

CHAPTER 409

UNIFORM COMMERCIAL CODE — SECURED TRANSACTIONS

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Cross-reference: See definitions in s. 401.201.

SHORT TITLE, APPLICABILITY AND DEFINITIONS

409.101 Short title. This chapter shall be known and may be cited as uniform commercial code—secured transactions.

When does a debtor have rights in the collateral under article 9 of the uniform commercial code? Anzivino. 61 MLR 23.

409.102 Policy and subject matter of chapter.

(1) Except as otherwise provided in s. 409.104 on excluded transactions, this chapter applies:

(a) To any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper or accounts.

(b) To any sale of accounts or chattel paper.

(2) This chapter applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor’s lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This chapter does not apply to statutory liens except as provided in s. 409.310.

(3) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

History: 1973 c. 215.

A lease requiring a security deposit may operate to create a security interest in the deposit subject to this chapter. Demotopoulos v. Bank One Milwaukee, 924 F Supp. 894 (1996).

Secured transactions under the uniform commercial code: changes in Wisconsin filing provisions. 1974 WLR 864.

409.103 Perfection of security interests in multiple state transactions. (1) DOCUMENTS, INSTRUMENTS AND ORDINARY GOODS.

(a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in sub. (2), mobile goods described in sub. (3), and minerals described in sub. (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security inter-

est remains perfected, but if action is required by ss. 409.301 to 409.318 to perfect the security interest:

1. If the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of 4 months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

2. If the action is taken before the expiration of the period specified in subd. 1., the security interest continues perfected thereafter;

3. For the purpose of priority over a buyer of consumer goods (s. 409.307 (2)), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subds. 1. and 2.

(2) CERTIFICATE OF TITLE. (a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until 4 months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in par. (d), a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to sub. (1) (d).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) ACCOUNTS, GENERAL INTANGIBLES AND MOBILE GOODS. (a) This subsection applies to accounts, other than an account described in sub. (5) on minerals, and general intangibles, other than uncertificated securities, and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in sub. (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be per-

fectured by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at the debtor's place of business if the debtor has one, at the debtor's chief executive office if the debtor has more than one place of business, otherwise at the debtor's residence. If, however, the debtor is a foreign air carrier under the federal aviation act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of 4 months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) CHATTEL PAPER. The rules stated for goods in sub. (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in sub. (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) MINERALS. Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) UNCERTIFICATED SECURITIES. The law, including the conflict of laws rules, of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities.

History: 1973 c. 215; 1985 a. 237; 1991 a. 316.

409.104 Transactions excluded from chapter. This chapter does not apply:

(1) To a security interest subject to any statute of the United States to the extent that such statute governs the rights of parties to and 3rd parties affected by transactions in particular types of property; or

(2) To a nonconsensual landlord's lien; or

(3) To a lien given by statute or other rule of law for services or materials except as provided in s. 409.310 on priority of such liens; or

(4) To a transfer of a claim for wages, salary or other compensation of an employee; or

(6) To a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

(7) To a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds in s. 409.306 and priorities in proceeds in s. 409.312; or

(8) To a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or

(9) To any right of setoff; or

(10) Except to the extent that provision is made for fixtures in s. 409.313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder and including an interest in or lien on real estate owned by a public utility even though

for some purposes such real estate is deemed to be personal property; or

(11) To a transfer in whole or in part of any claim arising out of tort; or

(12) To a contract between a cooperative association and a member thereof, authorized by s. 185.41; or

(13) To a transfer of an interest in any deposit account as defined in s. 409.105 (1), except as provided with respect to proceeds under s. 409.306 and priorities in proceeds under s. 409.312.

History: 1973 c. 215.

Legislative Council Note, 1973: Sub. (2) is amended to make it clear that contractual landlord's liens are not exempt from coverage by ch. 409. Wisconsin has abolished the common law landlord's lien, distress for rent. See s. 704.11, Wis. Stats. (Bill 177-S)

409.105 Definitions and index of definitions. (1) In this chapter unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible.

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold.

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not that person owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

(dm) "Department" means the department of financial institutions.

(e) "Deposit account" means a demand, time, savings, pass-book or like account maintained with a bank, savings bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit.

(f) "Document" means document of title as defined in s. 401.201, and a receipt of the kind described in s. 407.201 (2).

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (s. 409.313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops.

(i) "Instrument" means a negotiable instrument as defined in s. 403.104 or a certificated security as defined in s. 408.102 or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment.

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

(k) An advance is made "pursuant to commitment" if the secured party has bound himself or herself to make it, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from the secured party's obligation.

(L) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders

of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(m) "Security agreement" means an agreement which creates or provides for a security interest.

(n) "Transmitting utility" means any person primarily engaged in the railroad business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(2) Other definitions applying to this chapter and the sections in which they appear are:

(a) "Account" — s. 409.106.

(am) "Attach" — s. 409.203.

(ar) "Construction mortgage" — s. 409.313 (1).

(b) "Consumer goods" — s. 409.109 (1).

(d) "Equipment" — s. 409.109 (2).

(e) "Farm products" — s. 409.109 (3).

(em) "Fixture" — s. 409.313.

(er) "Fixture filing" — s. 409.313.

(f) "General intangibles" — s. 409.106.

(g) "Inventory" — s. 409.109 (4).

(h) "Lien creditor" — s. 409.301 (3).

(i) "Proceeds" — s. 409.306 (1).

(j) "Purchase money security interest" — s. 409.107.

(k) "United States" — s. 409.103.

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

(a) "Check" — s. 403.104.

(b) "Contract for sale" — s. 402.106.

(c) "Holder in due course" — s. 403.302.

(d) "Note" — s. 403.104.

(e) "Sale" — s. 402.106.

(4) In addition ch. 401 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: 1973 c. 215; 1983 a. 189; 1985 a. 187, 237; 1991 a. 221, 316; 1995 a. 27.

409.106 Definitions: "account"; "general intangibles". "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

History: 1973 c. 215.

409.107 Definitions: "purchase money security interest". A security interest is a "purchase money security interest" to the extent that it is:

(1) Taken or retained by the seller of the collateral to secure all or part of its price; or

(2) Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

409.108 When after-acquired collateral not security for antecedent debt. Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property the secured party's security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires the debtor's rights in such collateral either in the ordinary

course of the debtor's business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

History: 1991 a. 316.

Security interests in after-acquired property under the uniform commercial code. Skilton, 1974 WLR 925.

409.109 Classification of goods; “consumer goods”; “equipment”; “farm products”; “inventory”. Goods are:

(1) “Consumer goods” if they are used or bought for use primarily for personal, family or household purposes;

(2) “Equipment” if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) “Farm products” if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) “Inventory” if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if the person has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as the person's equipment.

History: 1991 a. 316.

See note to 409.203, citing Milwaukee Mack Sales v. First Wis. Nat. Bank, 93 W (2d) 589, 287 NW (2d) 708 (1980).

Goods classified as “inventory” under (4) while in possession of debtor remain “inventory” while on lease status in possession of lessee. Voluntary Assign. of Water-town Tr. & Equip. Co. 94 W (2d) 622, 289 NW (2d) 288 (1980).

