

1 effective solely under s. 409.508. However, if the security agreements to which a new
2 debtor became bound as debtor were not entered into by the same original debtor, the
3 conflicting security interests rank according to priority in time of the new debtor's
4 having become bound.

5 **409.327 Priority of security interests in deposit account.** The following
6 rules govern priority among conflicting security interests in the same deposit
7 account:

8 (1) A security interest held by a secured party having control of the deposit
9 account under s. 409.104 has priority over a conflicting security interest held by a
10 secured party that does not have control.

11 (2) Except as otherwise provided in subs. (3) and (4), security interests
12 perfected by control under s. 409.314 rank according to priority in time of obtaining
13 control.

14 (3) Except as otherwise provided in sub. (4), a security interest held by the bank
15 with which the deposit account is maintained has priority over a conflicting security
16 interest held by another secured party.

17 (4) A security interest perfected by control under s. 409.104 (1) (c) has priority
18 over a security interest held by the bank with which the deposit account is
19 maintained.

20 **409.328 Priority of security interests in investment property.** The
21 following rules govern priority among conflicting security interests in the same
22 investment property:

23 (1) A security interest held by a secured party having control of investment
24 property under s. 409.106 has priority over a security interest held by a secured party
25 that does not have control of the investment property.

1 (2) Except as otherwise provided in subs. (3) and (4), conflicting security
2 interests held by secured parties each of which has control under s. 409.106 rank
3 according to priority in time of:

4 (a) If the collateral is a security, obtaining control;

5 (b) If the collateral is a security entitlement carried in a securities account and:

6 1. If the secured party obtained control under s. 408.106 (d) (1), the secured
7 party's becoming the person for which the securities account is maintained;

8 2. If the secured party obtained control under s. 408.106 (d) (2), the securities
9 intermediary's agreement to comply with the secured party's entitlement orders with
10 respect to security entitlements carried or to be carried in the securities account; or

11 3. If the secured party obtained control through another person under s.
12 408.106 (d) (3), the time on which priority would be based under this subsection if
13 the other person were the secured party; or

14 (c) If the collateral is a commodity contract carried with a commodity
15 intermediary, the satisfaction of the requirement for control specified in s. 409.106
16 (2) (b) with respect to commodity contracts carried or to be carried with the
17 commodity intermediary.

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

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

24 (5) A security interest in a certificated security in registered form which is
25 perfected by taking delivery under s. 409.313 (1) and not by control under s. 409.314

1 has priority over a conflicting security interest perfected by a method other than
2 control.

3 (6) Conflicting security interests created by a broker, securities intermediary
4 or commodity intermediary which are perfected without control under s. 409.106
5 rank equally.

6 (7) In all other cases, priority among conflicting security interests in
7 investment property is governed by ss. 409.322 and 409.323.

8 **409.329 Priority of security interests in letter-of-credit right.** The
9 following rules govern priority among conflicting security interests in the same
10 letter-of-credit right:

11 (1) A security interest held by a secured party having control of the
12 letter-of-credit right under s. 409.107 has priority to the extent of its control over
13 a conflicting security interest held by a secured party that does not have control.

14 (2) Security interests perfected by control under s. 409.314 rank according to
15 priority in time of obtaining control.

16 **409.330 Priority of purchaser of chattel paper or instrument.** (1)
17 PURCHASER'S PRIORITY: SECURITY INTEREST CLAIMED MERELY AS PROCEEDS. A purchaser
18 of chattel paper has priority over a security interest in the chattel paper which is
19 claimed merely as proceeds of inventory subject to a security interest if:

20 (a) In good faith and in the ordinary course of the purchaser's business, the
21 purchaser gives new value and takes possession of the chattel paper or obtains
22 control of the chattel paper under s. 409.105; and

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

1 **(2) PURCHASER'S PRIORITY: OTHER SECURITY INTERESTS.** A purchaser of chattel
 2 paper has priority over a security interest in the chattel paper which is claimed other
 3 than merely as proceeds of inventory subject to a security interest if the purchaser
 4 gives new value and takes possession of the chattel paper or obtains control of the
 5 chattel paper under s. 409.105 in good faith, in the ordinary course of the purchaser's
 6 business and without knowledge that the purchase violates the rights of the secured
 7 party.

8 **(3) CHATTEL PAPER PURCHASER'S PRIORITY IN PROCEEDS.** Except as otherwise
 9 provided in s. 409.327, a purchaser having priority in chattel paper under sub. (1)
 10 or (2) also has priority in proceeds of the chattel paper to the extent that:

- 11 (a) Section 409.322 provides for priority in the proceeds; or
- 12 (b) The proceeds consist of the specific goods covered by the chattel paper or
- 13 cash proceeds of the specific goods, even if the purchaser's security interest in the
- 14 proceeds is unperfected.

15 **(4) INSTRUMENT PURCHASER'S PRIORITY.** Except as otherwise provided in s.
 16 409.331 (1), a purchaser of an instrument has priority over a security interest in the
 17 instrument perfected by a method other than possession if the purchaser gives value
 18 and takes possession of the instrument in good faith and without knowledge that the
 19 purchase violates the rights of the secured party.

20 **(5) HOLDER OF PURCHASE-MONEY SECURITY INTEREST GIVES NEW VALUE.** For
 21 purposes of subs. (1) and (2), the holder of a purchase-money security interest in
 22 inventory gives new value for chattel paper constituting proceeds of the inventory.

23 **(6) INDICATION OF ASSIGNMENT GIVES KNOWLEDGE.** For purposes of subs. (2) and
 24 (4), if chattel paper or an instrument indicates that it has been assigned to an
 25 identified secured party other than the purchaser, a purchaser of the chattel paper

1 or instrument has knowledge that the purchase violates the rights of the secured
2 party.

3 **409.331 Priority of rights of purchasers of instruments, documents and**
4 **securities under other chapters; priority of interests in financial assets and**
5 **security entitlements under ch. 408.** (1) RIGHTS UNDER CHS. 403, 407 AND 408 NOT
6 LIMITED. This chapter does not limit the rights of a holder in due course of a negotiable
7 instrument, a holder to which a negotiable document of title has been duly negotiated
8 or a protected purchaser of a security. These holders or purchasers take priority over
9 an earlier security interest, even if perfected, to the extent provided in chs. 403, 407
10 and 408.

11 (2) PROTECTION UNDER CH. 408. This chapter does not limit the rights of or impose
12 liability on a person to the extent that the person is protected against the assertion
13 of an adverse claim under ch. 408.

14 (3) FILING NOT NOTICE. Filing under this chapter does not constitute notice of
15 a claim or defense to the holders, or purchasers, or persons described in subs. (1) and
16 (2).

17 **409.332 Transfer of money; transfer of funds from deposit account.** (1)
18 TRANSFEREE OF MONEY. A transferee of money takes the money free of a security
19 interest unless the transferee acts in collusion with the debtor in violating the rights
20 of the secured party.

21 (2) TRANSFEREE OF FUNDS FROM DEPOSIT ACCOUNT. A transferee of funds from a
22 deposit account takes the funds free of a security interest in the deposit account
23 unless the transferee acts in collusion with the debtor in violating the rights of the
24 secured party.

1 **409.333 Priority of certain liens arising by operation of law.** (1)

2 POSSESSORY LIEN. In this section, “possessory lien” means an interest, other than a
3 security interest or an agricultural lien:

4 (a) Which secures payment or performance of an obligation for services or
5 materials furnished with respect to goods by a person in the ordinary course of the
6 person’s business;

7 (b) Which is created by statute or rule of law in favor of the person; and

8 (c) Whose effectiveness depends on the person’s possession of the goods.

9 **(2) PRIORITY OF POSSESSORY LIEN.** A possessory lien on goods has priority over
10 a security interest in the goods unless the lien is created by a statute that expressly
11 provides otherwise.

12 **409.334 Priority of security interests in fixtures and crops.** (1) SECURITY
13 INTEREST IN FIXTURES UNDER THIS CHAPTER. A security interest under this chapter may
14 be created in goods that are fixtures or may continue in goods that become fixtures.
15 A security interest does not exist under this chapter in ordinary building materials
16 incorporated into an improvement on land.

17 **(2) SECURITY INTEREST IN FIXTURES UNDER REAL-PROPERTY LAW.** This chapter does
18 not prevent creation of an encumbrance upon fixtures under real property law.

19 **(3) GENERAL RULE: SUBORDINATION OF SECURITY INTEREST IN FIXTURES.** In cases
20 not governed by subs. (4) to (8), a security interest in fixtures is subordinate to a
21 conflicting interest of an encumbrancer or owner of the related real property other
22 than the debtor.

