

statement of assignment or statement of release shall be filed for each original financing statement to be affected.” Should this subsection be included in this draft?

\*\*\*\*NOTE: The conversion table lists 9-405 (2) as a source for new 9-519. Current s. 409.405 (2), Wis. stats., reads: (2) A secured party may assign of record all or part of his or her rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. The officer shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like, including oil and gas, or accounts subject to s. 409.103 (5), the officer shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, the officer shall index the assignment of the financing statement under the name of the assignee. The fee for filing, indexing and furnishing filing data about such a separate statement of assignment is \$5 if the statement is on the standard form prescribed by the department and is \$10 if the statement is not on the standard form or if additional pages are attached to the standard form. A register of deeds shall forward \$3 to the department for each statement of assignment filed with the office of the register of deeds. Notwithstanding this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing under s. 409.402 (6) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than chs. 401 to 411.” Should any of the nonuniform provisions be included in this draft?

We need to work with the department of commerce on the fee sections.

[new 9-519] 409.403 – ANNOT.

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

- 1           **409.520 Acceptance and refusal to accept record. (1) MANDATORY REFUSAL**  
2           **TO ACCEPT RECORD.** A filing office shall refuse to accept a record for filing for a reason  
3           set forth in s. 409.516 (2) and may refuse to accept a record for filing only for a reason  
4           set forth in s. 409.516 (2).
- 5           **(2) COMMUNICATION CONCERNING REFUSAL.** If a filing office refuses to accept a  
6           record for filing, it shall communicate to the person that presented the record the fact  
7           of and reason for the refusal and the date and time the record would have been filed  
8           had the filing office accepted it. The communication must be made at the time and

1 in the manner prescribed by filing-office rule but, in the case of a filing office  
2 described in s. 409.501 (1) (b), in no event more than 2 business days after the filing  
3 office receives the record.

4 (3) WHEN FILED FINANCING STATEMENT EFFECTIVE. A filed financing statement  
5 satisfying s. 409.502 (1) and (2) is effective, even if the filing office is required to  
6 refuse to accept it for filing under sub. (1). However, s. 409.338 applies to a filed  
7 financing statement providing information described in s. 409.516 (2) (e) which is  
8 incorrect at the time the financing statement is filed.

9 (4) SEPARATE APPLICATION TO MULTIPLE DEBTORS. If a record communicated to a  
10 filing office provides information that relates to more than one debtor, this  
11 subchapter applies as to each debtor separately.

NCCUSL Legislative Note: A state that elects not to require real-property filing  
offices to comply with sub. (2) should include the bracketed language.

\*\*\*\*NOTE:This draft includes the bracketed material.

12 **409.521 Uniform form of written financing statement and amendment.**

13 (1) INITIAL FINANCING STATEMENT FORM. A filing office that accepts written records  
14 may not refuse to accept a written initial financing statement in the following form  
15 and format except for a reason set forth in s. 409.516 (2):

\*\*\*\*NOTE: Current s. 409.402 (3), Wis. stats., is nonuniform in that Wisconsin  
deletes item #2, renumbers #3 and #4 to be #2 and #3 and modifies item #2.

“409.402 (3) A form substantially as follows is sufficient to comply with sub. (1):  
Name of debtor (or assignor) Address Name of secured party (or assignee) Address

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

(Describe)

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

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

Signature of Debtor (or Assignor) ....

Signature of Secured Party (or Assignee) ....(use whichever is applicable)”.  
Should any of these changes be included in this draft?

\*\*\*NOTE: Current s. 409.402 (3m) is a nonuniform addition. It reads: 409.402 (3m) The department shall prescribe by rule standard forms for filing a financing statement, continuation statement, termination statement, statement of assignment or statement of release. A filing officer may refuse to accept statements not on the required form or not containing information required under sub. (1).". Should this subsection be included in this draft?



**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME  insert only one debtor name (1a OR 1b)  do not abbreviate OR combine names

1a. ORGANIZATION'S NAME				
OR	1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
1d. TAX ID #, SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME  insert only one debtor name (2a OR 2b)  do not abbreviate OR combine names

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
2d. TAX ID #, SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (OR NAME OF TOTAL ASSIGNEE OF ASSIGNOR S/P)  insert only one secured party name (3a OR 3b)

3a. ORGANIZATION'S NAME				
OR	3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

1

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX
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10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME  insert only one name (11a OR 11b)  do not abbreviate OR combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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11c. MAILING ADDRESS

CITY	STATE	POSTAL CODE	COUNTRY
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11d. TAX ID #, DON OR EIN

ADD'L INFO RE ORGANIZATION DEBTOR

11e. TYPE OF ORGANIZATION

11f. JURISDICTION OF ORGANIZATION

11g. ORGANIZATIONAL ID #, If any  NONE

12.  ADDITIONAL SECURED PARTY'S or  ASSIGNOR S/P'S NAME  insert only one name (12a OR 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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12c. MAILING ADDRESS

CITY	STATE	POSTAL CODE	COUNTRY
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13. This FINANCING STATEMENT covers  timber to be cut or  as-extracted collateral, or is filed as a  fixture filing.

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.  
 Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box.  
 Debtor is a TRANSMIGRATING UTILITY  
 Filed in connection with a Manufactured Home Transaction  effective 30 years  
 Filed in connection with a Public Finance Transaction  effective 30 years

1           **(2) AMENDMENT FORM.** A filing office that accepts written records may not refuse  
2           to accept a written record in the following form and format except for a reason set  
3           forth in s. 409.516 (2):

1



**UCC FINANCING STATEMENT AMENDMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

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B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

1b. This FINANCING STATEMENT AMENDMENT IS to be filed [for record] (or recorded) IN the REAL ESTATE RECORDS.

2.  TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3.  CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4.  ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): THIS Amendment affects  Debtor or  Secured Party of record. Check only one of these two boxes.  
Also check one of the following three boxes and provide appropriate information in item 6 and/or 7.

CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c.  DELETE name: Give record name to be deleted in item 6a or 6b.  ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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7d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATIONAL ID #, if any
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NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.  
Describe collateral  deleted or  added, or give entire  restated collateral description, or describe collateral  assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here  and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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10. OPTIONAL FILER REFERENCE DATA



**UCC FINANCING STATEMENT AMENDMENT ADDENDUM**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as item 1a on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME, SUFFIX

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1           **409.522 Maintenance and destruction of records.**

2           (1) POST-LAPSE MAINTENANCE AND RETRIEVAL OF INFORMATION. The filing office  
3 shall maintain a record of the information provided in a filed financing statement for  
4 at least one year after the effectiveness of the financing statement has lapsed under  
5 s. 409.515 with respect to all secured parties of record. The record must be  
6 retrievable by using the name of the debtor and:

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

11           (b) If the record was filed in the filing office described in s. 409.501 (1) (b), by  
12 using the file number assigned to the initial financing statement to which the record  
13 relates.

      \*\*\*NOTE: Should this draft include the bracketed material? Alternative B is  
included in this draft.

14           (2) DESTRUCTION OF WRITTEN RECORDS. Except to the extent that a statute  
15 governing disposition of public records provides otherwise, the filing office  
16 immediately may destroy any written record evidencing a financing statement.  
17 However, if the filing office destroys a written record, it shall maintain another  
18 record of the financing statement which complies with sub. (1).

      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).

19           **409.523 Information from filing office; sale or license of records. (1)**

20           ACKNOWLEDGMENT OF FILING WRITTEN RECORD. If a person that files a written record  
21 requests an acknowledgment of the filing, the filing office shall send to the person

1 an image of the record showing the number assigned to the record pursuant to s.  
2 409.519 (1) (a) and the date and time of the filing of the record. However, if the person  
3 furnishes a copy of the record to the filing office, the filing office may instead:

4 (a) Note upon the copy the number assigned to the record pursuant to s. 409.519  
5 (1) (a) and the date and time of the filing of the record; and

6 (b) Send the copy to the person.

7 (2) ACKNOWLEDGMENT OF FILING OTHER RECORD. If a person files a record other  
8 than a written record, the filing office shall communicate to the person an  
9 acknowledgment that provides:

10 (a) The information in the record;

11 (b) The number assigned to the record pursuant to s. 409.519 (1) (a); and

12 (c) The date and time of the filing of the record.

13 (3) COMMUNICATION OF REQUESTED INFORMATION. The filing office shall  
14 communicate or otherwise make available in a record the following information to  
15 any person that requests it:

16 (a) Whether there is on file on a date and time specified by the filing office, but  
17 not a date earlier than 3 business days before the filing office receives the request,  
18 any financing statement that:

19 1. Designates a particular debtor or, if the request so states, designates a  
20 particular debtor at the address specified in the request;

\*\*\*\*NOTE: This draft includes the bracketed material after the first debtor.

21 2. Has not lapsed under s. 409.515 with respect to all secured parties of record;  
22 and

23 3. If the request so states, has lapsed under s. 409.515 and a record of which is  
24 maintained by the filing office under s. 409.522 (1);

1 (b) The date and time of filing of each financing statement; and

2 (c) The information provided in each financing statement.

3 (4) MEDIUM FOR COMMUNICATING INFORMATION. In complying with its duty under  
4 sub. (3), the filing office may communicate information in any medium. However, if  
5 requested, the filing office shall communicate information by issuing a record that  
6 can be admitted into evidence in the courts of this state without extrinsic evidence  
7 of its authenticity.

\*\*\*\*NOTE: This draft includes the 2nd bracketed material.

8 (5) TIMELINESS OF FILING OFFICE PERFORMANCE. The filing office shall perform  
9 the acts required by subs. (1) to (4) at the time and in the manner prescribed by  
10 filing-office rule, but not later than 2 business days after the filing office receives the  
11 request.

12 (6) PUBLIC AVAILABILITY OF RECORDS. At least weekly, the department of financial  
13 institutions shall offer to sell or license to the public on a nonexclusive basis, in bulk,  
14 copies of all records filed in it under this subchapter, in every medium from time to  
15 time available to the filing office.

\*\*\*\*NOTE: The bracketed alternative inserting “filing office” is deleted from this draft.

NCCUSL Legislative Notes:

1. States whose filing office does not offer the additional service of responding to search requests limited to a particular address should omit the bracketed language in sub. (3) (a) 1.

2. A state that elects not to require real-estate filing offices to comply with either or both of subs. (5) and (6) should specify in the appropriate subsection(s) only the filing office described in s. 409.501 (1) (b).

\*\*\*\*NOTE: Current s. 409.407 (2), Wis. stats., is nonuniform throughout and current s. 409.407 (3), Wis. stats., is nonuniform in that it is entirely additional. We need to work with the department of commerce regarding all fees sections and put all fees in one section. They read: “409.407 (2) Oral request for information from filing officer; issuance of certificate; fees.

409.407 (2) (a)

(a) Upon the oral request of any person, the filing officer shall disclose orally at the time of the request or as soon thereafter as possible any presently effective statement naming

a particular debtor and if there is such a statement, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The fee for the information is \$10. Upon the request for a copy of a statement, the filing officer shall furnish copies for a fee of \$1 per page.

409.407 (2) (b)

(b) Upon request of any person, the filing officer shall issue a certificate showing whether there is on file on the date and hour stated therein, any presently effective statement naming a particular debtor and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The fee for such a certificate is \$10. Upon request the filing officer shall furnish a certificate and copies of any filed statement for a fee of \$1 for each page of the copied statement.

409.407 (2) (c)

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

409.407 (3)

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

The conversion list gives 9-407 as the source for new 9-523. Should any of these nonuniform provisions be included in this draft?

- 1           **409.524 Delay by filing office.** Delay by the filing office beyond a time limit  
2 prescribed by this subchapter is excused if:
- 3           (1) The delay is caused by interruption of communication or computer facilities,  
4 war, emergency conditions, failure of equipment or other circumstances beyond  
5 control of the filing office; and
- 6           (2) The filing office exercises reasonable diligence under the circumstances.
- 7           **409.525 FEES.** (1) INITIAL FINANCING STATEMENT: GENERAL. Except as otherwise  
8 provided in sub. (5), the fee for filing and indexing a record under this subchapter,  
9 other than an initial financing statement of the kind described in s. 409.502 (3), is  
10 [the amount specified in sub. (3), if applicable, plus]:

\*\*\*\*NOTE: Should this draft include the bracketed material?