409.110 Sufficiency of description. For the purposes of this chapter any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

409.111 Applicability of bulk transfer laws. The creation of a security interest is not a bulk transfer under ch. 406 (see s. 406.103).

409.112 Where collateral is not owned by debtor. Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under s. 409.502 (2) or under s. 409.504 (1), and is not liable for the debt or for any deficiency after resale, and the owner of the collateral has the same right as the debtor:

(1) To receive statements under s. 409.208;

(2) To receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under s. 409.505;

(3) To redeem the collateral under s. 409.506;

(4) To obtain injunctive or other relief under s. 409.507 (1); and

(5) To recover losses caused to the owner under s. 409.208 (2).

History: 1991 a. 316.

409.113 Security interests arising under ch. 402 or 411. A security interest arising solely under ch. 402 or 411 is subject to the provisions of this chapter except that, to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods, all of the following apply:

(1) No security agreement is necessary to make the security interest enforceable.

(2) No filing is required to perfect the security interest.

(3) The rights of the secured party on default by the debtor are governed by ch. 402 if a security interest arises solely under that chapter or by ch. 411 if a security interest arises solely under that chapter.

History: 1991 a. 148.

409.114 Consignment. (1) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this chapter by s. 402.326 (3) (c) has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if:

(a) The consignor complies with the filing provision on sales with respect to consignments (s. 402.326 (3) (c)) before the consignee receives possession of the goods; and

(b) The consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor; and

(c) The holder of the security interest receives the notification before the consignee receives possession of the goods; and

(d) The notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

(2) In the case of a consignment which is not a security interest and in which the requirements of sub. (1) have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor.

History: 1973 c. 215; 1981 c. 390 s. 252.

Legislative Council Note, 1973: Sub. (1) (c) was amended by the Special Committee to delete the words “within 5 years” which appear after “notification” in the official text. Under s. 409.403 (2), as amended by this proposal, the effectiveness of a filed financing statement lapses at the end of 5 years unless a continuation statement is filed prior to lapse. For this reason the official text requires that a new notice be made under this section and s. 409.312 (3) (c) every 5 years even though holders of conflicting security interests received notice when the financing statement was originally filed and will have constructive notice upon the filing of a continuation statement. The Special Committee felt this requirement of new notice every 5 years to be both unreasonable and unnecessary. (Bill 177–S)

VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

409.201 General validity of security interest. Except as otherwise provided by chs. 401 to 411 a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this chapter validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail instalment sales, or the like, or under chs. 421 to 427 and 429, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

History: 1971 c. 239; 1979 c. 89; 1991 a. 148, 304, 315; 1995 a. 329.

409.202 Title to collateral immaterial. Each provision of this chapter with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

A person with a voidable title in property, having the power to pass title to a good faith purchaser under s. 402.403, may transfer a security interest in that property. Return of Property in State v. Pippin, 176 W (2d) 418, 500 NW (2d) 407 (Ct. App. 1993).

409.203 Attachment and enforceability of security interest; proceeds; formal requisites. (1) Subject to s. 404.210 on the security interest of a collecting bank, s. 408.321 on security interests in securities and s. 409.113 on a security interest arising under ch. 402 or 411, a security interest is not enforceable against the debtor or 3rd parties with respect to the collateral and does not attach unless:

(a) The collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement

which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

- (b) Value has been given; and
- (c) The debtor has rights in the collateral.

(2) A security agreement signed by one spouse is signed by the debtor under this section if that spouse acting alone has the right under s. 766.51 to manage and control the collateral, unless a marital property agreement or court decree which is binding on the secured party under s. 766.55 (4m) or 766.56 (2) (c) provides otherwise.

(3) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in sub. (1) have taken place unless explicit agreement postpones the time of attaching.

(4) Unless otherwise agreed a security agreement gives the secured party the rights to proceed under s. 409.306.

(5) A transaction, although subject to this chapter, is also subject to chs. 138, 421 to 427 and 429 and s. 182.025, or any other similar statute which may be applicable to the particular transaction, and in the case of conflict between this chapter and any such statute, such statute controls. Failure to comply with any applicable statute has only the effect which is specified therein.

History: 1971 c. 239; 1973 c. 3, 215; 1985 a. 37, 237; 1991 a. 148; 1995 a. 329, 449.

Security interest in all of trucking company's "equipment" reasonably identified trucks as collateral. *Milwaukee Mack Sales v. First Wis. Nat. Bank*, 93 W (2d) 589, 287 NW (2d) 708 (1980).

A provision in an instrument prohibiting transfer of the instrument did not render a security interest in the instrument unenforceable under sub. (1) (c). *Belke v. M & I First National Bank of Stevens Point*, 189 W (2d) 385, 525 NW (2d) 737 (Ct. App. 1994).

409.204 After-acquired property; future advances.

(1) Except as provided in sub. (2), a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions under s. 409.314 when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (s. 409.105 (1)).

History: 1973 c. 215.

A security agreement covering money lent "and all other obligations and liabilities" will not extend to obligations arising out of contract violations unless clearly within the intent of the parties. *John Miller Supply Co. v. Western State Bank*, 55 W (2d) 385, 199 NW (2d) 161.

Priorities of "future advances" under previously perfected security interests and article 9 of the U.C.C. 58 MLR 759.

Security interests in after-acquired property under the uniform commercial code. *Skilton*, 1974 WLR 925.

409.205 Use or disposition of collateral without accounting permissible.

A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

History: 1973 c. 215.

Under 409.205 the debtor is freed from strict accountability to the secured creditor for the property secured and the validity of a secured interest in after-acquired property specifically recognized; thus where a creditor has a security interest in the debtor's after-acquired property the debtor is able to commingle his property and use it to his best interest, and the acquiescence of the secured creditor under an after-acquired clause in such a program by the debtor does not invalidate the security interest of the creditor. *Burlington Nat. Bank v. Strauss*, 50 W (2d) 270, 184 NW (2d) 122.

409.206 Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists.

(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee not to assert against an assignee any claim or defense which the buyer or lessee may have against the seller or lessor is enforceable by an assignee who takes an assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under ch. 403. A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods ch. 402 governs the sale and any disclaimer, limitation or modification of the seller's warranties.

History: 1991 a. 316.

409.207 Rights and duties when collateral is in secured party's possession.

(1) A secured party must use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession:

(a) Reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) The risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) The secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) The secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) The secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by the secured party's failure to meet any obligation imposed by subs. (1) and (2) but does not lose his or her security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

History: 1991 a. 316.

Pledged securities – the pledgee's duty to preserve value under the UCC. 62 MLR 391 (1979).

409.208 Request for statement of account or list of collateral.

(1) A debtor may sign a statement indicating what the debtor believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within 2 weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor the secured party may indicate that fact in the secured party's reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply the secured party is liable for any loss caused to the debtor thereby; and if the debtor has properly included in the request a good faith statement of the

obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by the secured party's failure to comply. If the secured party no longer has an interest in the obligation or collateral at the time the request is received the secured party must disclose the name and address of any successor in interest known to the secured party and the secured party is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by the successor in interest.

(3) A debtor is entitled to such a statement once every 6 months without charge. The secured party may require payment of a charge not exceeding \$10 for each additional statement furnished.