23 **(4) FIXTURES PURCHASE-MONEY PRIORITY.** Except as otherwise provided in sub.
24 (8), a perfected security interest in fixtures has priority over a conflicting interest of

1 an encumbrancer or owner of the real property if the debtor has an interest of record
2 in or is in possession of the real property and:

***NOTE: Current s. 409.313 (4) (a), Wis. stats., is nonuniform in that it does not include “ or is in possession of the real estate”. Should this draft include “or is in possession of the real property”? Does this chapter cover it under manufactured housing?

***NOTE: [new 9-334] 409.313 – ANNOT.

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 fixture 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)

- 3 (a) The security interest is a purchase-money security interest;
4 (b) The interest of the encumbrancer or owner arises before the goods become
5 fixtures; and
6 (c) The security interest is perfected by a fixture filing before the goods become
7 fixtures or within 20 days thereafter.

8 **(5) PRIORITY OF SECURITY INTEREST IN FIXTURES OVER INTERESTS IN REAL PROPERTY.**

9 A perfected security interest in fixtures has priority over a conflicting interest of an
10 encumbrancer or owner of the real property if:

- 11 (a) The debtor has an interest of record in the real property or is in possession
12 of the real property and the security interest:

***NOTE: Current s. 409.313 (4) (a), Wis. stats., is nonuniform in that it does not include “ or is in possession of the real estate”. Should this draft include “or is in possession of the real property”?

- 13 1. Is perfected by a fixture filing before the interest of the encumbrancer or
14 owner is of record; and
15 2. Has priority over any conflicting interest of a predecessor in title of the
16 encumbrancer or owner;
17 (b) Before the goods become fixtures, the security interest is perfected by any
18 method permitted by this chapter and the fixtures are readily removable:

- 1 1. Factory or office machines;
- 2 2. Equipment that is not primarily used or leased for use in the operation of the
- 3 real property; or
- 4 3. Replacements of domestic appliances that are consumer goods;
- 5 (c) The conflicting interest is a lien on the real property obtained by legal or
- 6 equitable proceedings after the security interest was perfected by any method
- 7 permitted by this chapter;
- 8 (d) The security interest is:
- 9 1. Created in a manufactured home in a manufactured-home transaction; and
- 10 2. Perfected pursuant to a statute described in s. 409.311 (1) (b); or
- 11 (e) The debtor has an interest of record in the real property and the security
- 12 interest:
- 13 1. Is created by a master lease entered into by the state under s. 16.76 (4);
- 14 2. Is perfected under s. 16.76 (4) (e) before the interest of the encumbrancer or
- 15 owner is of record; and
- 16 3. Has priority over any conflicting interest of a predecessor in title of the
- 17 encumbrancer or owner.

****NOTE: Paragraph (e) is from s. 409.313 (4) (e) created by 1999 Wisconsin Act 9,
restructured to fit into this section. Should this draft include it? If so, should it include
it here?

- 18 **(6) PRIORITY BASED ON CONSENT, DISCLAIMER, OR RIGHT TO REMOVE.** A security
- 19 interest in fixtures, whether or not perfected, has priority over a conflicting interest
- 20 of an encumbrancer or owner of the real property if:
- 21 (a) The encumbrancer or owner has, in an authenticated record, consented to
- 22 the security interest or disclaimed an interest in the goods as fixtures; or

1 (b) The debtor has a right to remove the goods as against the encumbrancer or
2 owner.

3 (7) CONTINUATION OF SUB. (6) PRIORITY. The priority of the security interest under
4 sub. (6) continues for a reasonable time if the debtor's right to remove the goods as
5 against the encumbrancer or owner terminates.

6 (8) PRIORITY OF CONSTRUCTION MORTGAGE. A mortgage is a construction
7 mortgage to the extent that it secures an obligation incurred for the construction of
8 an improvement on land, including the acquisition cost of the land, if a recorded
9 record of the mortgage so indicates. Except as otherwise provided in subs. (5) and
10 (6), a security interest in fixtures is subordinate to a construction mortgage if a record
11 of the mortgage is recorded before the goods become fixtures and the goods become
12 fixtures before the completion of the construction. A mortgage has this priority to
13 the same extent as a construction mortgage to the extent that it is given to refinance
14 a construction mortgage.

15 (9) PRIORITY OF SECURITY INTEREST IN CROPS. A perfected security interest in
16 crops growing on real property has priority over a conflicting interest of an
17 encumbrancer or owner of the real property if the debtor has an interest of record in
18 or is in possession of the real property.

***NOTE: Current s. 409.312 (2), Wis. stats., is the only UCC provision that refers to both crops and to secure. It reads: 409.312 (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." The conversion table lists 9-312 (2) as omitted and as the source for Appendix II. Should this draft include Appendix II or current s. 409.312 (2), Wis. stats. or neither?

19 (10) SUB. (9) PREVAILS. Subsection (9) prevails over any inconsistent provisions
20 of the following statutes:

1 [List here any statutes containing provisions inconsistent with sub. (9).]

NCCUSL Legislative Note: States that amend statutes to remove provisions inconsistent with sub. (9) need not enact sub. (10).

****NOTE: Subsection (10) needs to be deleted and inconsistent provisions amended. What statutes need to be amended? Should vehicles be excluded and farm products included?

****NOTE: Current s. 409.313 (9), Wis. stats., is a nonuniform provision of the UCC that reads: "409.313 (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)." Does it need to be continued in this draft either in this section or new s. 409.337?

2 **409.335 Accessions.** (1) CREATION OF SECURITY INTEREST IN ACCESSION. A
3 security interest may be created in an accession and continues in collateral that
4 becomes an accession.

5 (2) PERFECTION OF SECURITY INTEREST. If a security interest is perfected when
6 the collateral becomes an accession, the security interest remains perfected in the
7 collateral.

8 (3) PRIORITY OF SECURITY INTEREST. Except as otherwise provided in sub. (4), the
9 other provisions of this subchapter determine the priority of a security interest in an
10 accession.

11 (4) COMPLIANCE WITH CERTIFICATE-OF-TITLE STATUTE. A security interest in an
12 accession is subordinate to a security interest in the whole which is perfected by
13 compliance with the requirements of a certificate-of-title statute under s. 409.311
14 (2).

15 (5) REMOVAL OF ACCESSION AFTER DEFAULT. After default, subject to subch. VI, a
16 secured party may remove an accession from other goods if the security interest in
17 the accession has priority over the claims of every person having an interest in the
18 whole.

1 **(6) REIMBURSEMENT FOLLOWING REMOVAL.** A secured party that removes an
2 accession from other goods under sub. (5) shall promptly reimburse any holder of a
3 security interest or other lien on, or owner of, the whole or of the other goods, other
4 than the debtor, for the cost of repair of any physical injury to the whole or the other
5 goods. The secured party need not reimburse the holder or owner for any diminution
6 in value of the whole or the other goods caused by the absence of the accession
7 removed or by any necessity for replacing it. A person entitled to reimbursement
8 may refuse permission to remove until the secured party gives adequate assurance
9 for the performance of the obligation to reimburse.

10 **409.336 Commingled goods.** (1) **COMMINGLED GOODS.** In this section,
11 “commingled goods” means goods that are physically united with other goods in such
12 a manner that their identity is lost in a product or mass.

13 **(2) NO SECURITY INTEREST IN COMMINGLED GOODS AS SUCH.** A security interest does
14 not exist in commingled goods as such. However, a security interest may attach to
15 a product or mass that results when goods become commingled goods.

16 **(3) ATTACHMENT OF SECURITY INTEREST TO PRODUCT OR MASS.** If collateral becomes
17 commingled goods, a security interest attaches to the product or mass.

18 **(4) PERFECTION OF SECURITY INTEREST.** If a security interest in collateral is
19 perfected before the collateral becomes commingled goods, the security interest that
20 attaches to the product or mass under sub. (3) is perfected.

21 **(5) PRIORITY OF SECURITY INTEREST.** Except as otherwise provided in sub. (6), the
22 other provisions of this subchapter determine the priority of a security interest that
23 attaches to the product or mass under sub. (3).

1 **(6) CONFLICTING SECURITY INTERESTS IN PRODUCT OR MASS.** If more than one
 2 security interest attaches to the product or mass under sub. (3), the following rules
 3 determine priority:

4 (a) A security interest that is perfected under sub. (4) has priority over a
 5 security interest that is unperfected at the time the collateral becomes commingled
 6 goods.

7 (b) If more than one security interest is perfected under sub. (4), the security
 8 interests rank equally in proportion to value of the collateral at the time it became
 9 commingled goods.

10 **409.337 Priority of security interests in goods covered by certificate of**
 11 **title.** If, while a security interest in goods is perfected by any method under the law
 12 of another jurisdiction, this state issues a certificate of title that does not show that
 13 the goods are subject to the security interest or contain a statement that they may
 14 be subject to security interests not shown on the certificate:

15 (1) A buyer of the goods, other than a person in the business of selling goods of
 16 that kind, takes free of the security interest if the buyer gives value and receives
 17 delivery of the goods after issuance of the certificate and without knowledge of the
 18 security interest; and

19 (2) The security interest is subordinate to a conflicting security interest in the
 20 goods that attaches, and is perfected under s. 409.311 (2), after issuance of the
 21 certificate and without the conflicting secured party’s knowledge of the security
 22 interest.