1 (a) \$ [X] if the record is communicated in writing and consists of one  
2 or 2 pages;

3 (b) \$ [2X] if the record is communicated in writing and consists of  
4 more than 2 pages; and

5 (c) \$ [1/2X] if the record is communicated by another medium authorized  
6 by filing-office rule.

7 (2) INITIAL FINANCING STATEMENT: S. 409.502 (3). Except as otherwise provided in  
8 sub. (5), the fee for filing and indexing an initial financing statement of the kind  
9 described in s. 409.502 (3) is [the amount specified in sub. (3), if applicable, plus]:

\*\*\*NOTE: Should this draft include the bracketed material?

10 (a) \$ \_\_\_\_\_ if the financing statement indicates that it is filed in connection with  
11 a public-finance transaction; and

12 (b) \$ \_\_\_\_\_ if the financing statement indicates that it is filed in connection with  
13 a manufactured-home transaction.

14 [Alternative A]

15 (3) NUMBER OF NAMES. The number of names required to be indexed does not  
16 affect the amount of the fee in subs. (1) and (2).

17 [Alternative B]

18 (3) NUMBER OF NAMES. Except as otherwise provided in sub. (5), if a record is  
19 communicated in writing, the fee for each name more than 2 required to be indexed  
20 is \$ \_\_\_\_\_.

21 [End of Alternatives]

\*\*\*NOTE: Which alternative should this draft include?

1           (4) RESPONSE TO INFORMATION REQUEST. The fee for responding to a request for  
2 information from the filing office, including for communicating whether there is on  
3 file any financing statement naming a particular debtor, is:

      \*\*\*NOTE: The second alternative in the bracketed material is included in this draft.

4           (a) \$ \_\_\_\_ if the request is communicated in writing; and

5           (b) \$ \_\_\_\_ if the request is communicated by another medium authorized by  
6 filing-office rule.

      \*\*\*NOTE: The UCC 9 enactment guide suggests that some or all of these fees could  
be set by rule.

7           (5) RECORD OF MORTGAGE. This section does not require a fee with respect to a  
8 record of a mortgage which is effective as a financing statement filed as a fixture  
9 filing or as a financing statement covering as-extracted collateral or timber to be cut  
10 under s. 409.502 (3). However, the recording and satisfaction fees that otherwise  
11 would be applicable to the record of the mortgage apply.

NCCUSL Legislative Notes:

1. To preserve uniformity, a state that places the provisions of this section together with statutes setting fees for other services should do so without modification.

2. A state should enact sub. (3), Alternative A, and omit the bracketed language in subs. (1) and (2) unless its indexing system entails a substantial additional cost when indexing additional names.

      \*\*\*NOTE: Current s. 409.403 (5), Wis. stats., is a nonuniform provision. The conversion table gives 9-403 (4) as the source for new 9-525. Current s. 409.403 (5), Wis. stats., reads:

409.403 (5) (a) Fees for filing with the office of the register of deeds.

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

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

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

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

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

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

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

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

We need the help of the department of financial institutions in properly establishing the fees and need to keep them in one place as does the new article 9. It would be possible to insert fee levels in this draft and adjust them next session after the department had time to review the entire act.

1           **409.526 Filing office rules. (1) ADOPTION OF FILING-OFFICE RULES.** The  
2 secretary of financial institutions shall promulgate filing-office rules to implement  
3 this chapter. The filing-office rules must be:

4           (a) Consistent with this chapter; and

5           (b) Promulgated in accordance with ch. 227.

6           **(2) HARMONIZATION OF RULES.** To keep the filing-office rules and practices of the  
7 filing office in harmony with the rules and practices of filing offices in other  
8 jurisdictions that enact substantially this subchapter, and to keep the technology  
9 used by the filing office compatible with the technology used by filing offices in other  
10 jurisdictions that enact substantially this subchapter, the secretary of financial  
11 institutions, so far as is consistent with the purposes, policies and provisions of this  
12 chapter, in promulgating filing-office rules, shall:

13           (a) Consult with filing offices in other jurisdictions that enact substantially this  
14 subchapter;



1 (b) Consult the most recent version of the Model Rules promulgated by the  
2 International Association of Corporate Administrators or any successor  
3 organization; and

4 (c) Take into consideration the rules and practices of, and the technology used  
5 by, filing offices in other jurisdictions that enact substantially this subchapter.

6 **409.527 Duty to report.** The department of financial institutions shall  
7 include in its report under s. 15.04 (1) (d) a report on the operation of the filing office.  
8 The report must contain a statement of the extent to which:

9 (1) The filing-office rules are not in harmony with the rules of filing offices in  
10 other jurisdictions that enact substantially this subchapter and the reasons for these  
11 variations; and

12 (2) The filing-office rules are not in harmony with the most recent version of  
13 the Model Rules promulgated by the International Association of Corporate  
14 Administrators, or any successor organization, and the reasons for these variations.

\*\*\*\*NOTE: Wisconsin has added two sections to this subject matter. Should they be included in this draft? I believe that s. 409.409 should be continued but with “it is stored in an electronic or other medium and is retrievable in perceivable form” (the 2nd half of the definition of record) substituted for “a microfilm or other photographic copy or an optical disk or electronic copy has been prepared and filed for retention”. They are: “409.409

409.409 Storage of records. Whenever in this chapter a filing officer is required to mark, index or file any financing statement, termination statement, continuation statement, statement of assignment or statement of release, the officer may destroy the original statement after a microfilm or other photographic copy or an optical disk or electronic copy has been prepared and filed for retention.” and I believe that s. 409.410 should be continued but with sub. (3) modified by deleting “ but may not maintain a central filing system, as defined in 7 USC 1631 (c) (2), for farm products, as defined in 7 USC 1631 (c) (5)”. 409.410

409.410 Statewide lien system.

409.410 (1)

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

409.410 (2)

(2) Beginning 30 days after notification by the department, each filing officer shall enter

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

409.410 (3)

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

\*\*\*\*NOTE: If retained the following would need to be deleted from sub. (3): "but may not maintain a central filing system, as defined in 7 USC 1631 (c) (2), for farm products, as defined in 7 USC 1631 (c) (5)."