History: 1991 a. 316.

RIGHTS OF THIRD PARTIES; PERFECTED AND
UNPERFECTED SECURITY INTERESTS;
RULES OF PRIORITY

409.301 Persons who take priority over unperfected security interests; rights of "lien creditor". (1) Except as otherwise provided in sub. (2), an unperfected security interest is subordinate to the rights of:

(a) Persons entitled to priority under s. 409.312;

(b) A person who becomes a lien creditor before the security interest is perfected;

(c) In the case of goods, instruments, documents and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that that person gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) In the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that that person gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 20 days after the debtor receives possession of the collateral, the secured party takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before that person becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

History: 1973 c. 215; 1977 c. 298; 1991 a. 316.

Since the transaction between the supplier and the debtor was a security arrangement only, failure of the supplier to perfect its security interest rendered its claim subordinate to that of the attaching judgment creditor, absent actual knowledge that the gasoline held by the debtor was the property of the supplier rather than the debtor. *Clark Oil & Refining Co. v. Liddicoat*, 65 W (2d) 612, 223 NW (2d) 530.

409.302 When filing is required to perfect security interest; security interests to which filing provisions of this chapter do not apply. (1) A financing statement must be filed to perfect all security interests except the following:

(a) A security interest in collateral in possession of the secured party under s. 409.305;

(b) A security interest temporarily perfected in instruments or documents without delivery under s. 409.304 or in proceeds for a 10-day period under s. 409.306;

(c) A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) A purchase money security interest in consumer goods; but fixture filing is required for priority over conflicting interests in fixtures to the extent provided in s. 409.313;

(e) An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) A security interest of a collecting bank (s. 404.210) or in securities (s. 408.321) or arising under ch. 402 or 411 (see s. 409.113) or covered in sub. (3);

(g) An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder; or

(h) A security interest created by a master lease entered into by the state under s. 16.76 (4).

(2) If a secured party assigns a perfected security interest, no filing under this chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing provisions of this chapter are not necessary or effective to perfect a security interest in property subject to:

(a) A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this chapter for filing of the security interest; or

(b) The following vehicle title statutes: ss. 342.19, 342.20, 342.284 and 342.285; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of ss. 409.401 to 409.408 apply to a security interest in that collateral created by that person as debtor; or

(bm) The following boat title statutes: ss. 30.57, 30.572 and 30.573; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of ss. 409.401 to 409.408 apply to a security interest in that collateral created by that person as debtor; or

(c) A certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (s. 409.103 (2)); or

(d) Sections 182.025 and 190.11 and other statutes providing for central filing.

(4) Compliance with a statute or treaty described in sub. (3) is equivalent to the filing of a financing statement under this chapter, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in s. 409.103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this chapter.

History: 1973 c. 215; 1985 a. 187, 237; 1989 a. 31; 1991 a. 39, 148, 316; 1995 a. 449.

Legislative Council Note, 1973: The language of sub. (3) (intro.) has been changed from that contained in the official text in order to conform more closely to the stylistic approach of present s. 409.302 (3) without making a substantive change. Filing under the vehicle title statutes specified in sub. (3) (b) is the exclusive method of perfection with respect to mobile homes and certain other vehicles. Sub. (3) (b) is a restatement of present s. 409.302 (5). Sub. (3) (d) is not contained in the official text. It is a restatement of present s. 409.302 (3) (intro.) and (b). The provisions of sub. (5) are incorporated into s. 409.302 (3) (b). (Bill 177-S)

409.303 When security interest is perfected; continuity of perfection. (1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in ss. 409.302,

409.304, 409.305 and 409.306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this chapter and is subsequently perfected in some other way under this chapter, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this chapter.

Since the bank had a valid loan and security agreement which was perfected by the filing of financing statements as required by 409.303 (1) and 409.302 (1), its security, including after-acquired property, had priority under 409.312 (5) (a) as to a grinder mixer over a chattel mortgage which was filed almost 2 years after the filing by the bank of its financing statements, even though the bank subsequently refiled a financing statement. *Burlington Nat. Bank v. Strauss*, 50 W (2d) 270, 184 NW (2d) 122.

409.304 Perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession. (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments, other than certificated securities or instruments which constitute part of chattel paper, can be perfected only by the secured party's taking possession, except as provided in subs. (4) and (5) and s. 409.306 (2) and (3) on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments, other than certificated securities, or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument (other than a certificated security), a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange but priority between conflicting security interests in the goods is subject to s. 409.312 (3); or

(b) Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subs. (4) and (5) perfection depends upon compliance with applicable provisions of this chapter.

History: 1973 c. 215; 1985 a. 237.

409.305 When possession by secured party perfects security interest without filing. A security interest in letters of credit and advices of credit (s. 405.116 (2) (a)), goods, instruments (other than certificated securities), money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as pos-

session is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

History: 1973 c. 215; 1985 a. 237.

Police seizure of collateral does not interrupt possession by a secured party. *Return of Property in State v. Pippin*, 176 W (2d) 418, 500 NW (2d) 407 (Ct. App. 1993).

409.306 "Proceeds"; secured party's rights on disposition of collateral. (1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "noncash proceeds".

(2) Except where this chapter otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) Subject to sub. (3m), the security interest in proceeds under s. 409.203 (4) is a continuously perfected security interest if the interest in the original collateral was perfected.

(3m) If proceeds are acquired with cash proceeds from the sale of the original collateral or the sale of noncash proceeds of the original collateral and are of a type of property not described in the original financing statement, a buyer for value of such noncash proceeds who buys without knowledge of the fact that the property was purchased with cash proceeds of the original collateral and before filing of the financing statement describing such noncash proceeds, takes free of the original security interest in such proceeds.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) In identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

(b) In identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) In all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph is:

1. Subject to any right of setoff; and

2. Limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of a) the payments to the secured party on account of cash proceeds received by the debtor during such period and b) the cash proceeds received by the debtor during such period to which the secured party is entitled under pars. (a) to (c).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party

must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under par. (a) to the extent that the transferee of the chattel paper was entitled to priority under s. 409.308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under par. (a).

(d) A security interest of an unpaid transferee asserted under par. (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

History: 1973 c. 215; 1985 a. 37 s. 187.

Legislative Council Note, 1973: The official text amended sub. (3) so as to provide that the security interest in proceeds continues to be perfected if a filed financing statement covered the original collateral and the proceeds are collateral in which a security interest could be perfected by a filing in the office where the financing statement was filed. In addition, if the property constituting the proceeds was acquired with cash proceeds obtained through the sale of the original collateral, the security interest would cover these acquired proceeds only if they were a type of property described in the financing statement. The Special Committee rejected the proposed change and decided to retain present sub. (3) but amended sub. (3) to reflect the intent of new s. 409.203 (3) which provides that a security agreement gives the secured party the rights to proceeds under s. 409.306 unless otherwise agreed. Sub. (3), as amended, makes it clear that perfection of a security interest in the original collateral constitutes perfection of the security interest in proceeds unless coverage of proceeds is disclaimed in the security agreement under s. 409.203 (3). An exception to the rule of sub. (3) is provided in sub. (3m).