***NOTE: Current s. 409.313 (9), Wis. stats., is a nonuniform provision of the UCC that reads: “409.313 (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).” Does it need to be continued in this draft either in this section or new section 409.334?

1 **409.338 Priority of security interest or agricultural lien perfected by**
2 **filed financing statement providing certain incorrect information.** If a
3 security interest or agricultural lien is perfected by a filed financing statement
4 providing information described in s. 409.516 (2) (e) which is incorrect at the time the
5 financing statement is filed:

6 (1) The security interest or agricultural lien is subordinate to a conflicting
7 perfected security interest in the collateral to the extent that the holder of the
8 conflicting security interest gives value in reasonable reliance upon the incorrect
9 information; and

10 (2) A purchaser, other than a secured party, of the collateral takes free of the
11 security interest or agricultural lien to the extent that, in reasonable reliance upon
12 the incorrect information, the purchaser gives value and, in the case of chattel paper,
13 documents, goods, instruments or a security certificate, receives delivery of the
14 collateral.

15 **409.339 Priority subject to subordination.** This chapter does not preclude
16 subordination by agreement by a person entitled to priority.

17 **409.340 Effectiveness of right of recoupment or set-off against deposit**
18 **account.** (1) EXERCISE OF RECOUPMENT OR SET-OFF. Except as otherwise provided in
19 sub. (3), a bank with which a deposit account is maintained may exercise any right
20 of recoupment or set-off against a secured party that holds a security interest in the
21 deposit account.

22 (2) RECOUPMENT OR SETOFF NOT AFFECTED BY SECURITY INTEREST. Except as
23 otherwise provided in sub. (3), the application of this chapter to a security interest
24 in a deposit account does not affect a right of recoupment or set-off of the secured
25 party as to a deposit account maintained with the secured party.

1 **(2) AGREEMENT DOES NOT PREVENT TRANSFER.** An agreement between the debtor
2 and secured party which prohibits a transfer of the debtor's rights in collateral or
3 makes the transfer a default does not prevent the transfer from taking effect.

4 **409.402 Secured party not obligated on contract of debtor or in tort.**
5 The existence of a security interest, agricultural lien or authority given to a debtor
6 to dispose of or use collateral, without more, does not subject a secured party to
7 liability in contract or tort for the debtor's acts or omissions.

8 **409.403 Agreement not to assert defenses against assignee. (1) VALUE.**
9 In this section, "value" has the meaning provided in s. 403.303 (1).

10 **(2) AGREEMENT NOT TO ASSERT CLAIM OR DEFENSE.** Except as otherwise provided
11 in this section, an agreement between an account debtor and an assignor not to assert
12 against an assignee any claim or defense that the account debtor may have against
13 the assignor is enforceable by an assignee that takes an assignment:

14 (a) For value;

15 (b) In good faith;

16 (c) Without notice of a claim of a property or possessory right to the property
17 assigned; and

18 (d) Without notice of a defense or claim in recoupment of the type that may be
19 asserted against a person entitled to enforce a negotiable instrument under s.
20 403.305 (1).

21 **(3) WHEN SUB. (2) NOT APPLICABLE.** Subsection (2) does not apply to defenses of
22 a type that may be asserted against a holder in due course of a negotiable instrument
23 under s. 403.305 (2).

24 **(4) OMISSION OF REQUIRED STATEMENT IN CONSUMER TRANSACTION.** In a consumer
25 transaction, if a record evidences the account debtor's obligation, law other than this

1 chapter requires that the record include a statement to the effect that the rights of
2 an assignee are subject to claims or defenses that the account debtor could assert
3 against the original obligee and the record does not include such a statement:

4 (a) The record has the same effect as if the record included such a statement;

5 and

6 (b) The account debtor may assert against an assignee those claims and
7 defenses that would have been available if the record included such a statement.

8 (5) RULE FOR INDIVIDUAL UNDER OTHER LAW. This section is subject to law other
9 than this chapter which establishes a different rule for an account debtor who is an
10 individual and who incurred the obligation primarily for personal, family or
11 household purposes.

12 (6) OTHER LAW NOT DISPLACED. Except as otherwise provided in sub. (4), this
13 section does not displace law other than this chapter which gives effect to an
14 agreement by an account debtor not to assert a claim or defense against an assignee.

15 **409.404 Rights acquired by assignee; claims and defenses against**
16 **assignee. (1) ASSIGNEE'S RIGHTS SUBJECT TO TERMS, CLAIMS AND DEFENSES; EXCEPTIONS.**

17 Unless an account debtor has made an enforceable agreement not to assert defenses
18 or claims, and subject to subs. (2) to (5), the rights of an assignee are subject to:

19 (a) All terms of the agreement between the account debtor and assignor and any
20 defense or claim in recoupment arising from the transaction that gave rise to the
21 contract; and

22 (b) Any other defense or claim of the account debtor against the assignor which
23 accrues before the account debtor receives a notification of the assignment
24 authenticated by the assignor or the assignee.

1 **(2) ACCOUNT DEBTOR'S CLAIM REDUCES AMOUNT OWED TO ASSIGNEE.** Subject to sub.
2 (3) and except as otherwise provided in sub. (4), the claim of an account debtor
3 against an assignor may be asserted against an assignee under sub. (1) only to reduce
4 the amount the account debtor owes.

5 **(3) RULE FOR INDIVIDUAL UNDER OTHER LAW.** This section is subject to law other
6 than this chapter which establishes a different rule for an account debtor who is an
7 individual and who incurred the obligation primarily for personal, family or
8 household purposes.

9 **(4) OMISSION OF REQUIRED STATEMENT IN CONSUMER TRANSACTION.** In a consumer
10 transaction, if a record evidences the account debtor's obligation, law other than this
11 chapter requires that the record include a statement to the effect that the account
12 debtor's recovery against an assignee with respect to claims and defenses against the
13 assignor may not exceed amounts paid by the account debtor under the record and
14 the record does not include such a statement, the extent to which a claim of an
15 account debtor against the assignor may be asserted against an assignee is
16 determined as if the record included such a statement.

17 **(5) INAPPLICABILITY TO HEALTH-CARE-INSURANCE RECEIVABLE.** This section does
18 not apply to an assignment of a health-care-insurance receivable.

19 **409.405 Modification of assigned contract. (1) EFFECT OF MODIFICATION ON**
20 ASSIGNEE. A modification of or substitution for an assigned contract is effective
21 against an assignee if made in good faith. The assignee acquires corresponding
22 rights under the modified or substituted contract. The assignment may provide that
23 the modification or substitution is a breach of contract by the assignor. This
24 subsection is subject to subs. (2) to (4).

25 **(2) APPLICABILITY OF SUB. (1).** Subsection (1) applies to the extent that:

1 (a) The right to payment or a part thereof under an assigned contract has not
2 been fully earned by performance; or

3 (b) The right to payment or a part thereof has been fully earned by performance
4 and the account debtor has not received notification of the assignment under s.
5 409.406 (1).

6 (3) RULE FOR INDIVIDUAL UNDER OTHER LAW. This section is subject to law other
7 than this chapter which establishes a different rule for an account debtor who is an
8 individual and who incurred the obligation primarily for personal, family or
9 household purposes.

10 (4) INAPPLICABILITY TO HEALTH-CARE-INSURANCE RECEIVABLE. This section does
11 not apply to an assignment of a health-care-insurance receivable.

12 **409.406 Discharge of account debtor; notification of assignment;**
13 **identification and proof of assignment; restrictions on assignment of**
14 **accounts, chattel paper, payment intangibles and promissory notes**
15 **ineffective. (1) DISCHARGE OF ACCOUNT DEBTOR; EFFECT OF NOTIFICATION.** Subject to
16 subs. (2) to (9), an account debtor on an account, chattel paper or a payment
17 intangible may discharge its obligation by paying the assignor until, but not after,
18 the account debtor receives a notification, authenticated by the assignor or the
19 assignee, that the amount due or to become due has been assigned and that payment
20 is to be made to the assignee. After receipt of the notification, the account debtor may
21 discharge its obligation by paying the assignee and may not discharge the obligation
22 by paying the assignor.

23 (2) WHEN NOTIFICATION INEFFECTIVE. Subject to sub. (8), notification is
24 ineffective under sub. (1):

25 (a) If it does not reasonably identify the rights assigned;

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

4 (c) At the option of an account debtor, if the notification notifies the account
5 debtor to make less than the full amount of any installment or other periodic
6 payment to the assignee, even if:

7 1. Only a portion of the account, chattel paper or general intangible has been
8 assigned to that assignee;

9 2. A portion has been assigned to another assignee; or

10 3. The account debtor knows that the assignment to that assignee is limited.