SUBCHAPTER VI

DEFAULT

**409.601 Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes. (1)**

RIGHTS OF SECURED PARTY AFTER DEFAULT. After default, a secured party has the rights provided in this subchapter and, except as otherwise provided in s. 409.602, those provided by agreement of the parties. A secured party:

(a) May reduce a claim to judgment, foreclose or otherwise enforce the claim, security interest or agricultural lien by any available judicial procedure; and

(b) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(2) RIGHTS AND DUTIES OF SECURED PARTY IN POSSESSION OR CONTROL. A secured party in possession of collateral or control of collateral under s. 409.104, 409.105, 409.106 or 409.107 has the rights and duties provided in s. 409.207.

(3) RIGHTS CUMULATIVE; SIMULTANEOUS EXERCISE. The rights under subs. (1) and (2) are cumulative and may be exercised simultaneously.

1           (4) RIGHTS OF DEBTOR AND OBLIGOR. Except as otherwise provided in sub. (7) and  
2 s. 409.605, after default, a debtor and an obligor have the rights provided in this  
3 subchapter and by agreement of the parties.

4           (5) LIEN OF LEVY AFTER JUDGMENT. If a secured party has reduced its claim to  
5 judgment, the lien of any levy that may be made upon the collateral by virtue of an  
6 execution based upon the judgment relates back to the earliest of:

7           (a) The date of perfection of the security interest or agricultural lien in the  
8 collateral;

9           (b) The date of filing a financing statement covering the collateral; or

10          (c) Any date specified in a statute under which the agricultural lien was created.

11          (6) EXECUTION SALE. A sale pursuant to an execution is a foreclosure of the  
12 security interest or agricultural lien by judicial procedure within the meaning of this  
13 section. A secured party may purchase at the sale and thereafter hold the collateral  
14 free of any other requirements of this chapter.

15          (7) CONSIGNOR OR BUYER OF CERTAIN RIGHTS TO PAYMENT. Except as otherwise  
16 provided in s. 409.607 (3), this subchapter imposes no duties upon a secured party  
17 that is a consignor or is a buyer of accounts, chattel paper, payment intangibles or  
18 promissory notes.

19          **409.602 Waiver and variance of rights and duties.** Except as otherwise  
20 provided in s. 409.624, to the extent that they give rights to a debtor or obligor and  
21 impose duties on a secured party, the debtor or obligor may not waive or vary the  
22 rules stated in the following listed sections:

23          (1) Section 409.207 (2) (d) 3., which deals with use and operation of the  
24 collateral by the secured party;

1           **(2)** Section 409.210, which deals with requests for an accounting and requests  
2 concerning a list of collateral and statement of account;

3           **(3)** Section 409.607 (3), which deals with collection and enforcement of  
4 collateral;

5           **(4)** Sections 409.608 (1) and 409.615 (3) to the extent that they deal with  
6 application or payment of noncash proceeds of collection, enforcement or disposition;

7           **(5)** Sections 409.608 (1) and 409.615 (4) to the extent that they require  
8 accounting for or payment of surplus proceeds of collateral;

9           **(6)** Section 409.609 to the extent that it imposes upon a secured party that takes  
10 possession of collateral without judicial process the duty to do so without breach of  
11 the peace;

12           **(7)** Sections 409.610 (2), 409.611, 409.613 and 409.614, which deal with  
13 disposition of collateral;

14           **(8)** Section 409.615 (6), which deals with calculation of a deficiency or surplus  
15 when a disposition is made to the secured party, a person related to the secured party  
16 or a secondary obligor;

17           **(9)** Section 409.616, which deals with explanation of the calculation of a surplus  
18 or deficiency;

19           **(10)** Sections 409.620, 409.621 and 409.622, which deal with acceptance of  
20 collateral in satisfaction of obligation;

21           **(11)** Section 409.623, which deals with redemption of collateral;

22           **(12)** Section 409.624, which deals with permissible waivers; and

23           **(13)** Sections 409.625 and 409.626, which deal with the secured party's liability  
24 for failure to comply with this chapter.

1           **409.603 Agreement on standards concerning rights and duties. (1)**

2       AGREED STANDARDS. The parties may determine by agreement the standards  
3       measuring the fulfillment of the rights of a debtor or obligor and the duties of a  
4       secured party under a rule stated in s. 409.602 if the standards are not manifestly  
5       unreasonable.

6           **(2) AGREED STANDARDS INAPPLICABLE TO BREACH OF PEACE.** Subsection (1) does not  
7       apply to the duty under s. 409.609 to refrain from breaching the peace.

8           **409.604 Procedure if security agreement covers real property or**  
9       **fixtures. (1) ENFORCEMENT: PERSONAL AND REAL PROPERTY.** If a security agreement  
10      covers both personal and real property, a secured party may proceed:

11           (a) Under this subchapter as to the personal property without prejudicing any  
12      rights with respect to the real property; or

13           (b) As to both the personal property and the real property in accordance with  
14      the rights with respect to the real property, in which case the other provisions of this  
15      subchapter do not apply.

16           **(2) ENFORCEMENT: FIXTURES.** Subject to sub. (3), if a security agreement covers  
17      goods that are or become fixtures, a secured party may proceed:

18           (a) Under this subchapter; or

19           (b) In accordance with the rights with respect to real property, in which case the  
20      other provisions of this subchapter do not apply.

21           **(3) REMOVAL OF FIXTURES** Subject to the other provisions of this subchapter, if  
22      a secured party holding a security interest in fixtures has priority over all owners and  
23      encumbrancers of the real property, the secured party, after default, may remove the  
24      collateral from the real property.

1           **(4) INJURY CAUSED BY REMOVAL.** A secured party that removes collateral shall  
2 promptly reimburse any encumbrancer or owner of the real property, other than the  
3 debtor, for the cost of repair of any physical injury caused by the removal. The  
4 secured party need not reimburse the encumbrancer or owner for any diminution in  
5 value of the real property caused by the absence of the goods removed or by any  
6 necessity of replacing them. A person entitled to reimbursement may refuse  
7 permission to remove until the secured party gives adequate assurance for the  
8 performance of the obligation to reimburse.

9           **409.605 Unknown debtor or secondary obligor.** A secured party does not  
10 owe a duty based on its status as secured party:

11           **(1)** To a person that is a debtor or obligor, unless the secured party knows:

12           (a) That the person is a debtor or obligor;

13           (b) The identity of the person; and

14           (c) How to communicate with the person; or

15           **(2)** To a secured party or lienholder that has filed a financing statement against  
16 a person, unless the secured party knows:

17           (a) That the person is a debtor; and

18           (b) The identity of the person.