Sub. (3m) was created by the Special Committee to protect an innocent buyer for value who acquires proceeds purchased with cash proceeds from the sale of the original collateral or the sale of noncash proceeds of the original collateral. This subsection provides that a buyer under these circumstances is not subject to a security interest in the original collateral if the goods he is acquiring are not a type of property described in the financing statement covering the original collateral. This buyer is not considered innocent if he has knowledge of the fact that the property was purchased with cash proceeds from the sale of the original collateral or if he makes his purchase after a financing statement describing this property has been filed.

For example, a bank finances the purchase of a tractor by first buyer. The bank takes a security interest in the tractor and files a financing statement which covers both the tractor and proceeds. First buyer sells the tractor without authorization from the bank. The bank has a continuing security interest in the tractor and in the cash proceeds first buyer received from the sale [409.306 (2) and 409.306 (3)]. Next, the cash proceeds are used by first buyer to purchase an oil painting. Even though the oil painting is not property of a type described in the financing statement covering the tractor, it is considered "proceeds" of the tractor and the bank has a security interest in the oil painting while it is in the hands of first buyer. However, if first buyer sells the oil painting for value to second buyer who has no knowledge of the bank's security interest in the oil painting because the painting was not the type of property described in the financing statement covering the tractor and a financing statement describing the oil painting has not been filed, then under sub. (3m) second buyer takes free of the bank's security interest in the oil painting and the bank has a security interest only in the proceeds which first buyer received from the sale of the painting and in the tractor. This buyer is not considered innocent if he has knowledge of the fact that the property was purchased with cash proceeds from the sale of the original collateral or if he makes his purchase after a financing statement describing this property has been filed. (Bill 177-S)

See note to 409.311, citing *Production Credit Assn. v. Equity Coop Livestock*, 82 W (2d) 5, 261 NW (2d) 127.

Rights of security holder in collateral survive transfer of collateral under 409.311 made without secured party's consent. *Production Credit Assn. of Madison v. Nowatzki*, 90 W (2d) 344, 280 NW (2d) 118 (1979).

Condition imposed by secured party on authorization to sell collateral is ineffective unless performance of condition is within buyer's control. *Production Credit Ass'n. v. Pillsbury Co.* 132 W (2d) 243, 392 NW (2d) (Ct. App. 1986).

409.307 Protection of buyers of goods. (1) A buyer in ordinary course of business as defined in s. 401.201 (9) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his or her seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods having an original purchase price not in excess of \$500, a buyer takes free of a security interest even though perfected if the buyer buys without knowledge of the security interest, for value and for the buyer's personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

History: 1973 c. 215; 1983 a. 192; 1991 a. 316.

Status of party as buyer in ordinary course of business is not dependent upon secured party's knowledge thereof. *Antigo Coop. Credit Union v. Miller*, 86 W (2d) 90, 271 NW (2d) 642 (1978).

Purchasers became buyers in ordinary course of business when goods became identified to purchase contract. *Daniel v. Bank of Hayward*, 144 W (2d) 931, 425 NW (2d) 416 (1988).

When sale involves farm products, 7 USC s. 1631 determines whether buyer takes free of security interest. *Farm Credit Bank of St. Paul v. F&A Dairy*, 165 W (2d) 360, 477 NW (2d) 357 (Ct. App. 1991).

Buyer in ordinary course of business under article 9 of the uniform commercial code (and related matters). *Skilton*, 1974 WLR 1.

409.308 Purchase of chattel paper and instruments. A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of the purchaser's business has priority over a security interest in the chattel paper or instrument:

(1) Which is perfected under s. 409.304 (permissive filing and temporary perfection) or under s. 409.306 (perfection as to proceeds) if the purchaser acts without knowledge that the specific paper or instrument is subject to a security interest; or

(2) Which is claimed merely as proceeds of inventory subject to a security interest (s. 409.306) even though the purchaser knows that the specific paper or instrument is subject to the security interest.

History: 1973 c. 215; 1991 a. 316.

409.309 Protection of purchasers of instruments, documents and securities. Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (s. 403.302) or a holder to whom a negotiable document of title has been duly negotiated (s. 407.501) or a bona fide purchaser of a security (s. 408.302) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to such holders or purchasers.

History: 1985 a. 237 ss. 117, 119.

409.310 Priority of certain liens arising by operation of law. When a person in the ordinary course of that person's business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

History: 1991 a. 316.

"Possession" under this section is not continuous possession; priority of mechanic's lien over previously existing security interest was retained where lienor conditionally released the property to the owner who subsequently returned it to the lienor. *M&I Western State Bank v. Wilson*, 172 W (2d) 357, 493 NW (2d) 387 (Ct. App. 1992).

409.311 Alienability of debtor's rights: judicial process. The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

Where security agreement does not explicitly provide that transfer of collateral constitutes default and secured party is not entitled to immediate possession, sale of collateral is not a conversion. *Production Credit Assn. v. Equity Coop Livestock*, 82 W (2d) 5, 261 NW (2d) 127.

See note to 409.306, citing *Production Credit Assn. of Madison v. Nowatzki*, 90 W (2d) 344, 280 NW (2d) 118 (1979).

409.312 Priorities among conflicting security interests in the same collateral. (1) The rules of priority stated in ss. 409.301 to 409.311 and 409.313 to 409.318 and in the following sections shall govern when applicable: s. 404.210 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; s. 409.103 on security interests related to other jurisdictions; s. 409.114 on consignments.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than 6 months before the crops

become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory before the date of the filing made by the purchase money secured party, or before the beginning of the 21-day period where the purchase money security interest is temporarily perfected without filing or possession (s. 409.304 (5)); and

(c) The holder of the conflicting security interest receives the notification before the debtor receives possession of the inventory; and

(d) The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subs. (3) and (4)), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of sub. (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under s. 408.321 on securities, the security interest has the same priority for the purposes of sub. (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

History: 1973 c. 215; 1977 c. 298; 1985 a. 237; 1995 a. 225, 449.

A seller of goods on credit must perfect its claim to priority, under this section, by filing the agreement and financing statements as required by this section. *House of Stainless v. Marshall & Ilsley Bank*, 75 W (2d) 264, 249 NW (2d) 561.

Equipment financing and the lease paradox of article 9. Tuthill, WBB October 1981.

409.313 Priority of security interests in fixtures. (1) In this section and in the provisions of ss. 409.401 to 409.408 referring to fixture filing, unless the context otherwise requires:

(a) A mortgage is a “construction mortgage” to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(b) A “fixture filing” is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of s. 409.402 (5).

(c) Goods are “fixtures” when they become so related to particular real estate that an interest in them arises under real estate law.

(2) A security interest under this chapter may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this chapter in ordinary building materials incorporated into an improvement on land.

(3) This chapter does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where:

(a) The security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the debtor has an interest of record in the real estate; or

(b) The security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate; or

(c) The fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this chapter; or

(d) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where:

(a) The encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) The debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor’s right terminates, the priority of the security interest continues for a reasonable time.

(6) Notwithstanding sub. (4) (a) but otherwise subject to subs. (4) and (5), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(8) When the secured party has priority over all owners and encumbrancers of the real estate, the secured party may, on default, subject to ss. 409.501 to 409.507 remove the secured party’s collateral from the real estate but the secured party must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

(9) The priority provisions of this section do not apply to security interests in vehicles for which certificates of title are required under ch. 342 and which are subject to s. 409.302 (3) (b).