11 (3) PROOF OF ASSIGNMENT. Subject to sub. (8), if requested by the account debtor,
12 an assignee shall seasonably furnish reasonable proof that the assignment has been
13 made. Unless the assignee complies, the account debtor may discharge its obligation
14 by paying the assignor, even if the account debtor has received a notification under
15 sub. (1).

16 (4) TERM RESTRICTING ASSIGNMENT GENERALLY INEFFECTIVE. Except as otherwise
17 provided in sub. (5) and ss. 409.407 and 411.303, and subject to sub. (8), a term in an
18 agreement between an account debtor and an assignor or in a promissory note is
19 ineffective to the extent that it:

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

24 (b) Provides that the assignment or transfer or the creation, attachment,
25 perfection or enforcement of the security interest may give rise to a default, breach,

1 right of recoupment, claim, defense, termination, right of termination or remedy
2 under the account, chattel paper, payment intangible or promissory note.

3 (5) INAPPLICABILITY OF SUB. (4) TO CERTAIN SALES. Subsection (4) does not apply
4 to the sale of a payment intangible or promissory note.

5 (6) LEGAL RESTRICTIONS ON ASSIGNMENT GENERALLY INEFFECTIVE. Except as
6 otherwise provided in ss. 409.407 and 411.303 and subject to subs. (8) and (9), a rule
7 of law, statute or rule that prohibits, restricts or requires the consent of a
8 government, governmental body or official or account debtor to the assignment or
9 transfer of, or creation of a security interest in, an account or chattel paper is
10 ineffective to the extent that the rule of law, statute or rule:

11 (a) Prohibits, restricts or requires the consent of the government, governmental
12 body or official or account debtor to the assignment or transfer of, or the creation,
13 attachment, perfection or enforcement of a security interest in, the account or chattel
14 paper; or

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

19 (7) SUB. (2)(C) NOT WAIVABLE. Subject to sub. (8), an account debtor may not waive
20 or vary its option under sub. (2) (c).

21 (8) RULE FOR INDIVIDUAL UNDER OTHER LAW. This section is subject to law other
22 than this chapter which establishes a different rule for an account debtor who is an
23 individual and who incurred the obligation primarily for personal, family or
24 household purposes.

1 (9) INAPPLICABILITY TO HEALTH-CARE-INSURANCE RECEIVABLE. This section does
2 not apply to an assignment of a health-care-insurance receivable.

3 (10) SECTION PREVAILS OVER SPECIFIED INCONSISTENT LAW. This section prevails
4 over any inconsistent provisions of the following statutes and rules:

5 [
6 section.]

NCCUSL Legislative Note: States that amend statutes and rules to remove provisions inconsistent with this section need not enact sub. (10).

***NOTE: Subsection (10) needs to be deleted and inconsistent provisions amended. What statutes need to be amended?

The article 9 enactment guide states: “The legislature may, for policy reasons, wish to exclude a particular type of assignment from the effect of Section 9-406. One type of assignment that the legislature may wish to exclude from the operation of subsections (a) and (f) of Section 9-406 is a state assignment of claims statute that provides that a governmental account debtor is not bound by a notice of assignment of a claim against the governmental account debtor to which the governmental account debtor did not consent. If the jurisdiction has such a statute and wishes to exclude it from subsections (a) and (f), care should be taken to exclude the statute from subsection (f) only to the extent of enforcement of the security interest by collection against the governmental account debtor. A secured party’s security interest in a claim against a governmental account debtor should still remain capable of being created, attaching and becoming perfected, and being enforced against the debtor by sale or other disposition, because such actions do not in themselves impose any obligation upon the governmental account debtor to pay anyone on the claim other than the debtor.

Another type of assignment that might be excluded could relate to a statutory prohibition on a narrowly defined assignment where the obvious policy underlying the statutory prohibition on assignment is to protect the assignor rather than the account debtor. A typical example might be a statutory prohibition on the assignment of lottery winnings (an account under Revised Article 9) without a court order. In that case, the legislative policy may manifestly be one of protecting the assignor from inadvertently assigning his or her winnings for an unreasonably low discounted amount rather than protecting the lottery commission from paying the wrong person. In such a case, the legislature may decide to make the policy choice to exclude this particular type of assignment, already subject to a statutory prohibition on assignment, from the operation of Section 9-406(f).

7 **409.407 Restrictions on creation or enforcement of security interest in**
8 **leasehold interest or in lessor’s residual interest. (1) TERM RESTRICTING**
9 **ASSIGNMENT GENERALLY INEFFECTIVE. Except as otherwise provided in sub. (2), a term**
10 **in a lease agreement is ineffective to the extent that it:**

1 (a) Prohibits, restricts or requires the consent of a party to the lease to the
2 assignment or transfer of, or the creation, attachment, perfection or enforcement of
3 a security interest in, an interest of a party under the lease contract or in the lessor's
4 residual interest in the goods; or

5 (b) Provides that the assignment or transfer or the creation, attachment,
6 perfection or enforcement of the security interest may give rise to a default, breach,
7 right of recoupment, claim, defense, termination, right of termination or remedy
8 under the lease.

9 (2) EFFECTIVENESS OF CERTAIN TERMS. Except as otherwise provided in s. 411.303
10 (7), a term described in sub. (1) (b) is effective to the extent that there is:

11 (a) A transfer by the lessee of the lessee's right of possession or use of the goods
12 in violation of the term; or

13 (b) A delegation of a material performance of either party to the lease contract
14 in violation of the term.

15 (3) SECURITY INTEREST NOT MATERIAL IMPAIRMENT. The creation, attachment,
16 perfection or enforcement of a security interest in the lessor's interest under the lease
17 contract or the lessor's residual interest in the goods is not a transfer that materially
18 impairs the lessee's prospect of obtaining return performance or materially changes
19 the duty of or materially increases the burden or risk imposed on the lessee within
20 the purview of s. 411.303 (4) unless, and then only to the extent that, enforcement
21 actually results in a delegation of material performance of the lessor.

22 **409.408 Restrictions on assignment of promissory notes,**
23 **health-care-insurance receivables and certain general intangibles**
24 **ineffective. (1) TERM RESTRICTING ASSIGNMENT GENERALLY INEFFECTIVE.** Except as
25 otherwise provided in sub. (2), a term in a promissory note or in an agreement

1 between an account debtor and a debtor which relates to a health-care-insurance
2 receivable or a general intangible, including a contract, permit, license or franchise,
3 and which term prohibits, restricts or requires the consent of the person obligated
4 on the promissory note or the account debtor to, the assignment or transfer of, or
5 creation, attachment or perfection of a security interest in, the promissory note,
6 health-care-insurance receivable or general intangible, is ineffective to the extent
7 that the term:

8 (a) Would impair the creation, attachment or perfection of a security interest;
9 or

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

14 **(2) APPLICABILITY OF SUB. (1) TO SALES OF CERTAIN RIGHTS TO PAYMENT.** Subsection
15 (1) applies to a security interest in a payment intangible or promissory note only if
16 the security interest arises out of a sale of the payment intangible or promissory note.

17 **(3) LEGAL RESTRICTIONS ON ASSIGNMENT GENERALLY INEFFECTIVE.** A rule of law,
18 statute or rule that prohibits, restricts or requires the consent of a government,
19 governmental body or official, person obligated on a promissory note or account
20 debtor to the assignment or transfer of, or creation of a security interest in, a
21 promissory note, health-care-insurance receivable or general intangible, including
22 a contract, permit, license or franchise between an account debtor and a debtor, is
23 ineffective to the extent that the rule of law, statute or rule:

24 (a) Would impair the creation, attachment or perfection of a security interest;
25 or

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

5 **(4) LIMITATION ON INEFFECTIVENESS UNDER SUBS. (1) AND (3).** To the extent that a
6 term in a promissory note or in an agreement between an account debtor and a debtor
7 which relates to a health-care-insurance receivable or general intangible or a rule
8 of law, statute or rule described in sub. (3) would be effective under law other than
9 this chapter but is ineffective under sub. (1) or (3), the creation, attachment or
10 perfection of a security interest in the promissory note, health-care-insurance
11 receivable or general intangible:

12 (a) Is not enforceable against the person obligated on the promissory note or the
13 account debtor;

14 (b) Does not impose a duty or obligation on the person obligated on the
15 promissory note or the account debtor;

16 (c) Does not require the person obligated on the promissory note or the account
17 debtor to recognize the security interest, pay or render performance to the secured
18 party or accept payment or performance from the secured party;

19 (d) Does not entitle the secured party to use or assign the debtor's rights under
20 the promissory note, health-care-insurance receivable or general intangible,
21 including any related information or materials furnished to the debtor in the
22 transaction giving rise to the promissory note, health-care-insurance receivable or
23 general intangible;

1 (e) Does not entitle the secured party to use, assign, possess or have access to
2 any trade secrets or confidential information of the person obligated on the
3 promissory note or the account debtor; and

4 (f) Does not entitle the secured party to enforce the security interest in the
5 promissory note, health-care-insurance receivable or general intangible.