19           **409.606 Time of default for agricultural lien.** For purposes of this  
20 subchapter, a default occurs in connection with an agricultural lien at the time the  
21 secured party becomes entitled to enforce the lien in accordance with the statute  
22 under which it was created.

23           **409.607 Collection and enforcement by secured party. (1) COLLECTION**  
24 **AND ENFORCEMENT GENERALLY.** If so agreed, and in any event after default, a secured  
25 party:

1 (a) May notify an account debtor or other person obligated on collateral to make  
2 payment or otherwise render performance to or for the benefit of the secured party;

3 (b) May take any proceeds to which the secured party is entitled under s.  
4 409.315;

5 (c) May enforce the obligations of an account debtor or other person obligated  
6 on collateral and exercise the rights of the debtor with respect to the obligation of the  
7 account debtor or other person obligated on collateral to make payment or otherwise  
8 render performance to the debtor, and with respect to any property that secures the  
9 obligations of the account debtor or other person obligated on the collateral;

10 (d) If it holds a security interest in a deposit account perfected by control under  
11 s. 409.104 (1) (a), may apply the balance of the deposit account to the obligation  
12 secured by the deposit account; and

13 (e) If it holds a security interest in a deposit account perfected by control under  
14 s. 409.104 (1) (b) or (c), may instruct the bank to pay the balance of the deposit  
15 account to or for the benefit of the secured party.

16 **(2) NONJUDICIAL ENFORCEMENT OF MORTGAGE.** If necessary to enable a secured  
17 party to exercise under sub. (1) (c) the right of a debtor to enforce a mortgage  
18 nonjudicially, the secured party may record in the office in which a record of the  
19 mortgage is recorded:

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

22 (b) The secured party's sworn affidavit in recordable form stating that:

23 1. A default has occurred; and

24 2. The secured party is entitled to enforce the mortgage nonjudicially.

1           (3) **COMMERCIALLY REASONABLE COLLECTION AND ENFORCEMENT.** A secured party  
2 shall proceed in a commercially reasonable manner if the secured party:

3           (a) Undertakes to collect from or enforce an obligation of an account debtor or  
4 other person obligated on collateral; and

5           (b) Is entitled to charge back uncollected collateral or otherwise to full or limited  
6 recourse against the debtor or a secondary obligor.

7           (4) **EXPENSES OF COLLECTION AND ENFORCEMENT.** A secured party may deduct  
8 from the collections made pursuant to sub. (3) reasonable expenses of collection and  
9 enforcement, including reasonable attorney's fees and legal expenses incurred by the  
10 secured party.

11           (5) **DUTIES TO SECURED PARTY NOT AFFECTED.** This section does not determine  
12 whether an account debtor, bank or other person obligated on collateral owes a duty  
13 to a secured party.

14           **409.608 Application of proceeds of collection or enforcement; liability**  
15 **for deficiency and right to surplus. (1) APPLICATION OF PROCEEDS, SURPLUS AND**  
16 **DEFICIENCY IF OBLIGATION SECURED.** If a security interest or agricultural lien secures  
17 payment or performance of an obligation, the following rules apply:

18           (a) A secured party shall apply or pay over for application the cash proceeds of  
19 collection or enforcement under this section in the following order to:

20           1. The reasonable expenses of collection and enforcement and, to the extent  
21 provided for by agreement and not prohibited by law, reasonable attorney's fees and  
22 legal expenses incurred by the secured party;

23           2. The satisfaction of obligations secured by the security interest or agricultural  
24 lien under which the collection or enforcement is made; and



1           3. The satisfaction of obligations secured by any subordinate security interest  
2 in or other lien on the collateral subject to the security interest or agricultural lien  
3 under which the collection or enforcement is made if the secured party receives an  
4 authenticated demand for proceeds before distribution of the proceeds is completed.

5           (b) If requested by a secured party, a holder of a subordinate security interest  
6 or other lien shall furnish reasonable proof of the interest or lien within a reasonable  
7 time. Unless the holder complies, the secured party need not comply with the  
8 holder's demand under par. (a) 3.

9           (c) A secured party need not apply or pay over for application noncash proceeds  
10 of collection and enforcement under this section unless the failure to do so would be  
11 commercially unreasonable. A secured party that applies or pays over for application  
12 noncash proceeds shall do so in a commercially reasonable manner.

13           (d) A secured party shall account to and pay a debtor for any surplus, and the  
14 obligor is liable for any deficiency.

15           **(2) NO SURPLUS OR DEFICIENCY IN SALES OF CERTAIN RIGHTS TO PAYMENT.** If the  
16 underlying transaction is a sale of accounts, chattel paper, payment intangibles or  
17 promissory notes, the debtor is not entitled to any surplus, and the obligor is not  
18 liable for any deficiency.

19           **409.609 Secured party's right to take possession after default. (1)**  
20 **POSSESSION; RENDERING EQUIPMENT UNUSABLE; DISPOSITION ON DEBTOR'S PREMISES.** After  
21 default, a secured party:

22           (a) May take possession of the collateral; and

23           (b) Without removal, may render equipment unusable and dispose of collateral  
24 on a debtor's premises under s. 409.610.

1           **(2) JUDICIAL AND NONJUDICIAL PROCESS.** A secured party may proceed under sub.

2           (1):

3           (a) Pursuant to judicial process; or

4           (b) Without judicial process, if it proceeds without breach of the peace.

5           **(3) ASSEMBLY OF COLLATERAL.** If so agreed, and in any event after default, a  
6 secured party may require the debtor to assemble the collateral and make it  
7 available to the secured party at a place to be designated by the secured party which  
8 is reasonably convenient to both parties.

9           **409.610 Disposition of collateral after default.** (1) **DISPOSITION AFTER**  
10 **DEFAULT.** After default, a secured party may sell, lease, license or otherwise dispose  
11 of any or all of the collateral in its present condition or following any commercially  
12 reasonable preparation or processing.

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

18           **(3) PURCHASE BY SECURED PARTY.** A secured party may purchase collateral:

19           (a) At a public disposition; or

20           (b) At a private disposition only if the collateral is of a kind that is customarily  
21 sold on a recognized market or the subject of widely distributed standard price  
22 quotations.