History: 1973 c. 215; 1977 c. 447 s. 210; 1983 a. 189; 1991 a. 316.

Legislative Council Note, 1973: Sub. (9) is not contained in the official text. It was added by the Special Committee to make it clear that vehicles perfected by filing under the motor vehicle title statutes, including mobile homes, are not subject to fix-

ture filing regardless of how they may be attached to the land; therefore, the rules of priority set out in this section do not apply. (Bill 177–S)

409.314 Accessions. (1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section “accessions”) over the claims of all persons to the whole except as stated in sub. (3) and subject to s. 409.315 (1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in sub. (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) If the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected, the security interests described in subs. (1) and (2) do not take priority over:

(a) A subsequent purchaser for value of any interest in the whole; or

(b) A creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) A creditor with a prior perfected security interest in the whole to the extent that the creditor makes subsequent advances.

(3m) A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at that holder’s own foreclosure sale is a subsequent purchaser within this section.

(4) When under subs. (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, the secured party may on default subject to ss. 409.501 to 409.507 remove the secured party’s collateral from the whole but the secured party must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the security party gives adequate security for the performance of this obligation.

History: 1991 a. 316.

409.315 Priority when goods are commingled or processed. (1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if:

(a) The goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) A financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

(1m) In a case to which sub. (1) (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under s. 409.314.

(2) When under sub. (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

409.316 Priority subject to subordination. Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

409.317 Secured party not obligated on contract of debtor. The mere existence of a security interest or authority

given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor’s acts or omissions.

409.318 Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment. (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in s. 409.206 the rights of an assignee are subject to:

(a) All the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless the assignee does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor’s consent to such assignment or security interest.

History: 1973 c. 215; 1991 a. 316.

There is no distinction between a party with a security interest in a debtor’s accounts receivable and a party who is an assignee of a debtor’s accounts receivable. *Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F 2d 1185 (1990).

FILING

409.401 Place of filing; erroneous filing; removal of collateral. (1) The proper place to file in order to perfect a security interest is as follows:

(a) When the collateral is equipment used in farming operations, or farm products, or accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the register of deeds in the county of the debtor’s residence or if the debtor is not a resident of this state then in the office of the register of deeds in the county where the goods are kept, and in addition when the collateral is crops growing or to be grown in the office of the register of deeds in the county where the land is located;

(b) When the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to s. 409.103 (5), or when the financing statement is filed as a fixture filing (s. 409.313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

(c) In all other cases, with the department.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also effective with regard to collateral covered by the financing statement

against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) The rules stated in s. 409.103 determine whether filing is necessary in this state.

(5) Notwithstanding the preceding subsections, and subject to s. 409.302 (3), the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is with the department. This filing constitutes a fixture filing under s. 409.313 as to the collateral described therein which is or is to become fixtures.

(6) For the purposes of this section, the residence of an organization is its place of business if it has one or its chief executive office if it has more than one place of business.

History: 1973 c. 215; 1975 c. 41; 1995 a. 27.

Cross-reference: See s. 779.97 for filing federal liens.

Changes in UCC filing procedures brought about by the amendments to (1) (c) and 409.403 (1), by ch. 215, laws of 1973, discussed. 63 Atty. Gen. 439.

Secured transactions under the uniform commercial code: changes in Wisconsin filing provisions. 1974 WLR 864.

409.402 Formal requisites of financing statement; amendments; mortgage as financing statement. (1)

(a) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

(b) When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to s. 409.103 (5), or when the financing statement is filed as a fixture filing (s. 409.313) and the collateral is goods which are or are to become fixtures, the statement must also comply with sub. (5). In each county, the register of deeds shall enter evidence of financing statements covering fixtures on all indices kept by the register of deeds regarding the transfer of real estate. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. An accurate reproduction of the security agreement or the financing statement, certified to be a true copy by the secured party, public officer or notary public, or a carbon copy bearing signatures appearing by carbon impression, may be filed.

(2) A financing statement which otherwise complies with sub. (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in:

(a) Collateral already subject to a security interest in another jurisdiction when it is brought into this state or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or

(b) Proceeds under s. 409.306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

(c) Collateral as to which the filing has lapsed; or

(d) Collateral acquired after a change of name, identity or corporate structure of the debtor (sub. (7)).

(3) A form substantially as follows is sufficient to comply with sub. (1):

Name of debtor (or assignor)

Address

Name of secured party (or assignee)

Address

1. This financing statement covers the following types (or items) of property:

(Describe)

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Enter Description of Real Estate)

3. The above goods are to become fixtures on (Legal Description of Real Estate) and this financing statement is to be filed in the real estate records.

4. (If products of collateral are claimed) Products of the collateral are also covered.

Signature of Debtor (or Assignor)

Signature of Secured Party (or Assignee)

(use whichever is applicable)

(3m) The department shall prescribe by rule standard forms for filing a financing statement, continuation statement, termination statement, statement of assignment or statement of release. A filing officer may refuse to accept statements not on the required form or not containing information required under sub. (1).

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment which changes only the name or the address of either party need be signed only by the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to s. 409.103 (5), or a financing statement filed as a fixture filing (s. 409.313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed in the real estate records, and the financing statement must contain a legal description of the real estate.

(6) (a) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if all of the following conditions are met:

1. The goods are described in the mortgage by item or type.

2. The goods are or are to become fixtures related to the real estate described in the mortgage.

3. The mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records.

4. The mortgage is duly recorded.

(b) No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership, limited liability company or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes the debtor's name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

(9) A financing statement signed by one spouse is signed by the debtor under this section if that spouse acting alone has the right under s. 766.51 to manage and control the collateral, unless

a marital property agreement or court decree which is binding on the secured party under s. 766.55 (4m) or 766.56 (2) (c) provides otherwise.

History: 1973 c. 215; 1977 c. 29, 418; 1985 a. 37; 1991 a. 316; 1993 a. 112; 1995 a. 27, 225.

Legislative Council Note, 1973: The present requirement in sub. (1) (b) that a financing statement covering crops growing or to be grown must contain the legal description and name of the record owner of the real estate concerned is not a part of the official text of the code. This special Wisconsin requirement was rejected by the Special Committee because financing statements covering growing crops and crops to be grown are to be filed with the register of deeds in the county where the land is located [s. 409.401 (1) (a)] but not in the real estate records. Accidental filing in the real estate records may cause problems. In addition, the name of the record owner is misleading if the crops are being grown by a debtor who is a tenant farmer. The Special Committee decided not to adopt the additional language of the official text relating to use of reproductions of the security agreement or financing statement for filing purposes. The Committee transferred the language presently contained in the last sentence of s. 409.403 (1) to the last sentence of par. (b).

Changes in various provisions of the official text make it unnecessary in certain instances to have both the signature of the debtor and the secured party on the financing statement or a copy of the security agreement. The Special Committee is of the opinion that it is not the responsibility of a filing officer to determine whether or not one or 2 signatures are necessary or if only one, which one.