6 (5) SECTION PREVAILS OVER SPECIFIED INCONSISTENT LAW. This section prevails
7 over any inconsistent provisions of the following statutes and rules:

8 [List here any statutes and rules containing provisions inconsistent with this
9 section.]

NCCUSL Legislative Note: States that amend statutes and rules to remove provisions inconsistent with this section need not enact sub. (5).

***NOTE: Subsection (5) needs to be deleted and inconsistent provisions amended.
What statutes need to be amended?

10 **409.409 Restrictions on assignment of letter-of-credit rights**
11 **ineffective. (1) TERM OR LAW RESTRICTING ASSIGNMENT GENERALLY INEFFECTIVE.** A
12 term in a letter of credit or a rule of law, statute, rule, custom or practice applicable
13 to the letter of credit which prohibits, restricts or requires the consent of an
14 applicant, issuer or nominated person to a beneficiary's assignment of or creation of
15 a security interest in a letter-of-credit right is ineffective to the extent that the term
16 or rule of law, statute, rule, custom or practice:

17 (a) Would impair the creation, attachment or perfection of a security interest
18 in the letter-of-credit right; or

19 (b) Provides that the assignment or the creation, attachment or perfection of the
20 security interest may give rise to a default, breach, right of recoupment, claim,
21 defense, termination, right of termination or remedy under the letter-of-credit
22 right.

1 (b) The office of the department of financial institutions, in all other cases,
2 including a case in which the collateral is goods that are or are to become fixtures and
3 the financing statement is not filed as a fixture filing.

4 **(2) FILING OFFICE FOR TRANSMITTING UTILITIES.** The office in which to file a
5 financing statement to perfect a security interest in collateral, including fixtures, of
6 a transmitting utility is the office of the department of financial institutions. The
7 financing statement also constitutes a fixture filing as to the collateral indicated in
8 the financing statement which is or is to become fixtures.

9 **409.502 Contents of financing statement; record of mortgage as**
10 **financing statement; time of filing financing statement. (1) SUFFICIENCY OF**
11 **FINANCING STATEMENT.** Subject to sub. (2), a financing statement is sufficient only if
12 it:

13 (a) Provides the name of the debtor;

14 (b) Provides the name of the secured party or a representative of the secured
15 party; and

16 (c) Indicates the collateral covered by the financing statement.

17 **(2) REAL-PROPERTY-RELATED FINANCING STATEMENTS.** Except as otherwise
18 provided in s. 409.501 (2), to be sufficient, a financing statement that covers
19 as extracted collateral or timber to be cut, or which is filed as a fixture filing and
20 covers goods that are or are to become fixtures, must satisfy sub. (1) and also:

21 (a) Indicate that it covers this type of collateral;

22 (b) Indicate that it is to be filed [for record] in the real property records;

1 (c) Provide a description of the real property to which the collateral is related
2 [sufficient to give constructive notice of a mortgage under the law of this state if the
3 description were contained in a record of the mortgage of the real property]; and

4 (d) If the debtor does not have an interest of record in the real property, provide
5 the name of a record owner.

6 (3) RECORD OF MORTGAGE AS FINANCING STATEMENT. A record of a mortgage is
7 effective, from the date of recording, as a financing statement filed as a fixture filing
8 or as a financing statement covering as-extracted collateral or timber to be cut only
9 if:

10 (a) The record indicates the goods or accounts that it covers;

11 (b) The goods are or are to become fixtures related to the real property described
12 in the record or the collateral is related to the real property described in the record
13 and is as-extracted collateral or timber to be cut;

14 (c) The record satisfies the requirements for a financing statement in this
15 section other than an indication that it is to be filed in the real property records; and

16 (d) The record is [duly] recorded.

17 (4) FILING BEFORE SECURITY AGREEMENT OR ATTACHMENT. A financing statement
18 may be filed before a security agreement is made or a security interest otherwise
19 attaches.

NCCUSL Legislative Note: Language in brackets is optional. Where the state has any special recording system for real property other than the usual grantor-grantee index (as, for instance, a tract system or a title registration or Torrens system) local adaptations of sub. (2) and s. 409.519 (4) and (5) may be necessary. See, e.g., Mass. Gen. Laws Chapter 106, s. 409.410.

***NOTE: Current s. 409.402 (1) (b), Wis. stats., is nonuniform. The second sentence is added "409.402 (1) (b) (2nd sentence) 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." The conversion table gives 9-402 (1) as

one of the sources for new 9-502, the others being 9-402 (5) and (6). Should this nonuniform provision be included in this draft?

****NOTE: Current s. 409.402 (5), Wis. stats., is a nonuniform provision. It omits all bracketed language [for record] [sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the laws of this state. [and the last sentence (If a debtor does not have an interest of record in the real estate, the financing statement must show the name of the record owner.) and substitutes legal description for description. "409.402 (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.". The conversion table gives 9-402 (5) as a source for new 9-502. Should any of the nonuniform changes be included in this draft?

****NOTE: [new 9 504 9 502] 409.402 – ANNOT.

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)

- 1 **409.503 Name of debtor and secured party. (1) SUFFICIENCY OF DEBTOR'S**
 2 **NAME.** A financing statement sufficiently provides the name of the debtor:
 3 (a) If the debtor is a registered organization, only if the financing statement
 4 provides the name of the debtor indicated on the public record of the debtor's
 5 jurisdiction of organization which shows the debtor to have been organized;
 6 (b) If the debtor is a decedent's estate, only if the financing statement provides
 7 the name of the decedent and indicates that the debtor is an estate;
 8 (c) If the debtor is a trust or a trustee acting with respect to property held in
 9 trust, only if the financing statement:
 10 1. Provides the name specified for the trust in its organic documents or, if no
 11 name is specified, provides the name of the settlor and additional information

1 sufficient to distinguish the debtor from other trusts having one or more of the same
2 settlors; and

3 2. Indicates, in the debtor's name or otherwise, that the debtor is a trust or is
4 a trustee acting with respect to property held in trust; and

5 (d) In other cases:

6 1. If the debtor has a name, only if it provides the individual or organizational
7 name of the debtor; and

8 2. If the debtor does not have a name, only if it provides the names of the
9 partners, members, associates or other persons comprising the debtor.

****NOTE: Current s. 409.402 (7). Wis. stats., is a nonuniform provision. Limited liability company is added after partnership. ULA states that the last sentence is deleted, but it appears in the current text. It reads: "409.402 (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.". Should the nonuniform provisions be included in this draft?

10 (2) ADDITIONAL DEBTOR-RELATED INFORMATION. A financing statement that
11 provides the name of the debtor in accordance with sub. (1) is not rendered ineffective
12 by the absence of:

13 (a) A trade name or other name of the debtor; or

14 (b) Unless required under sub. (1) (d) 2., names of partners, members,
15 associates or other persons comprising the debtor.

16 (3) DEBTOR'S TRADE NAME INSUFFICIENT. A financing statement that provides
17 only the debtor's trade name does not sufficiently provide the name of the debtor.

1 **(4) REPRESENTATIVE CAPACITY.** Failure to indicate the representative capacity
2 of a secured party or representative of a secured party does not affect the sufficiency
3 of a financing statement.

4 **(5) MULTIPLE DEBTORS AND SECURED PARTIES.** A financing statement may provide
5 the name of more than one debtor and the name of more than one secured party.

6 **409.504 Indication of collateral.** A financing statement sufficiently
7 indicates the collateral that it covers if the financing statement provides:

8 **(1)** A description of the collateral pursuant to s. 409.108; or

9 **(2)** An indication that the financing statement covers all assets or all personal
10 property.

***NOTE: [new 9-504 9-502] 409.402 – ANNOT.

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).

11 **409.505 Filing and compliance with other statutes and treaties for**
12 **consignments, leases, other bailments and other transactions. (1) USE OF**
13 **TERMS OTHER THAN DEBTOR AND SECURED PARTY.** A consignor, lessor or other bailor of
14 goods, a licensor or a buyer of a payment intangible or promissory note may file a
15 financing statement, or may comply with a statute or treaty described in s. 409.311
16 (1), using the terms “consignor”, “consignee”, “lessor”, “lessee”, “bailor”, “bailee”,
17 “licensor”, “licensee”, “owner”, “registered owner”, “buyer”, “seller”, or words of
18 similar import, instead of the terms “secured party” and “debtor”.