23           **(4) WARRANTIES ON DISPOSITION.** A contract for sale, lease, license or other  
24 disposition includes the warranties relating to title, possession, quiet enjoyment and

1 the like which by operation of law accompany a voluntary disposition of property of  
2 the kind subject to the contract.

3 (5) DISCLAIMER OF WARRANTIES. A secured party may disclaim or modify  
4 warranties under sub. (4):

5 (a) In a manner that would be effective to disclaim or modify the warranties in  
6 a voluntary disposition of property of the kind subject to the contract of disposition;  
7 or

8 (b) By communicating to the purchaser a record evidencing the contract for  
9 disposition and including an express disclaimer or modification of the warranties.

10 (6) RECORD SUFFICIENT TO DISCLAIM WARRANTIES. A record is sufficient to disclaim  
11 warranties under sub. (5) if it indicates “There is no warranty relating to title,  
12 possession, quiet enjoyment or the like in this disposition” or uses words of similar  
13 import.

\*\*\*NOTE: Current s. 409.504 (3) is a nonuniform provision. Wisconsin adds the third sentence and deletes the 4th and 5th sentences. The conversion list gives that subsection as the source for new 9-610, 9-611 and 9-624. Should this draft include the nonuniform provisions in that subsection? The subsection reads: “409.504 (3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if the debtor has not signed after default a statement renouncing or modifying the debtor’s right to notification of sale and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations the secured party may buy at private sale.”.

\*\*\*NOTE: [ new 9-610 9-611 9-624] 409.504 – ANNOT.

Legislative Council Note, 1973: The official text amended sub. (3) to require the secured party to notify only persons, other than the debtor, who had notified the secured party in writing of their claim of an interest in the collateral to be sold at public or private sale. Presently, notification must be given to every person who has duly filed a financing statement indexed in the name of the debtor and every person known by the secured party

to have an interest in the collateral; this requirement necessitates a complete record search in case of any sale. The official text also expressly provides the debtor with the right to default. The Special Committee rejected the substantial lessening of the notification requirement and decided to retain present language with the exception of the addition of the right to renounce notice and the deletion of the requirement of giving notice to persons “known” by the secured party to have a security interest in the collateral. (Bill 177-S)

**409.611 Notification before disposition of collateral. (1) NOTIFICATION**

DATE. In this section, “notification date” means the earlier of the date on which:

(a) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(b) The debtor and any secondary obligor waive the right to notification.

**(2) NOTIFICATION OF DISPOSITION REQUIRED.** Except as otherwise provided in sub. (4), a secured party that disposes of collateral under s. 409.610 shall send to the persons specified in sub. (3) a reasonable authenticated notification of disposition.

**(3) PERSONS TO BE NOTIFIED.** To comply with sub. (2), the secured party shall send an authenticated notification of disposition to:

(a) The debtor;

(b) Any secondary obligor; and

(c) If the collateral is other than consumer goods:

1. Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

\*\*\*\*NOTE: New s. 409.611 (3) (c)1. (present 9-504 (3) 5th sentence) is not included in s. 409.504 (3), Wis. stats. Should it be deleted from here?

\*\*\*\*NOTE: Current s. 409.504 (3) is a nonuniform provision. Wisconsin adds the third sentence and deletes the 4th and 5th sentences. The conversion list gives that subsection as the source for new 9-610, 9-611 and 9-624. Should this draft include the nonuniform provisions in that subsection? The subsection reads: “409.504 (3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a

recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if the debtor has not signed after default a statement renouncing or modifying the debtor's right to notification of sale and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations the secured party may buy at private sale."

\*\*\*NOTE: [ new 9-610 9-611 9-624] 409.504 – ANNOT.

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

- 1           2. Any other secured party or lienholder that, 10 days before the notification  
2 date, held a security interest in or other lien on the collateral perfected by the filing  
3 of a financing statement that:
- 4           a. Identified the collateral;
- 5           b. Was indexed under the debtor's name as of that date; and
- 6           c. Was filed in the office in which to file a financing statement against the debtor  
7 covering the collateral as of that date; and
- 8           3. Any other secured party that, 10 days before the notification date, held a  
9 security interest in the collateral perfected by compliance with a statute, regulation  
10 or treaty described in s. 409.311 (1).
- 11           (4) SUB. (2) INAPPLICABLE: PERISHABLE COLLATERAL; RECOGNIZED MARKET.  
12 Subsection (2) does not apply if the collateral is perishable or threatens to decline  
13 speedily in value or is of a type customarily sold on a recognized market.

1           (5) COMPLIANCE WITH SUB. (3) (C) 2. A secured party complies with the  
2 requirement for notification prescribed by sub. (3) (c) 2. if:

3           (a) Not later than 20 days or earlier than 30 days before the notification date,  
4 the secured party requests, in a commercially reasonable manner, information  
5 concerning financing statements indexed under the debtor's name in the office  
6 indicated in sub. (3) (c) 2.; and

7           (b) Before the notification date, the secured party:

8           1. Did not receive a response to the request for information; or

9           2. Received a response to the request for information and sent an authenticated  
10 notification of disposition to each secured party or other lienholder named in that  
11 response whose financing statement covered the collateral.

12           **409.612 Timeliness of notification before disposition of collateral. (1)**

13           REASONABLE TIME IS QUESTION OF FACT. Except as otherwise provided in sub. (2),  
14 whether a notification is sent within a reasonable time is a question of fact.

15           (2) TEN-DAY PERIOD SUFFICIENT IN NON-CONSUMER TRANSACTION. In a transaction  
16 other than a consumer transaction, a notification of disposition sent after default and  
17 10 days or more before the earliest time of disposition set forth in the notification is  
18 sent within a reasonable time before the disposition.

19           **409.613 Contents and form of notification before disposition of**  
20 **collateral: general.** Except in a consumer-goods transaction, the following rules  
21 apply:

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

23           (a) Describes the debtor and the secured party;

24           (b) Describes the collateral that is the subject of the intended disposition;

25           (c) States the method of intended disposition;

1 (d) States that the debtor is entitled to an accounting of the unpaid  
2 indebtedness and states the charge, if any, for an accounting; and

3 (e) States the time and place of a public sale or the time after which any other  
4 disposition is to be made.