For an explanation of the change in sub. (3) 2., see NOTE to s. 409.402 (1) (b). The Special Committee also deleted the following language at the end of sub. (3) 3: "(If the debtor does not have an interest of record) The name of the record owner is ...". This change was made to conform to the change in s. 409.313 (4) (a) and (b). See the note to those paragraphs. A similar deletion is made in s. 409.402 (5). For the purposes of clarification, except in s. 409.402 (1) (b), the Special Committee decided that where a description of real estate is required, what is meant is a "legal" description. This clarification has been made throughout the bill.

The Special Committee added the language concerning amendments which change only the name or address of the parties. The Special Committee is of the opinion that only the secured party could be affected adversely by a name or address change and that the requirement of signatures of both parties is unnecessary.

Language was deleted in new sub. (5). See note to s. 409.402 (3) 3. With respect to the requirement in s. 409.402 (5) that certain financing statements must specify that they are to be filed in the real estate records, the Special Committee rejected additional language which would have provided that, "failure to indicate on the financing statement that proper filing is in the real estate records does not invalidate a financing statement that otherwise complies with the law." The Special Committee was of the opinion that such a notation on a financing statement serves only as an instruction to the filing officer and that the failure to include this instruction would be only a minor error which is not seriously misleading as long as the financing statement is, in fact, properly filed. In reaching this conclusion, the Special Committee took cognizance of s. 409.402 (8) [present sub. (5)] which provides that minor errors, which are not seriously misleading, do not jeopardize the effectiveness of financing statements. (Bill 177-S)

Creditor's filing statement became "seriously misleading" under (7) after debtors' name change and so was insufficient to perfect security interest in property acquired more than 4 months after name change. *First Agri Services, Inc. v. Kahl*, 129 W (2d) 464, 385 NW (2d) 191 (Ct. App. 1986).

Address as a formal requisite of the financing statement. *Neimann*, 55 MLR 387.

409.403 What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer. (1) Presentation for filing of a financing statement and tender of the filing fee constitutes filing under this chapter unless the filing officer refuses to accept the statement under s. 409.402 (3m). Presentation for filing of a financing statement and acceptance of the statement by the filing officer constitutes filing under this chapter.

(2) Except as provided in sub. (6) a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in sub. (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying

with s. 409.405 (2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in sub. (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if the officer has retained a microfilm or other photographic record or an optical disk or electronic copy. In other cases a lapsed statement may not be destroyed until after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if the officer physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under sub. (6) shall be retained.

(4) Except as provided in sub. (7), a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof, or an optical disk or electronic copy thereof, for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) (a) Fees for filing with the office of the register of deeds.
1. The fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement is \$8 if the statement is on the standard form prescribed by the department and is \$16 if the statement is not on the standard form or if additional pages are attached to the standard form. The fee for filing an original financing statement subject to s. 409.402 (5) is \$10 if the statement is on the standard form and is \$20 if the statement is not on the standard form or if additional pages are attached to the standard form.

1m. There is no fee for processing the termination statement.

2. The fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an amendment or a continuation statement is \$5 if the amendment or statement is on the standard form prescribed by the department and is \$10 if the amendment or statement is not on the standard form or if additional pages are attached to the standard form.

3. A register of deeds shall forward \$3 to the department for each original financing statement filed with the office of the register of deeds under subd. 1. and for each amendment and each continuation statement filed with the office of the register of deeds under subd. 2.

(b) Fees for filing with the department of financial institutions.

1. The fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement is \$8 if the statement is on the standard form prescribed by the department and is \$16 if the statement is not on the standard form or if additional pages are attached to the standard form.

1m. There is no fee for processing the termination statement.

2. The fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an amendment or a continuation statement is \$5 if the amendment or statement is on the standard form prescribed by the department and is \$10 if the amendment or statement is not on the standard form or if additional pages are attached to the standard form.

(6) If the debtor is a transmitting utility (s. 409.401 (5)) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under s. 409.402 (6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to s. 409.103 (5), or is filed as a fixture filing, the filing officer shall index it under the names of the debtor in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

(8) A separate amendment, continuation statement, termination statement, statement of assignment or statement of release shall be filed for each original financing statement to be affected.

History: 1971 c. 125 s. 524; 1973 c. 215; 1977 c. 29, 418; 1985 a. 29; 1989 a. 123; 1991 a. 39, 269, 316; 1993 a. 452; 1995 a. 27, 417.

Legislative Council Note, 1973: In sub. (7), the Special Committee deleted the words “and any owner of record shown on the financing statement” which appear after the word “debtor” in the official text. This change is in conformity with changes made in ss. 409.402 (3) 3. and 409.402 (5). See the note to s. 409.402 (3) 3. (Bill 177–S)

When creditor fails to file continuation statement under (2), perfection lapses and creditor may assume status of unperfected secured creditor as against pre-lapse purchaser. *Hanley Implement v. Riesterer Equip.* 150 W (2d) 161, 441 NW (2d) 304 (Ct. App. 1989).

See note to 409.401, citing 63 Atty. Gen. 439.

Filing of 2nd financing statement which did not refer to original filing does not bring creditor into substantial compliance with (3). *Bostwick–Braun Co. v. Owens*, 634 F Supp. 839 (1986).

409.404 Termination statement. (1) (a) *Requirement for filing termination statement with the office of the register of deeds.* If a financing statement covering consumer goods is filed on or after July 1, 1974, then within one month or within 10 days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with s. 409.405 (2), including payment of the required fee.

(b) *Requirement for filing termination statement with the department of financial institutions.* Except as provided in par. (c), if a financing statement is filed with the department, then within one month or within 10 days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with the department a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with s. 409.405 (2), including payment of the required fee.

(c) *Exceptions to requirement for filing termination statement with the department of financial institutions.* No termination statement needs to be filed with the department pursuant to par. (b) if:

1. The effectiveness of the financing statement or continuation statement has lapsed prior to the time when a termination statement is required to be filed under par. (b).

2. The financing statement states that a continuing business relationship exists between the debtor and the secured party.

3. The financing statement was filed prior to January 1, 1978.

(d) *Failure to file a termination statement.* If the affected secured party fails to file a termination statement as required by this subsection, or to send such a termination statement within 10 days after receipt of the debtor’s written demand the secured party is liable to the debtor for \$25, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of a termination statement the officer must note it in the index. If the officer has received the termination statement in duplicate, the officer shall return one copy of the termination statement to the secured party stamped to show the time of receipt. If the filing officer has a microfilm, other photographic record or optical disk or electronic copy of the financing statement, and of any related continuation statement, statement of assignment and statement of release, the officer may remove the originals from the files at any time after receipt of the termination statement, or if the officer has no such record, the officer may remove them from the files at any time after one year after receipt of the termination statement.

(3) (a) *Fees for filing a termination statement with the office of the register of deeds.* There is no fee for a termination statement that is filed with the office of the register of deeds and there is no fee for indexing any name in connection with the termination process.

(b) *Fees for filing a termination statement with the department of financial institutions.* There is no fee for a termination statement which is filed with the department and there is no fee for indexing any name in connection with the termination process.

History: 1971 c. 125 s. 524; 1973 c. 215; 1977 c. 29, 247; 1985 a. 29; 1989 a. 123; 1991 a. 39, 269; 1995 a. 27.