1 **(2) EFFECT OF FINANCING STATEMENT UNDER SUB. (1).** This subchapter applies to
2 the filing of a financing statement under sub. (1) and, as appropriate, to compliance
3 that is equivalent to filing a financing statement under s. 409.311 (2), but the filing
4 or compliance is not of itself a factor in determining whether the collateral secures
5 an obligation. If it is determined for another reason that the collateral secures an
6 obligation, a security interest held by the consignor, lessor, bailor, licensor, owner or
7 buyer which attaches to the collateral is perfected by the filing or compliance

8 **409.506 Effect of errors or omissions. (1) MINOR ERRORS AND OMISSIONS.** A
9 financing statement substantially satisfying the requirements of this subchapter is
10 effective, even if it has minor errors or omissions, unless the errors or omissions make
11 the financing statement seriously misleading.

12 **(2) FINANCING STATEMENT SERIOUSLY MISLEADING.** Except as otherwise provided
13 in sub. (3), a financing statement that fails sufficiently to provide the name of the
14 debtor in accordance with s. 409.503 (1) is seriously misleading.

15 **(3) FINANCING STATEMENT NOT SERIOUSLY MISLEADING.** If a search of the records
16 of the filing office under the debtor's correct name, using the filing office's standard
17 search logic, if any, would disclose a financing statement that fails sufficiently to
18 provide the name of the debtor in accordance with s. 409.503 (1), the name provided
19 does not make the financing statement seriously misleading.

20 **(4) DEBTOR'S CORRECT NAME.** For purposes of s. 409.508 (2), the "debtor's correct
21 name" in sub. (3) means the correct name of the new debtor.

22 **409.507 Effect of certain events on effectiveness of financing**
23 **statement. (1) DISPOSITION.** A filed financing statement remains effective with
24 respect to collateral that is sold, exchanged, leased, licensed or otherwise disposed

1 of and in which a security interest or agricultural lien continues, even if the secured
2 party knows of or consents to the disposition.

3 (2) INFORMATION BECOMING SERIOUSLY MISLEADING. Except as otherwise provided
4 in sub. (3) and s. 409.508, a financing statement is not rendered ineffective if, after
5 the financing statement is filed, the information provided in the financing statement
6 becomes seriously misleading under s. 409.506.

7 (3) CHANGE IN DEBTOR'S NAME. If a debtor so changes its name that a filed
8 financing statement becomes seriously misleading under s. 409.506:

9 (a) The financing statement is effective to perfect a security interest in
10 collateral acquired by the debtor before, or within 4 months after, the change; and

11 (b) The financing statement is not effective to perfect a security interest in
12 collateral acquired by the debtor more than 4 months after the change, unless an
13 amendment to the financing statement which renders the financing statement not
14 seriously misleading is filed within 4 months after the change.

15 **409.508 Effectiveness of financing statement if new debtor becomes**
16 **bound by security agreement. (1) FINANCING STATEMENT NAMING ORIGINAL DEBTOR.**

17 Except as otherwise provided in this section, a filed financing statement naming an
18 original debtor is effective to perfect a security interest in collateral in which a new
19 debtor has or acquires rights to the extent that the financing statement would have
20 been effective had the original debtor acquired rights in the collateral.

21 (2) FINANCING STATEMENT BECOMING SERIOUSLY MISLEADING. If the difference
22 between the name of the original debtor and that of the new debtor causes a filed
23 financing statement that is effective under sub. (1) to be seriously misleading under
24 s. 409.506:

1 (a) The financing statement is effective to perfect a security interest in
2 collateral acquired by the new debtor before, and within 4 months after, the new
3 debtor becomes bound under s. 409.203 (4); and

4 (b) The financing statement is not effective to perfect a security interest in
5 collateral acquired by the new debtor more than 4 months after the new debtor
6 becomes bound under s. 409.203 (4) unless an initial financing statement providing
7 the name of the new debtor is filed before the expiration of that time.

8 (3) WHEN SECTION NOT APPLICABLE. This section does not apply to collateral as
9 to which a filed financing statement remains effective against the new debtor under
10 s. 409.507 (1).

11 **409.509 Persons entitled to file a record. (1) PERSON ENTITLED TO FILE**
12 **RECORD.** A person may file an initial financing statement, amendment that adds
13 collateral covered by a financing statement or amendment that adds a debtor to a
14 financing statement only if:

- 15 (a) The debtor authorizes the filing in an authenticated record; or
- 16 (b) The person holds an agricultural lien that has become effective at the time
17 of filing and the financing statement covers only collateral in which the person holds
18 an agricultural lien.

19 (2) SECURITY AGREEMENT AS AUTHORIZATION. By authenticating or becoming
20 bound as debtor by a security agreement, a debtor or new debtor authorizes the filing
21 of an initial financing statement, and an amendment, covering:

- 22 (a) The collateral described in the security agreement; and
- 23 (b) Property that becomes collateral under s. 409.315 (1) (b), whether or not the
24 security agreement expressly covers proceeds.

1 **(3) ACQUISITION OF COLLATERAL AS AUTHORIZATION.** By acquiring collateral in
2 which a security interest or agricultural lien continues under s. 409.315 (1) (a), a
3 debtor authorizes the filing of an initial financing statement, and an amendment,
4 covering the collateral and property that becomes collateral under s. 409.315 (1) (b).

5 **(4) PERSON ENTITLED TO FILE CERTAIN AMENDMENTS.** A person may file an
6 amendment other than an amendment that adds collateral covered by a financing
7 statement or an amendment that adds a debtor to a financing statement only if:

8 (a) The secured party of record authorizes the filing; or

9 (b) The amendment is a termination statement for a financing statement as to
10 which the secured party of record has failed to file or send a termination statement
11 as required by s. 409.513 (1) or (3), the debtor authorizes the filing, and the
12 termination statement indicates that the debtor authorized it to be filed.

13 **(5) MULTIPLE SECURED PARTIES OF RECORD.** If there is more than one secured
14 party of record for a financing statement, each secured party of record may authorize
15 the filing of an amendment under sub. (4).

16 **409.510 Effectiveness of filed record. (1) FILED RECORD EFFECTIVE IF**
17 **AUTHORIZED.** A filed record is effective only to the extent that it was filed by a person
18 that may file it under s. 409.509.

19 **(2) AUTHORIZATION BY ONE SECURED PARTY OF RECORD.** A record authorized by one
20 secured party of record does not affect the financing statement with respect to
21 another secured party of record.

22 **(3) CONTINUATION STATEMENT NOT TIMELY FILED.** A continuation statement that
23 is not filed within the 6-month period prescribed by s. 409.515 (4) is ineffective.

24 **409.511 Secured party of record. (1) SECURED PARTY OF RECORD.** A secured
25 party of record with respect to a financing statement is a person whose name is

1 provided as the name of the secured party or a representative of the secured party
2 in an initial financing statement that has been filed. If an initial financing statement
3 is filed under s. 409.514 (1), the assignee named in the initial financing statement
4 is the secured party of record with respect to the financing statement.

5 (2) AMENDMENT NAMING SECURED PARTY OF RECORD. If an amendment of a
6 financing statement which provides the name of a person as a secured party or a
7 representative of a secured party is filed, the person named in the amendment is a
8 secured party of record. If an amendment is filed under s. 409.514 (2), the assignee
9 named in the amendment is a secured party of record.

10 (3) AMENDMENT DELETING SECURED PARTY OF RECORD. A person remains a secured
11 party of record until the filing of an amendment of the financing statement which
12 deletes the person.

13 **409.512 Amendment of financing statement.** (1) AMENDMENT OF
14 INFORMATION IN FINANCING STATEMENT. Subject to s. 409.509, a person may add or
15 delete collateral covered by, continue or terminate the effectiveness of, or, subject to
16 sub. (5), otherwise amend the information provided in, a financing statement by
17 filing an amendment that:

18 (a) Identifies, by its file number, the initial financing statement to which the
19 amendment relates; and

20 (b) If the amendment relates to an initial financing statement filed [or
21 recorded] in a filing office described in s. 409.501 (1) (a), provides the date [and time]
22 that the initial financing statement was filed [or recorded] and the information
23 specified in s. 409.502 (2).

****NOTE: Alternative B is included in this draft. Alternative A does not have in paragraph (b) “the date [and time] that the initial financing statement was filed [or recorded] and”.

1 (2) PERIOD OF EFFECTIVENESS NOT AFFECTED. Except as otherwise provided in s.
2 409.515, the filing of an amendment does not extend the period of effectiveness of the
3 financing statement.

4 (3) EFFECTIVENESS OF AMENDMENT ADDING COLLATERAL. A financing statement
5 that is amended by an amendment that adds collateral is effective as to the added
6 collateral only from the date of the filing of the amendment.

7 (4) EFFECTIVENESS OF AMENDMENT ADDING DEBTOR. A financing statement that
8 is amended by an amendment that adds a debtor is effective as to the added debtor
9 only from the date of the filing of the amendment.

10 (5) CERTAIN AMENDMENTS INEFFECTIVE. An amendment is ineffective to the
11 extent it:

12 (a) Purports to delete all debtors and fails to provide the name of a debtor to be
13 covered by the financing statement; or

14 (b) Purports to delete all secured parties of record and fails to provide the name
15 of a new secured party of record.

