at a different time or contain a relation-back provision should amend the statutes accordingly.*

### Comment

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**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 ~~10~~ 30 days ~~(or 20 days, in the case of a purchase-money security interest)~~ 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.

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

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

- (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) **[Security interest perfected or unperfected under law of new jurisdiction.]** 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) **[Possessory security interest in collateral moved to new jurisdiction.]** 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) **[Goods covered by certificate of title from this state.]** 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) **[When subsection (d) security interest becomes unperfected against purchasers.]** 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 9-311(b) or 9-313 are not satisfied before the earlier of:

(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) **[Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.]** 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:

(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) **[Subsection (f) security interest perfected or unperfected under law of new jurisdiction.]** 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) **[Effect on filed financing statement of change in governing law.]** 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 9-301(1) or 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 paragraph (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 9-301(1) or 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) **[Effect of change in governing law on financing statement filed against original debtor.]** If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in Section 9-301(1) or 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 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 9-301(1) or 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.

### Comment

1. **Source.** Former Section 9-103(1)(d), (2)(b), (3)(e), as modified.

2. **Continued Perfection.** ~~This section deals~~ Subsections (a) through (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. ~~They~~ 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.

~~This section~~ 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. ~~As the following example explains, this section does not apply~~ Subsection (h) applies to security interests that have not attached before the location changes. See Comment 7.

**Example 5:** Debtor is a Pennsylvania corporation. Debtor grants to Lender a security interest in Debtor's existing and after-acquired inventory. Lender perfects by filing in Pennsylvania. Debtor's shareholders decide to "reincorporate" in Delaware. They form a Delaware corporation (Newcorp) into which they merge Debtor. By virtue of the merger, Newcorp becomes bound by Debtor's security agreement. See Section 9-203. After the merger, Newcorp acquires inventory to which Lender's security interest attaches. Because Newcorp is located in Delaware, Delaware law governs perfection of a security interest in Newcorp's inventory. See Sections 9-301, 9-307. Having failed to perfect under Delaware law, Lender holds an unperfected security interest in the inventory acquired by Newcorp after the merger. The same result follows regardless of the name of the Delaware corporation (i.e., even if the Delaware corporation and Debtor have the same name). A different result would occur if Debtor and Newcorp were incorporated in the same state. See Section 9-508, Comment 4.

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 6 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 7 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 6, 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 8 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 9 8:** Under the facts in Example 8 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 9-609, by taking possession of the automobile. See Section 9-313(b).

The results in Examples 8 7 and 9 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 within 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 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 deemed 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 deemed never to have been perfected as against a purchaser for value.

Section 9-325 contains special rules governing the priority of competing security interests in collateral that is transferred, by merger or otherwise, to a new debtor or other person who becomes a debtor with respect to the collateral. Section 9-326 contains special rules governing the priority of competing security interests in collateral acquired by a new debtor other than by transfer from the original debtor.

**7 9. Agricultural Liens.** This section does not apply to agricultural liens.

**Example 10 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.

### [SUBPART 3. PRIORITY]

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

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

- (1) a person entitled to priority under Section 9-322; and
- (2) except as otherwise provided in subsection (c), 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 9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) **[Buyers that receive delivery.]** Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a ~~security certificate~~ certificated 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) **[Lessees that receive delivery.]** 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) **[Licensees and buyers of certain collateral.]** A licensee of a general intangible or a buyer, other than a secured party, of ~~accounts, electronic chattel paper, electronic documents, 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.

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#### Comment

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5. **Security Interest of Consignor or Receivables Buyer vs. Lien Creditor.** Section ~~1-201(37)~~ 1-201(b)(35) 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.**

\* \* \*

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, tangible 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.

\* \* \*

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, electronic documents, 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.

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\* \* \*

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

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**Comment**

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**2. Sellers of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes.** Section ~~1-201(37)~~ 1-201(b)(35) defines “security interest” to include the interest of a buyer of accounts, chattel paper, payment intangibles, or promissory notes. See also Section 9-109(a) and Comment 5. Subsection (a) makes explicit what was implicit, but perfectly obvious, under former Article 9: The fact that a sale of an account or chattel paper gives rise to a “security interest” does not imply that the seller retains an interest in the property that has been sold. To the contrary, a seller of an account or chattel paper retains no interest whatsoever in the property to the extent that it has been sold. Subsection (a) also applies to sales of payment intangibles and promissory notes, transactions that were not covered by former Article 9. Neither this Article nor the definition of “security interest” in Section 1-201 provides rules for distinguishing sales transactions from those that create a security interest securing an obligation.