Legislative Council Note, 1973: Sub. (1) presently provides that a termination statement must be filed in all cases. This is not a part of the official text. The Special Committee decided to delete the mandatory requirement, except in the case of termination statements relating to security interests in consumer goods. It should be noted that the Wisconsin Consumer Act, ch. 239, laws of 1971, has additional requirements with respect to consumer credit transactions. (Bill 177–S)

409.405 Assignment of security interest; duties of filing officer; fees. (1) An original financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in s. 409.403 (4). The fee for filing, indexing and stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement so indicating an assignment is \$8 if the statement is on the standard form prescribed by the department and is \$16 if the statement is not on the standard form or if additional pages are attached to the standard form. The fee for filing an original financing statement indicating an assignment and subject to s. 409.402 (5) is \$10 if the statement is on the standard form and is \$20 if the statement is not on the standard form or if additional pages are attached to the standard form. A register of deeds shall forward \$3 to the department for each original financing statement indicating an assignment of a security interest that is filed with the office of the register of deeds.

(1m) There is no fee for processing the termination statement.

(2) A secured party may assign of record all or part of his or her rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separa-

rate statement, the filing officer shall mark such separate statement with the date and hour of the filing. The officer shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like, including oil and gas, or accounts subject to s. 409.103 (5), the officer shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, the officer shall index the assignment of the financing statement under the name of the assignee. The fee for filing, indexing and furnishing filing data about such a separate statement of assignment is \$5 if the statement is on the standard form prescribed by the department and is \$10 if the statement is not on the standard form or if additional pages are attached to the standard form. A register of deeds shall forward \$3 to the department for each statement of assignment filed with the office of the register of deeds. Notwithstanding this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing under s. 409.402 (6) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than chs. 401 to 411.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

History: 1971 c. 125 s. 524; 1973 c. 215, 333; 1977 c. 29; 1979 c. 89; 1985 a. 29; 1989 a. 123; 1991 a. 148, 269, 304, 315; 1993 a. 452; 1995 a. 27.

409.406 Release of collateral; duties of filing officer; fees. A secured party of record may by his or her signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with s. 409.405 (2), including payment of the required fee. Upon presentation of such a statement of release to the filing officer, the officer shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The fee for filing and noting such a statement of release is \$5 if the statement is on the standard form prescribed by the department and is \$10 if the statement is not on the standard form or if additional pages are attached to the standard form. A register of deeds shall forward \$3 to the department for each statement of release filed with the office of the register of deeds.

History: 1971 c. 125 s. 524; 1973 c. 215; 1977 c. 29; 1985 a. 29; 1989 a. 123; 1991 a. 269; 1993 a. 452; 1995 a. 27.

409.407 Duties and liability of filing officer. (1) INFORMATION FROM FILING OFFICER. If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) ORAL REQUEST FOR INFORMATION FROM FILING OFFICER; ISSUANCE OF CERTIFICATE; FEES. (a) Upon the oral request of any person, the filing officer shall disclose orally at the time of the request or as soon thereafter as possible any presently effective statement naming a particular debtor and if there is such a statement, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The fee for the information is \$10. Upon the request for a copy of a statement, the filing officer shall furnish copies for a fee of \$1 per page.

(b) Upon request of any person, the filing officer shall issue a certificate showing whether there is on file on the date and hour stated therein, any presently effective statement naming a particular debtor and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The fee for such a certificate is \$10. Upon request the fil-

ing officer shall furnish a certificate and copies of any filed statement for a fee of \$1 for each page of the copied statement.

(c) For providing any service under par. (a) or (b) in an expeditious manner, the department may charge and collect an expedited service fee of \$25 in addition to any fee required under par. (a) or (b). Only one expedited service fee may be charged for multiple identical certificates if the certificates are requested at the same time and issued at the same time.

(3) LIABILITY OF FILING OFFICER. No filing officer nor any of the filing officer's employes or agents shall be subject to personal liability by reason of any error or omission in the performance of any duty under ch. 409 except in case of misconduct as defined in s. 946.12.

History: 1971 c. 125; 1973 c. 215; 1977 c. 444; 1979 c. 103; 1981 c. 20; 1985 a. 29; 1989 a. 123; 1991 a. 269, 316; 1995 a. 27; 1995 a. 225 s. 549.

409.408 Financing statements covering consigned or leased goods. A consignor or lessor of goods may file a financing statement using the terms "consignor", "consignee", "lessor", "lessee" or the like instead of the terms specified in s. 409.402. Sections 409.401 to 409.409 apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (s. 401.201 (37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing.

History: 1973 c. 215.

409.409 Storage of records. Whenever in this chapter a filing officer is required to mark, index or file any financing statement, termination statement, continuation statement, statement of assignment or statement of release, the officer may destroy the original statement after a microfilm or other photographic copy or an optical disk or electronic copy has been prepared and filed for retention.

History: 1973 c. 215; 1991 a. 39; 1995 a. 27.

409.410 Statewide lien system. (1) The department and the office of each register of deeds in this state shall establish and maintain at least one computer terminal allowing the direct entry into permanent computer storage and the direct retrieval from permanent computer storage of information under sub. (2).

(2) Beginning 30 days after notification by the department, each filing officer shall enter all information contained in all financing statements, amendments, termination statements, continuation statements, statements of assignment and statements of release submitted for filing, indexing or marking under ss. 409.401 to 409.408, including the date and time of filing these statements or amendments, into permanent computer storage by means of a computer terminal established and maintained under sub. (1).

History: 1985 a. 29; 1995 a. 27.

409.411 Uniform commercial code statewide lien system council. (1) The uniform commercial code statewide lien system council shall advise the department of financial institutions on the uniform commercial code statewide lien system under s. 409.410.

(2) The department shall establish and maintain, in consultation with the uniform commercial code statewide lien system council, computer and any other services necessary to support the uniform commercial code statewide lien system under s. 409.410 but may not maintain a central filing system, as defined in 7 USC 1631 (c) (2), for farm products, as defined in 7 USC 1631 (c) (5).

History: 1995 a. 216 ss. 6, 59, 68.

DEFAULT

409.501 Default; procedure when security agreement covers both real and personal property. (1) When a debtor is in default under a security agreement, a secured party has

the rights and remedies provided in ss. 409.501 to 409.507 and except as limited by sub. (3) those provided in the security agreement. The secured party may reduce the claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in s. 409.207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in ss. 409.501 to 409.507, those provided in the security agreement and those provided in s. 409.207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the sections and subsections referred to in pars. (a) to (e) may not be waived or varied except as provided with respect to compulsory disposition of collateral (ss. 409.504 (3) and 409.505 (1)) and with respect to redemption of collateral (s. 409.506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) Sections 409.502 (2) and 409.504 (2) insofar as they require accounting for surplus proceeds of collateral;

(b) Sections 409.504 (3) and 409.505 (1) which deal with disposition of collateral;

(c) Section 409.505 (2) which deals with acceptance of collateral as discharge of obligation;

(d) Section 409.506 which deals with redemption of collateral; and

(e) Section 409.507 (1) which deals with the secured party's liability for failure to comply with ss. 409.501 to 409.507.