NCCUSL Legislative Note: States whose real-estate filing offices require additional information in amendments and cannot search their records by both the name of the debtor and the file number should enact Alternative B to ss. 409.512 (1), 409.518 (2), 409.519 (6) and 409.522 (1).

****NOTE: Current s. 409.406, Wis. stats., is nonuniform in that the last sentence was substituted for the uniform act last sentence. The section reads: “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.”. The conversion list gives 9-406 as the source for new 9-512. Should the nonuniform change be included in this draft?

***NOTE: We need the help of the department of commerce and we should put all fee provisions in one section as does the new article 9.

1 **409.513 Termination statement. (1) CONSUMER GOODS.** A secured party shall
2 cause the secured party of record for a financing statement to file a termination
3 statement for the financing statement if the financing statement covers consumer
4 goods and:

5 (a) There is no obligation secured by the collateral covered by the financing
6 statement and no commitment to make an advance, incur an obligation or otherwise
7 give value; or

8 (b) The debtor did not authorize the filing of the initial financing statement.

9 **(2) TIME FOR COMPLIANCE WITH SUB. (1).** To comply with sub. (1), a secured party
10 shall cause the secured party of record to file the termination statement:

11 (a) Within one month after there is no obligation secured by the collateral
12 covered by the financing statement and no commitment to make an advance, incur
13 an obligation or otherwise give value; or

14 (b) If earlier, within 20 days after the secured party receives an authenticated
15 demand from a debtor.

16 **(3) OTHER COLLATERAL.** In cases not governed by sub. (1), within 20 days after
17 a secured party receives an authenticated demand from a debtor, the secured party
18 shall cause the secured party of record for a financing statement to send to the debtor
19 a termination statement for the financing statement or file the termination
20 statement in the filing office if:

1 (a) Except in the case of a financing statement covering accounts or chattel
2 paper that has been sold or goods that are the subject of a consignment, there is no
3 obligation secured by the collateral covered by the financing statement and no
4 commitment to make an advance, incur an obligation or otherwise give value;

5 (b) The financing statement covers accounts or chattel paper that has been sold
6 but as to which the account debtor or other person obligated has discharged its
7 obligation;

8 (c) The financing statement covers goods that were the subject of a consignment
9 to the debtor but are not in the debtor's possession; or

10 (d) The debtor did not authorize the filing of the initial financing statement.

11 **(4) EFFECT OF FILING TERMINATION STATEMENT.** Except as otherwise provided in
12 s. 409.510, upon the filing of a termination statement with the filing office, the
13 financing statement to which the termination statement relates ceases to be
14 effective.

***NOTE: Current s. 409.404, Wis. stats., is a nonuniform section throughout it. The conversion table lists that section as the source for new 9-513. Should any of the nonuniform changes be included in this draft?

***NOTE: We need the help of the department of commerce and we should put all fee provisions in one section as does the new article 9.

The section reads: "409.404 Termination statement.

409.404 (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.

409.404 (1) (b)

(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.

409.404 (1) (c)

(c) (intro.) 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:

409.404 (1) (c)1.

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).

409.404 (1) (c)2.

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

409.404 (1) (c)3.

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

409.404 (1) (d)

(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 \$500, and in addition is liable for any loss caused to the debtor by such failure and for reasonable attorney fees and court costs incurred by the debtor due to such failure.

409.404 (2)

(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.

409.404 (3)

(3)

409.404 (3) (a)

(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.

409.404 (3) (b)

(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.

409.404 – ANNOT.

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; 1997 a. 27.”.

***NOTE: [new 9-513] 409.404 – ANNOT.

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)

- 1 **409.514 Assignment of powers of secured party of record. (1)**
 2 ASSIGNMENT REFLECTED ON INITIAL FINANCING STATEMENT. Except as otherwise
 3 provided in sub. (3), an initial financing statement may reflect an assignment of all
 4 of the secured party’s power to authorize an amendment to the financing statement
 5 by providing the name and mailing address of the assignee as the name and address
 6 of the secured party.
- 7 (2) ASSIGNMENT OF FILED FINANCING STATEMENT. Except as otherwise provided
 8 in sub. (3), a secured party of record may assign of record all or part of its power to
 9 authorize an amendment to a financing statement by filing in the filing office an
 10 amendment of the financing statement which:
- 11 (a) Identifies, by its file number, the initial financing statement to which it
 12 relates;
- 13 (b) Provides the name of the assignor; and
- 14 (c) Provides the name and mailing address of the assignee.
- 15 (3) ASSIGNMENT OF RECORD OF MORTGAGE. An assignment of record of a security
 16 interest in a fixture covered by a record of a mortgage which is effective as a financing

1 statement filed as a fixture filing under s. 409.502 (3) may be made only by an
 2 assignment of record of the mortgage in the manner provided by law of this state
 3 other than chs. 401 to 411.

***NOTE: Current s. 409.405 (1), Wis. stats., has nonuniform changes to it and current s. 409.405 (1m), Wis. stats. is nonuniform in that it is entirely an addition. They read: “409.405 (1)

(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.

409.405 (1m) There is no fee for processing the termination statement.”.

The conversion table lists 9-405 as a source for new 9- 514 and 9-519 and the reverse list lists 9-403 (4) and (7) and 9-405 (2) as sources for new 9-519. Should any of the nonuniform provisions be included in this draft? We need to work with the department of commerce regarding the fee sections. Does the first sentence need to be retained?

4 **409.515 Duration and effectiveness of financing statement; effect of**
 5 **lapsed financing statement. (1) FIVE-YEAR EFFECTIVENESS.** Except as otherwise
 6 provided in subs. (2), (5), (6) and (7), a filed financing statement is effective for a
 7 period of 5 years after the date of filing.

8 **(2) PUBLIC-FINANCE OR MANUFACTURED-HOME TRANSACTION.** Except as otherwise
 9 provided in subs. (5), (6) and (7), an initial financing statement filed in connection
 10 with a public-finance transaction or manufactured-home transaction is effective for
 11 a period of 30 years after the date of filing if it indicates that it is filed in connection
 12 with a public-finance transaction or manufactured-home transaction.

1 **(3) LAPSE AND CONTINUATION OF FINANCING STATEMENT.** The effectiveness of a filed
2 financing statement lapses on the expiration of the period of its effectiveness unless
3 before the lapse a continuation statement is filed pursuant to sub. (4). Upon lapse,
4 a financing statement ceases to be effective and any security interest or agricultural
5 lien that was perfected by the financing statement becomes unperfected, unless the
6 security interest is perfected otherwise. If the security interest or agricultural lien
7 becomes unperfected upon lapse, it is deemed never to have been perfected as against
8 a purchaser of the collateral for value.

9 **(4) WHEN CONTINUATION STATEMENT MAY BE FILED.** A continuation statement may
10 be filed only within 6 months before the expiration of the 5–year period specified in
11 sub. (1) or the 30–year period specified in sub. (2), whichever is applicable.

12 **(5) EFFECT OF FILING CONTINUATION STATEMENT.** Except as otherwise provided in
13 s. 409.510, upon timely filing of a continuation statement, the effectiveness of the
14 initial financing statement continues for a period of 5 years commencing on the day
15 on which the financing statement would have become ineffective in the absence of
16 the filing. Upon the expiration of the 5–year period, the financing statement lapses
17 in the same manner as provided in sub. (3), unless, before the lapse, another
18 continuation statement is filed pursuant to sub. (4). Succeeding continuation
19 statements may be filed in the same manner to continue the effectiveness of the
20 initial financing statement.

21 **(6) TRANSMITTING UTILITY FINANCING STATEMENT.** If a debtor is a transmitting
22 utility and a filed financing statement so indicates, the financing statement is
23 effective until a termination statement is filed.

24 **(7) RECORD OF MORTGAGE AS FINANCING STATEMENT.** A record of a mortgage that
25 is effective as a financing statement filed as a fixture filing under s. 409.502 (3)

1 remains effective as a financing statement filed as a fixture filing until the mortgage
2 is released or satisfied of record or its effectiveness otherwise terminates as to the
3 real property.

4 **409.516 What constitutes filing; effectiveness of filing.** (1) WHAT
5 CONSTITUTES FILING. Except as otherwise provided in sub. (2), communication of a
6 record to a filing office and tender of the filing fee or acceptance of the record by the
7 filing office constitutes filing.