5 (2) Whether the contents of a notification that lacks any of the information  
6 specified in sub. (1) are nevertheless sufficient is a question of fact.

7 (3) The contents of a notification providing substantially the information  
8 specified in sub. (1) are sufficient, even if the notification includes:

9 (a) Information not specified by sub. (1); or

10 (b) Minor errors that are not seriously misleading.

11 (4) A particular phrasing of the notification is not required.

12 (5) The following form of notification and the form appearing in s. 409.614 (3),  
13 when completed, each provides sufficient information:

14 **NOTIFICATION OF DISPOSITION OF COLLATERAL**

15 To: *[Name of debtor, obligor, or other person to which the notification is sent]*

16 From: *[Name, address, and telephone number of secured party]*

17 Name of Debtor(s): *[Include only if debtor(s) are not an addressee]*

18 *[For a public disposition:]*

19 We will sell [or lease or license, as *applicable*] the *[describe collateral]* [to  
20 the highest qualified bidder] in public as follows:

21 Day and Date:

22 Time:

23 Place:

24 *[For a private disposition:]*

1 We will sell [or lease or license, *as applicable*] the [describe collateral]  
2 privately sometime after [day and date] .

3 You are entitled to an accounting of the unpaid indebtedness secured by the  
4 property that we intend to sell [or lease or license, *as applicable*]

5 [for a charge of \$ ]. You may request an accounting by calling us at  
6 [telephone number]

7 [End of Form]

8 **409.614 Contents and form of notification before disposition of**  
9 **collateral: consumer-goods transaction.** In a consumer-goods transaction, the  
10 following rules apply:

11 (1) A notification of disposition must provide the following information:

12 (a) The information specified in s. 409.613 (1);

13 (b) A description of any liability for a deficiency of the person to which the  
14 notification is sent;

15 (c) A telephone number from which the amount that must be paid to the secured  
16 party to redeem the collateral under s. 409.623 is available; and

17 (d) A telephone number or mailing address from which additional information  
18 concerning the disposition and the obligation secured is available.

19 (2) A particular phrasing of the notification is not required.

20 (3) The following form of notification, when completed, provides sufficient  
21 information:

22 [Name and address of secured party]

23 [Date]

24 **NOTICE OF OUR PLAN TO SELL PROPERTY**

25 [Name and address of any obligor who is also a debtor]



1 Subject: *[Identification of Transaction]*

2 We have your *[describe collateral]*, because you broke promises in our  
3 agreement.

4 *[For a public disposition:]*

5 We will sell *[describe collateral]* at public sale. A sale could include a lease  
6 or license. The sale will be held as follows:

7 Date:

8 Time:

9 Place:

10 You may attend the sale and bring bidders if you want.

11 *[For a private disposition:]*

12 We will sell *[describe collateral]* at private sale sometime after *[date]*  
13 . A sale could include a lease or license.

14 The money that we get from the sale (after paying our costs) will reduce the  
15 amount you owe. If we get less money than you owe, you *[will or will not, as*  
16 *applicable]* still owe us the difference. If we get more money than you owe, you  
17 will get the extra money, unless we must pay it to someone else.

18 You can get the property back at any time before we sell it by paying us the full  
19 amount you owe (not just the past due payments), including our expenses. To learn  
20 the exact amount you must pay, call us at *[telephone number]*.

21 If you want us to explain to you in writing how we have figured the amount that  
22 you owe us, you may call us at *[telephone number]* [or write us at *[secured*  
23 *party's address]*] and request a written explanation. [We will charge you \$ for  
24 the explanation if we sent you another written explanation of the amount you owe  
us within the last 6 months.]

1 If you need more information about the sale call us at [telephone number]  
2 ] [or write us at [secured party's address] ].

3 We are sending this notice to the following other people who have an interest  
4 in [describe collateral] or who owe money under your agreement:  
5 [Names of all other debtors and obligors, if any]

6 [End of Form]

7 (4) A notification in the form of sub. (3) is sufficient, even if additional  
8 information appears at the end of the form.

9 (5) A notification in the form of sub. (3) is sufficient, even if it includes errors  
10 in information not required by sub. (1), unless the error is misleading with respect  
11 to rights arising under this chapter.

12 (6) If a notification under this section is not in the form of sub. (3), law other  
13 than this chapter determines the effect of including information not required by sub.  
14 (1).

15 **409.615 Application of proceeds of disposition; liability for deficiency**  
16 **and right to surplus. (1) APPLICATION OF PROCEEDS.** A secured party shall apply  
17 or pay over for application the cash proceeds of disposition in the following order to:

18 (a) The reasonable expenses of retaking, holding, preparing for disposition,  
19 processing and disposing, and, to the extent provided for by agreement and not  
20 prohibited by law, reasonable attorney’s fees and legal expenses incurred by the  
21 secured party;

22 (b) The satisfaction of obligations secured by the security interest or  
23 agricultural lien under which the disposition is made;

24 (c) The satisfaction of obligations secured by any subordinate security interest  
25 in or other subordinate lien on the collateral if:

1           1. The secured party receives from the holder of the subordinate security  
2 interest or other lien an authenticated demand for proceeds before distribution of the  
3 proceeds is completed; and

4           2. In a case in which a consignor has an interest in the collateral, the  
5 subordinate security interest or other lien is senior to the interest of the consignor;  
6 and

7           (d) A secured party that is a consignor of the collateral if the secured party  
8 receives from the consignor an authenticated demand for proceeds before  
9 distribution of the proceeds is completed.

10           **(2) PROOF OF SUBORDINATE INTEREST.** If requested by a secured party, a holder  
11 of a subordinate security interest or other lien shall furnish reasonable proof of the  
12 interest or lien within a reasonable time. Unless the holder does so, the secured party  
13 need not comply with the holder's demand under sub. (1) (c).

14           **(3) APPLICATION OF NONCASH PROCEEDS.** A secured party need not apply or pay  
15 over for application noncash proceeds of disposition under this section unless the  
16 failure to do so would be commercially unreasonable. A secured party that applies  
17 or pays over for application noncash proceeds shall do so in a commercially  
18 reasonable manner.

19           **(4) SURPLUS OR DEFICIENCY IF OBLIGATION SECURED.** If the security interest under  
20 which a disposition is made secures payment or performance of an obligation, after  
21 making the payments and applications required by sub. (1) and permitted by sub. (3):

22           (a) Unless sub. (1) (d) requires the secured party to apply or pay over cash  
23 proceeds to a consignor, the secured party shall account to and pay a debtor for any  
24 surplus; and

25           (b) The obligor is liable for any deficiency.