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**SECTION 9-319. RIGHTS AND TITLE OF CONSIGNEE WITH RESPECT TO CREDITORS AND PURCHASERS.**

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**Comment**

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**2. Consignments.** This section takes an approach to consignments similar to that taken by Section 9-318 with respect to buyers of accounts and chattel paper. Revised Section ~~1-201(37)~~ 1-201(b)(35) defines “security interest” to include the interest of a consignor of goods under many true consignments. Section 9-319(a) provides that, for purposes of determining the rights of certain third parties, the consignee is deemed to acquire all rights and title that the consignor had, if the consignor’s security interest is unperfected. The consignee acquires these rights even though, as between the parties, it purchases a limited interest in the goods (as would be the case in a true consignment, under which the consignee acquires only the interest of a bailee). As a consequence of this section, creditors of the consignee can acquire judicial liens and security interests in the goods.

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

\* \* \*

**Comment**

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

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

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

Under a notice-filing system, a filed financing statement indicates to third parties that a person may have a security interest in the collateral indicated. With further inquiry, they may discover the complete state of affairs. When a financing statement that is ineffective when filed becomes effective thereafter, the policy underlying the notice-filing system determines the “time of filing” for purposes of subsection (a)(1). For example, the unauthorized filing of an otherwise sufficient initial financing statement becomes authorized, and the financing statement becomes effective, upon the debtor’s post-filing authorization or ratification of the filing. See Section 9-509, Comment 3. Because the notice value of the financing statement is independent of the timing of authorization or ratification, the time of the unauthorized filing is the “time of filing”

for purposes of subsection (a)(1). The same policy applies to the other priority rules in this part.

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

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

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

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

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**8. Proceeds of Non-Filing Collateral: Non-Temporal Priority.** Subsection (c)(2) provides a baseline priority rule for proceeds of non-filing collateral which applies if the secured party has taken the steps required for non-temporal priority over a conflicting security interest in non-filing collateral (e.g., control, in the case of deposit accounts, letter-of-credit rights, investment property, and in some cases, electronic negotiable documents, section 9-331). This rule determines priority in proceeds of non-filing collateral whether or not there exists an actual conflicting security interest in the original non-filing collateral. Under subsection (c)(2), the priority in the original collateral continues in proceeds if the security interest in proceeds is perfected and the proceeds are cash proceeds or non-filing proceeds "of the same type" as the original collateral. As used in subsection (c)(2), "type" means a type of collateral defined in the Uniform Commercial Code and should be read broadly. For example, a security is "of the same type" as a security entitlement (i.e., investment property), and a promissory note is "of the same

type” as a draft (i.e., an instrument).

\* \* \*

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

**Example 11:** SP-1 perfects its security interest in Debtor’s deposit account by obtaining control. Thereafter, SP-2 files against inventory, (presumably) searches, finds no indication of a conflicting security interest, and advances against Debtor’s existing and after-acquired inventory. Debtor uses funds from the deposit account to purchase inventory, which SP-1 can trace as identifiable proceeds of its security interest in Debtor’s deposit account, and which SP-2 claims as original collateral. The inventory is sold and the proceeds deposited into *another* deposit account, as to which SP-1 has not obtained control. Subsection (c) does not govern priority in this other deposit account. This deposit account is cash proceeds and is also the same type of collateral as SP-1’s original collateral, as required by subsections (c)(2)(A) and (B). However, SP-1’s security interest does not satisfy subsection (c)(2)(C) because the inventory proceeds, which intervened between the original deposit account and the deposit account constituting the proceeds at issue, are not cash proceeds, proceeds of the same type as the collateral (original deposit account), or an account relating to the collateral. Stated otherwise, once proceeds other than cash proceeds, proceeds of the same type as the original collateral, or an account relating to the original collateral intervene in the chain of proceeds, priority under subsection (c) is thereafter unavailable. The special priority rule in subsection (d) also is inapplicable to this case. See Comment 9, Example 13, below. Instead, the general first-to-file-or-perfect rule of subsections (a) and (b) apply. Under that rule, SP-1 has priority unless its security interest in the inventory proceeds became unperfected under Section 9-315(d). Had SP-2 filed against inventory before SP-1 obtained control of the original deposit account, ~~the~~ then SP-2 would have had priority even if SP-1’s security interest in the inventory proceeds remained perfected.