8 (2) REFUSAL TO ACCEPT RECORD; FILING DOES NOT OCCUR. Filing does not occur with
9 respect to a record that a filing office refuses to accept because:

10 (a) The record is not communicated by a method or medium of communication
11 authorized by the filing office;

12 (b) An amount equal to or greater than the applicable filing fee is not tendered;

13 (c) The filing office is unable to index the record because:

14 1. In the case of an initial financing statement, the record does not provide a
15 name for the debtor;

16 2. In the case of an amendment or correction statement, the record:

17 a. Does not identify the initial financing statement as required by s. 409.512 or
18 409.518, as applicable; or

19 b. Identifies an initial financing statement whose effectiveness has lapsed
20 under s. 409.515;

21 3. In the case of an initial financing statement that provides the name of a
22 debtor identified as an individual or an amendment that provides a name of a debtor
23 identified as an individual which was not previously provided in the financing
24 statement to which the record relates, the record does not identify the debtor's last
25 name; or

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4. In the case of a record filed [or recorded] in the filing office described in s. 409.501 (1) (a), the record does not provide a sufficient description of the real property to which it relates;

(d) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

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

- 1. Provide a mailing address for the debtor;
- 2. Indicate whether the debtor is an individual or an organization; or
- 3. If the financing statement indicates that the debtor is an organization, provide:
 - a. A type of organization for the debtor;
 - b. A jurisdiction of organization for the debtor; or
 - c. An organizational identification number for the debtor or indicate that the debtor has none;

(f) In the case of an assignment reflected in an initial financing statement under s. 409.514 (1) or an amendment filed under s. 409.514 (2), the record does not provide a name and mailing address for the assignee; or

(g) In the case of a continuation statement, the record is not filed within the 6-month period prescribed by s. 409.515 (4).

(3) RULES APPLICABLE TO SUB. (2). For purposes of sub. (2):

1 (a) A record does not provide information if the filing office is unable to read or
2 decipher the information; and

3 (b) A record that does not indicate that it is an amendment or identify an initial
4 financing statement to which it relates, as required by s. 409.512, 409.514 or 409.518,
5 is an initial financing statement.

6 (4) REFUSAL TO ACCEPT RECORD; RECORD EFFECTIVE AS FILED RECORD. A record that
7 is communicated to the filing office with tender of the filing fee, but which the filing
8 office refuses to accept for a reason other than one set forth in sub. (2), is effective as
9 a filed record except as against a purchaser of the collateral which gives value in
10 reasonable reliance upon the absence of the record from the files.

11 **409.517 Effect of indexing errors.** The failure of the filing office to index a
12 record correctly does not affect the effectiveness of the filed record.

13 **409.518 Claim concerning inaccurate or wrongfully filed record. (1)**
14 CORRECTION STATEMENT. A person may file in the filing office a correction statement
15 with respect to a record indexed there under the person's name if the person believes
16 that the record is inaccurate or was wrongfully filed.

17 (2) SUFFICIENCY OF CORRECTION STATEMENT. A correction statement must:

18 (a) Identify the record to which it relates by:

19 1. The file number assigned to the initial financing statement to which the
20 record relates; and

21 2. If the correction statement relates to a record filed [or recorded] in a filing
22 office described in s. 409.501 (1) (a), the date [and time] that the initial financing
23 statement was filed [or recorded] and the information specified in s. 409.502 (2);

24 (b) Indicate that it is a correction statement; and

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

***NOTE: Alternative B for sub. (2) is included in this draft.

5 (3) RECORD NOT AFFECTED BY CORRECTION STATEMENT. The filing of a correction
6 statement does not affect the effectiveness of an initial financing statement or other
7 filed record.

NCCUSL Legislative Note: States whose real-estate filing offices require additional information in amendments and cannot search their records by both the name of the debtor and the file number should enact Alternative B to ss. 409.512 (1), 409.518 (2), 409.519 (6) and 409.522 (1).

8 **409.519 Numbering, maintaining and indexing records;**
9 **communicating information provided in records. (1) FILING OFFICE DUTIES.**

10 For each record filed in a filing office, the filing office shall:

- 11 (a) Assign a unique number to the filed record;
- 12 (b) Create a record that bears the number assigned to the filed record and the
13 date and time of filing;
- 14 (c) Maintain the filed record for public inspection; and
- 15 (d) Index the filed record in accordance with subs. (3), (4) and (5).

16 (2) FILE NUMBER. A file number assigned after January 1, 2002, must include
17 a digit that:

- 18 (a) Is mathematically derived from or related to the other digits of the file
19 number; and
- 20 (b) Aids the filing office in determining whether a number communicated as the
21 file number includes a single-digit or transpositional error.

1 **(3) INDEXING: GENERAL.** Except as otherwise provided in subs. (4) and (5), the
2 filing office shall:

3 (a) Index an initial financing statement according to the name of the debtor and
4 index all filed records relating to the initial financing statement in a manner that
5 associates with one another an initial financing statement and all filed records
6 relating to the initial financing statement; and

7 (b) Index a record that provides a name of a debtor which was not previously
8 provided in the financing statement to which the record relates also according to the
9 name that was not previously provided.

10 **(4) INDEXING: REAL-PROPERTY-RELATED FINANCING STATEMENT.** If a financing
11 statement is filed as a fixture filing or covers as-extracted collateral or timber to be
12 cut, [it must be filed for record and] the filing office shall index it:

13 (a) Under the names of the debtor and of each owner of record shown on the
14 financing statement as if they were the mortgagors under a mortgage of the real
15 property described; and

16 (b) To the extent that the law of this state provides for indexing of records of
17 mortgages under the name of the mortgagee, under the name of the secured party
18 as if the secured party were the mortgagee thereunder, or, if indexing is by
19 description, as if the financing statement were a record of a mortgage of the real
20 property described.

21 **(5) INDEXING: REAL PROPERTY RELATED ASSIGNMENT.** If a financing statement is
22 filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing
23 office shall index an assignment filed under s. 409.514 (1) or an amendment filed
24 under s. 409.514 (2):

1 (a) Under the name of the assignor as grantor; and

2 (b) To the extent that the law of this state provides for indexing a record of the
3 assignment of a mortgage under the name of the assignee, under the name of the
4 assignee.

5 **(6) RETRIEVAL AND ASSOCIATION CAPABILITY.** The filing office shall maintain a
6 capability:

7 (a) To retrieve a record by the name of the debtor and:

8 1. If the filing office is described in s. 409.501 (1) (a), by the file number assigned
9 to the initial financing statement to which the record relates and the date [and time]
10 that the record was filed [or recorded]; or

11 2. If the filing office is described in s. 409.501 (1) (b), by the file number assigned
12 to the initial financing statement to which the record relates; and

13 (b) To associate and retrieve with one another an initial financing statement
14 and each filed record relating to the initial financing statement.

****NOTE: Alternative B for sub. (6) is included in this draft.

15 **(7) REMOVAL OF DEBTOR'S NAME.** The filing office may not remove a debtor's name
16 from the index until one year after the effectiveness of a financing statement naming
17 the debtor lapses under s. 409.515 with respect to all secured parties of record.

18 **(8) TIMELINESS OF FILING OFFICE PERFORMANCE.** The filing office shall perform
19 the acts required by subs. (1) to (5) at the time and in the manner prescribed by
20 filing-office rule, but not later than 2 business days after the filing office receives the
21 record in question.

1 [(9) INAPPLICABILITY TO REAL-PROPERTY-RELATED FILING OFFICE. [Subsection]
2 [Subsections] [(2)] [and] [(8)] [does] [do] not apply to a filing office described in
3 s. 409.501 (1) (a).]

NCCUSL Legislative Notes:

1. States whose filing offices currently assign file numbers that include a verification number, commonly known as a “check digit,” or can implement this requirement before the effective date of this chapter should omit the bracketed language in sub. (2).

2. In states in which writings will not appear in the real property records and indices unless actually recorded the bracketed language in sub. (4) should be used.

3. States whose real-estate filing offices require additional information in amendments and cannot search their records by both the name of the debtor and the file number should enact Alternative B to ss. 409.512 (1), 409.518 (2), 409.519 (6) and 409.522 (1).

4. A state that elects not to require real-estate filing offices to comply with either or both of subs. (2) and (8) may adopt an applicable variation of sub. (9) and add “Except as otherwise provided in sub. (9),” to the appropriate subsection or subsections.

***NOTE: Which bracketed material should be included in this draft?

***NOTE: Current s. 409.402 (1) (b), Wis. stats., has the following nonuniform provision. The second sentence is added “409.402 (1) (b) (2nd sentence) 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.”. The conversion table gives 9-402 (1) as one of the sources for new 9-502, the others being 9-402 (5) and (6). Should this nonuniform provision be included in this draft?

***NOTE: The subsection is nonuniform. Section 409.403 (4) reads: “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.”. Should this nonuniform provision be included in this draft?

***NOTE: Current s. 409.403 (7) is a nonuniform subsection in that it does not include “and any owner of record shown on the financing statement” after “names of the debtor”. The subsection reads: “409.403 (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.”. It also deletes the language in brackets: [it shall be filed for record and”] before “the filing officer”. Should these nonuniform deletions be given effect in this draft?

***NOTE: Current s. 409.403 (8) is a nonuniform subsection that is added. It reads: “409.403 (8) A separate amendment, continuation statement, termination statement,