(4) If the security agreement covers both real and personal property, the secured party may proceed under ss. 409.501 to 409.507 as to the personal property or the secured party may proceed as to both the real and the personal property in accordance with the secured party's rights and remedies in respect of the real property in which case the provisions of ss. 409.501 to 409.507 do not apply.

(5) When a secured party has reduced a claim to judgment the lien of any levy which may be made upon the secured party's collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

History: 1973 c. 215; 1981 c. 390; 1991 a. 316.

A secured creditor can retain a debtor's collateral while seeking an independent action for a money judgment. *Dorman v. Morris*, 185 W (2d) 845, 519 NW (2d) 685 (Ct. App. 1994).

409.502 Collection rights of secured party. (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to the secured party whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which the secured party is entitled under s. 409.306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his or her reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or

is liable for any deficiency only if the security agreement so provides.

History: 1973 c. 215; 1991 a. 316.

409.503 Secured party's right to take possession after default. Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under s. 409.504.

A "breach of the peace" under this section has the same meaning as in s. 425.206. Repossession in disregard of the debtor's oral protest is a breach of the peace. Punitive damages may be appropriate as the result of the breach of the peace. *Hollibush v. Ford Motor Company*, 179 W (2d) 799, 508 NW (2d) 449 (Ct. App. 1993).

A secured creditor who unequivocally takes possession of collateral has a duty to exercise due care in regard to the collateral. *Nischke v. Farmers & Merchants Bank*, 187 W (2d) 96, 522 NW (2d) 542 (Ct. App. 1994).

Under either state or federal law, auctioneer selling livestock covered by security agreement would be liable for full purchase price. *United States v. Midwest Livestock Producers Coop.* 493 F Supp. 1001 (1980).

"Proceed by action" refers to replevin proceeding under ch. 810. *Del's Big Saver Foods v. Carpenter Cook, Inc.* 603 F Supp. 1071 (1985).

The debtor's duty to deliver collateral upon default. *Gilmer*, 53 MLR 33.

The state action conundrum reexamined: a new approach and its application to the constitutionality of creditor self-help remedies. 62 MLR 414 (1979).

The impact of denying self-help repossession of automobiles: a case study of the Wisconsin consumer act. *Whitford, Laufer*, 1975 WLR 607.

409.504 Secured party's right to dispose of collateral after default; effect of disposition. (1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to ch. 402. The proceeds of disposition shall be applied in the order following to:

(a) The reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of the holder's interest, and unless the holder does so, the secured party need not comply with the holder's demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if the debtor has not signed after default a statement renouncing or modifying the debtor's right to notification of sale and except in the case of con-

sumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations the secured party may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of ss. 409.501 to 409.507 or of any judicial proceedings:

(a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if the purchaser does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) In any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to the secured party's rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this chapter.

History: 1973 c. 215; 1991 a. 316.

Legislative Council Note, 1973: The official text amended sub. (3) to require the secured party to notify only persons, other than the debtor, who had notified the secured party in writing of their claim of an interest in the collateral to be sold at public or private sale. Presently, notification must be given to every person who has duly filed a financing statement indexed in the name of the debtor and every person known by the secured party to have an interest in the collateral; this requirement necessitates a complete record search in case of any sale. The official text also expressly provides the debtor with the right to default. The Special Committee rejected the substantial lessening of the notification requirement and decided to retain present language with the exception of the addition of the right to renounce notice and the deletion of the requirement of giving notice to persons "known" by the secured party to have a security interest in the collateral. (Bill 177–S)

The burden of proving that a private sale was commercially reasonable is on the seller. Proof that the sale was made at the wholesale price does not establish reasonableness. *Vic Hansen & Sons, Inc. v. Crowley*, 57 W (2d) 106, 203 NW (2d) 728.

Sub. (1) (a) relates to attorney's fees incurred in liquidating collateral, not in suit on promissory note. *Kohlenberg v. American Plumbing Supply Co.* 82 W (2d) 384, 263 NW (2d) 496.

Primary focus of commercial reasonableness under (3) is not proceeds from sale, but procedures employed for sale. *Appleton State Bank v. Van Dyke Ford, Inc.* 90 W (2d) 200, 279 NW (2d) 443 (1979).

Conduct of debtor may be taken into account in determining commercial reasonableness of sale under (3). *First National Bank of Kenosha v. Hinrichs*, 90 W (2d) 214, 279 NW (2d) 449 (1979).

A secured creditor can retain a debtor's collateral while seeking an independent action for a money judgment. *Dorman v. Morris*, 185 W (2d) 845, 519 NW (2d) 685 (Ct. App. 1994).

The secured party made whole—expenses, attorneys' fees and determination of the indebtedness under UCC s. 9–504 (1). 62 MLR 449 (1979).

409.505 Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation. (1)

If the debtor has paid 60 per cent of the cash price in the case of a purchase money security interest in consumer goods or 60 per cent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying the debtor's rights under ss. 409.501 to 409.507 a secured party who has taken possession of collateral must dispose of it under s. 409.504 and if the secured party fails to do so within 90 days after the secured party takes possession the debtor at the debtor's option may recover in conversion or under s. 409.507 (1) on secured party's liability. In this subsection "cash price" means the seller's price in dollars for the sale of the goods and the transfer of unqualified title thereto upon the concurrent payment of such price in cash or the equivalent thereof; "loan" refers to the principal and does not include interest or service charges.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written

notice of such proposal shall be sent to the debtor if the debtor has not signed after default a statement renouncing or modifying the debtor's rights under this subsection and except in the case of consumer goods to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state. If the debtor or other person entitled to receive notification objects in writing within 21 days from the receipt of the notification or if any other secured party objects in writing within 21 days after the secured party obtains possession the secured party must dispose of the collateral under s. 409.504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

History: 1973 c. 215; 1991 a. 316.

Legislative Council Note, 1973: The official text proposed to change the notice requirement in the same manner as in s. 409.504. The Special Committee rejected this change and decided to retain most of the present notice requirements except the time within which a person entitled to receive notification may object to the retention of the collateral by the secured party is reduced to 21 days, the right to renounce notice is added and the requirement of giving notice to persons "known" by the secured party is deleted. See note to s. 409.504. (Bill 177–S)

409.506 Debtor's right to redeem collateral. At any time before the secured party has disposed of collateral or entered into a contract for its disposition under s. 409.504 or before the obligation has been discharged under s. 409.505 (2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, the secured party's reasonable attorneys' fees and legal expenses.

History: 1991 a. 316.

409.507 Secured party's liability for failure to comply with default provisions. (1)

If it is established that the secured party is not proceeding in accordance with ss. 409.501 to 409.507 disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with ss. 409.501 to 409.507. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus 10 per cent of the principal amount of the debt or the time price differential plus 10 per cent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or at the price current in such market at the time of the sale or if the secured party has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold, the secured party has sold in a commercially reasonable manner. The principles stated in the 2 preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

History: 1991 a. 316.

Under (1) "any loss" provision relates to loss of surplus proceeds because of improper disposition of secured property; "surplus proceeds" refers to difference between fair market value of property and amount necessary to satisfy senior interest. *River Valley State Bank v. Peterson*, 154 W (2d) 442, 453 NW (2d) 193 (Ct. App. 1990).