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

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

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## Comment

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6. **Notification to Conflicting Inventory Secured Party: Address.** Inasmuch as the address provided as that of the secured party on a filed financing statement is an “address that is reasonable under the circumstances,” the holder of a purchase-money security interest may satisfy the requirement to “send” notification to the holder of a conflicting security interest in inventory 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 holder of the conflicting security interest] as the place for receipt of such communications [i.e., communications relating to security interests],” the holder is deemed to have “received” a notification delivered to that address. See Section ~~1-201(26)~~; 1-202(e).

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

(a) **[Subordination of security interest created by new debtor.]** 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 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 9-316(i)(1) or 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 9-508~~.

(b) **[Priority under other provisions; multiple original debtors.]** 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 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.

### Comment

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**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 ~~solely under Section 9-508. 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. ~~As used in this section, "a filed financing statement that is effective solely under Section 9-508" refers to a financing statement filed against the original debtor that continues to be effective under Section 9-508.~~ ~~It~~ This section does not ~~encompass~~ 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 ~~encompass~~ 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). ~~Under~~ But for Section 9-508, SP-X's financing statement ~~is effective~~ 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. ~~Subsequently;~~ Immediately thereafter, and before the effectiveness of SP-X's financing statement lapses, Z Corp acquires a new item of inventory. ~~Under~~ But for Section 9-508, SP-X's financing statement ~~is effective~~ 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 ~~another method;~~ a filing whose effectiveness does not depend on Section 9-316(i)(1) or 9-508, subsection (a)

~~provides that subordinates SP-X's perfected security interest is subordinate to SP-Z's; regardless of which financing statement was filed first. This would be the case even if SP-Z filed after Z Corp became bound by X Corp's security agreement; 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 jurisdictions. 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 ~~are perfected solely under~~ 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. ~~At that time, SP-X's security interest was~~ remains perfected only by virtue of its original filing against X Corp which ~~was~~ "effective solely under Section 9-508." "would be ineffective to perfect the security interest but for the application of Section 9-508." Because SP-Y's security interest ~~no longer~~ is perfected by the filing of a financing statement that is "effective solely under Section 9-508," this section does not apply to the priority contest; whose effectiveness does not depend on Section 9-508 or 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. Rather, the normal priority rules apply. Under Section 9-322, because SP-Y's financing statement was filed against Z Corp, the new debtor, before SP-X's, SP-Y's security interest is senior to that of SP-X. Similarly, the normal priority rules would govern priority between SP-Y and 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 perfected by filed financing statements that are "effective solely under Section 9-508." would be unperfected but for the application of Section 9-316(i)(1) or 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 was ~~"effective solely under Section 9-508."~~ "would be ineffective to perfect the security interest but for the application of Section 9-508." Because SP-W's security interest is not perfected by the filing of a financing statement that is "effective solely under Section 9-508," this section does not apply to the priority contest: whose effectiveness does not depend on Section 9-316(i)(1) or 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. Rather, the normal priority rules apply. Under Section 9-322, because SP-W's financing statement was the first to be filed against Z Corp, the new debtor, SP-W's security interest is senior to that of SP-X. Similarly, the normal priority rules would govern priority between SP-W and SP-Z.

\* \* \*

## SECTION 9-330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR INSTRUMENT.

\* \* \*

### Comment

\* \* \*

2. **Non-Temporal Priority.** This Article permits a security interest in chattel paper or instruments to be perfected either by filing or by the secured party's taking possession. This section enables secured parties and other purchasers of chattel paper (both electronic and tangible) and instruments to obtain priority over earlier-perfected security interests, thereby promoting the negotiability of these types of receivables.

\* \* \*

**4. Possession and Control.** ~~The priority afforded by this section turns in part on whether a purchaser “takes possession” of tangible chattel paper. Similarly, the governing law provisions in Section 9-301 address both “possessory” and “nonpossessory” security interests. To qualify for priority under subsection (a) or (b), a purchaser must “take[ ] possession of the chattel paper or obtain[ ] control of the chattel paper under Section 9-105.” When chattel paper comprises one or more tangible records and one or more electronic records, a purchaser may satisfy the possession-or-control requirement by taking possession of the tangible records under Section 9-313 and having control of the electronic records under Section 9-105. In determining which of several related records constitutes chattel paper and thus is relevant to possession or control, the form of the records is irrelevant. Rather, the touchstone is whether possession or control of the record would afford the public notice contemplated by the possession and control requirements. For example, because possession or control of an amendment extending the term of a lease would not afford the contemplated public notice, the amendment would not constitute chattel paper regardless of whether the amendment is in tangible form and the lease is in electronic form, the amendment is electronic and the lease is tangible, the amendment and lease are both tangible, or the amendment and lease are both electronic.~~

Two common practices have raised particular concerns with respect to the possession requirement. First, in some cases the parties create more than one copy or counterpart of chattel paper evidencing a single secured obligation or lease. This practice raises questions as to which counterpart is the “original” and whether it is necessary for a purchaser to take possession of all counterparts in order to “take possession” of the chattel paper. Second, parties sometimes enter into a single “master” agreement. The master agreement contemplates that the parties will enter into separate “schedules” from time to time, each evidencing chattel paper. Must a purchaser of an obligation or lease evidenced by a single schedule also take possession of the master agreement as well as the schedule in order to “take possession” of the chattel paper?

The problem raised by the first practice is easily solved. The parties may in the terms of their agreement and by designation on the chattel paper identify only one counterpart as the original chattel paper for purposes of taking possession of the chattel paper. Concerns about the second practice also are easily solved by careful drafting. Each schedule should provide that it incorporates the terms of the master agreement, not the other way around. This will make it clear that each schedule is a “stand alone” document.

A secured party may wish to convert tangible chattel paper to electronic chattel paper and vice versa. The priority of a security interest in chattel paper under subsection (a) or (b) may be preserved, even if the form of the chattel paper changes. The principle implied in the preceding paragraph, i.e., that not every copy of chattel paper is relevant, applies to “control” as well as to “possession.” When there are multiple copies of chattel paper, a secured party may take “possession” or obtain “control” of the chattel paper if it acts with respect to the copy or copies that are reliably identified as the copy or copies that are relevant for purposes of possession or control. This principle applies as well to chattel paper that has been converted from one form to another, even if the relevant copies are not the “original” chattel paper.

\* \* \*

6. **Chattel Paper Claimed Other Than Merely as Proceeds.** Subsection (b) eliminates the requirement that the purchaser take without knowledge that the “specific paper” is subject to the security interest and substitutes for it the requirement that the purchaser take “without knowledge that the purchase violates the rights of the secured party.” This standard derives from the definition of “buyer in ordinary course of business” in Section ~~1-201(9)~~; 1-201(b)(9). The source of the purchaser’s knowledge is irrelevant. Note, however, that “knowledge” means “actual knowledge.” Section ~~1-201(25)~~; 1-202(b).

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**SECTION 9-332. TRANSFER OF MONEY; TRANSFER OF FUNDS FROM  
DEPOSIT ACCOUNT.**

\* \* \*

**Comment**

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4. **“Bad Actors.”** To deal with the question of the “bad actor,” this section borrows “collusion” language from Article 8. See, e.g., Sections 8-115, 8-503(e). This is the most protective (i.e., least stringent) of the various standards now found in the UCC. Compare, e.g., Section ~~1-201(9)~~ (“without knowledge that the sale . . . is in violation of the . . . security interest”); 1-201(b)(9) (“without knowledge that the sale violates the rights of another person”); Section ~~1-201(19)~~ (“honesty in fact in the conduct or transaction concerned”); 1-201(b)(20) (“honesty in fact and the observance of reasonable commercial standards of fair dealing”); Section 3-302(a)(2)(v) (“without notice of any claim”).

\* \* \*

\* \* \*

**SECTION 9-338. PRIORITY OF SECURITY INTEREST OR AGRICULTURAL  
LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN  
INCORRECT INFORMATION.**

\* \* \*

**Comment**

\* \* \*

3. **Relationship to Section 9-507.** This section applies to financing statements that contain information that is incorrect at the time of filing and imposes a small risk of subordination on the filer. In contrast, Section 9-507 deals with financing statements containing information that is correct at the time of filing but which becomes incorrect later. Except as provided in Section 9-507 with respect to changes in the ~~debtor's~~ name that is sufficient as the name of the debtor under Section 9-503(a), an otherwise effective financing statement does not become ineffective if the information contained in it becomes inaccurate.

\* \* \*

## PART 4

### RIGHTS OF THIRD PARTIES

\* \* \*

#### SECTION 9-401. ALIENABILITY OF DEBTOR'S RIGHTS.

\* \* \*

#### Comment

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3. **Governing Law.** There was some uncertainty under former Article 9 as to which jurisdiction's law (usually, which jurisdiction's version of Article 9) applied to the matters that this Part addresses. Part 3, Subpart 1, does not determine the law governing these matters because they do not relate to perfection, the effect of perfection or nonperfection, or priority. However, it might be inappropriate for a designation of applicable law by a debtor and secured party under Section ~~1-105~~ 1-301 to control the law applicable to an independent transaction or relationship between the debtor and an account debtor.

\* \* \*

\* \* \*

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

(a) **[Discharge of account debtor; effect of notification.]** 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) **[When notification ineffective.]** 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 article; 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) **[Proof of assignment.]** 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) **[Term restricting assignment generally ineffective.]** Except as otherwise provided in subsection (e) and Sections 2A-303 and 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) **[Inapplicability of subsection (d) to certain sales.]** Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

(f) **[Legal restrictions on assignment generally ineffective.]** Except as otherwise provided in Sections 2A-303 and 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) **[Subsection (b)(3) not waivable.]** Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) **[Rule for individual under other law.]** This section is subject to law other than this article 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) **[Inapplicability to health-care-insurance receivable.]** This section does not apply to an assignment of a health-care-insurance receivable.

(j) **[Section prevails over specified inconsistent law.]** This section prevails over any inconsistent provisions of the following statutes, rules, and regulations:

[List here any statutes, rules, and regulations containing provisions inconsistent with this section.]

*Legislative Note: States that amend statutes, rules, and regulations to remove provisions inconsistent with this section need not enact subsection (j)*

\* \* \*

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

(a) **[Term restricting assignment generally ineffective.]** 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) **[Applicability of subsection (a) to sales of certain rights to payment.]** 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 pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

(c) **[Legal restrictions on assignment generally ineffective.]** 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) [**Limitation on ineffectiveness under subsections (a) and (c).**] 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 article 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) [**Section prevails over specified inconsistent law.**] This section prevails over any inconsistent provisions of the following statutes, rules, and regulations:

[List here any statutes, rules, and regulations containing provisions inconsistent with this section.]

**Legislative Note:** *States that amend statutes, rules, and regulations to remove provisions inconsistent with this section need not enact subsection (e).*

### Comment

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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)~~; 1-201(b)(35). 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).

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\* \* \*

## PART 5

### FILING

[SUBPART 1. FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT]

#### SECTION 9-501. FILING OFFICE.

\* \* \*

### Comment

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5. **Transmitting Utilities.** The usual filing rules do not apply well for a transmitting utility (defined in Section 9-102). Many pre-UCC statutes provided special filing rules for railroads and in some cases for other public utilities, to avoid the requirements for filing with legal descriptions in every county in which such debtors had property. Former Section 9-401(5)

recreated and broadened these provisions, and subsection (b) follows this approach. The nature of the debtor will inform persons searching the record as to where to make a search.

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

**SECTION 9-502. CONTENTS OF FINANCING STATEMENT; RECORD OF MORTGAGE AS FINANCING STATEMENT; TIME OF FILING FINANCING STATEMENT.**

(a) **[Sufficiency of financing statement.]** 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) **[Real-property-related financing statements.]** Except as otherwise provided in Section 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) **[Record of mortgage as financing statement.]** 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:

(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:

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

(B) the 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 9-503(a)(4) applies; and

(4) the record is [duly] recorded.

(d) **[Filing before security agreement or attachment.]** A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

***Legislative Note:*** Language in brackets is optional. Where the State has any special recording system for real property other than the usual grantor-grantee index (as, for instance, a tract system or a title registration or Torrens system) local adaptations of subsection (b) and Section 9-519(d) and (e) may be necessary. See, e.g., Mass. Gen. Laws Chapter 106, Section 9-410.

A State should enact the 2010 amendments to Section 9-502 only if the State enacts Alternative A of the 2010 amendments to Section 9-503.

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