1           **(5) NO SURPLUS OR DEFICIENCY IN SALES OF CERTAIN RIGHTS TO PAYMENT.** If the  
2 underlying transaction is a sale of accounts, chattel paper, payment intangibles or  
3 promissory notes:

4           (a) The debtor is not entitled to any surplus; and

5           (b) The obligor is not liable for any deficiency.

6           **(6) CALCULATION OF SURPLUS OR DEFICIENCY IN DISPOSITION TO PERSON RELATED TO**  
7 **SECURED PARTY.** The surplus or deficiency following a disposition is calculated based  
8 on the amount of proceeds that would have been realized in a disposition complying  
9 with this subchapter to a transferee other than the secured party, a person related  
10 to the secured party or a secondary obligor if:

11           (a) The transferee in the disposition is the secured party, a person related to the  
12 secured party or a secondary obligor; and

13           (b) The amount of proceeds of the disposition is significantly below the range  
14 of proceeds that a complying disposition to a person other than the secured party, a  
15 person related to the secured party or a secondary obligor would have brought.

16           **(7) CASH PROCEEDS RECEIVED BY JUNIOR SECURED PARTY.** A secured party that  
17 receives cash proceeds of a disposition in good faith and without knowledge that the  
18 receipt violates the rights of the holder of a security interest or other lien that is not  
19 subordinate to the security interest or agricultural lien under which the disposition  
20 is made:

21           (a) Takes the cash proceeds free of the security interest or other lien;

22           (b) Is not obligated to apply the proceeds of the disposition to the satisfaction  
23 of obligations secured by the security interest or other lien; and

24           (c) Is not obligated to account to or pay the holder of the security interest or  
25 other lien for any surplus.

1           **409.616 Explanation of calculation of surplus or deficiency. (1)**

2           DEFINITIONS. In this section:

3           (a) “Explanation” means a writing that:

4           1. States the amount of the surplus or deficiency;

5           2. Provides an explanation in accordance with sub. (3) of how the secured party  
6           calculated the surplus or deficiency;

7           3. States, if applicable, that future debits, credits, charges, including additional  
8           credit service charges or interest, rebates and expenses may affect the amount of the  
9           surplus or deficiency; and

10          4. Provides a telephone number or mailing address from which additional  
11          information concerning the transaction is available.

12          (b) “Request” means a record:

13          1. Authenticated by a debtor or consumer obligor;

14          2. Requesting that the recipient provide an explanation; and

15          3. Sent after disposition of the collateral under s. 409.610.

16          (2) EXPLANATION OF CALCULATION. In a consumer-goods transaction in which  
17          the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under  
18          s. 409.615, the secured party shall:

19          (a) Send an explanation to the debtor or consumer obligor, as applicable, after  
20          the disposition and:

21          1. Before or when the secured party accounts to the debtor and pays any surplus  
22          or first makes written demand on the consumer obligor after the disposition for  
23          payment of the deficiency; and

24          2. Within 14 days after receipt of a request; or

1           (b) In the case of a consumer obligor who is liable for a deficiency, within 14 days  
2 after receipt of a request, send to the consumer obligor a record waiving the secured  
3 party’s right to a deficiency.

4           **(3) REQUIRED INFORMATION.** To comply with sub. (1) (a) 2., a writing must provide  
5 the following information in the following order:

6           (a) The aggregate amount of obligations secured by the security interest under  
7 which the disposition was made, and, if the amount reflects a rebate of unearned  
8 interest or credit service charge, an indication of that fact, calculated as of a specified  
9 date:

10           1. If the secured party takes or receives possession of the collateral after  
11 default, not more than 35 days before the secured party takes or receives possession;  
12 or

13           2. If the secured party takes or receives possession of the collateral before  
14 default or does not take possession of the collateral, not more than 35 days before the  
15 disposition;

16           (b) The amount of proceeds of the disposition;

17           (c) The aggregate amount of the obligations after deducting the amount of  
18 proceeds;

19           (d) The amount, in the aggregate or by type, and types of expenses, including  
20 expenses of retaking, holding, preparing for disposition, processing and disposing of  
21 the collateral and attorney’s fees secured by the collateral which are known to the  
22 secured party and relate to the current disposition;

23           (e) The amount, in the aggregate or by type, and types of credits, including  
24 rebates of interest or credit service charges, to which the obligor is known to be  
25 entitled and which are not reflected in the amount in par. (a); and

1 (f) The amount of the surplus or deficiency.

2 (4) SUBSTANTIAL COMPLIANCE. A particular phrasing of the explanation is not  
3 required. An explanation complying substantially with the requirements of sub. (1)  
4 is sufficient, even if it includes minor errors that are not seriously misleading.

5 (5) CHARGES FOR RESPONSES. A debtor or consumer obligor is entitled without  
6 charge to one response to a request under this section during any 6-month period in  
7 which the secured party did not send to the debtor or consumer obligor an  
8 explanation pursuant to sub. (2) (a). The secured party may require payment of a  
9 charge not exceeding \$25 for each additional response.

10 **409.617 Rights of transferee of collateral. (1) EFFECTS OF DISPOSITION.** A  
11 secured party's disposition of collateral after default:

12 (a) Transfers to a transferee for value all of the debtor's rights in the collateral;

13 (b) Discharges the security interest under which the disposition is made; and

14 (c) Discharges any subordinate security interest or other subordinate lien

15 [other than liens created under [cite acts or statutes providing for liens, if any, that  
16 are not to be discharged]].

\*\*\*NOTE: Which statutes creating liens should be included in this draft?

17 (2) RIGHTS OF GOOD-FAITH TRANSFEREE. A transferee that acts in good faith takes  
18 free of the rights and interests described in sub. (1), even if the secured party fails  
19 to comply with this chapter or the requirements of any judicial proceeding.

20 (3) RIGHTS OF OTHER TRANSFEREE. If a transferee does not take free of the rights  
21 and interests described in sub. (1), the transferee takes the collateral subject to:

22 (a) The debtor's rights in the collateral;

1 (b) The security interest or agricultural lien under which the disposition is  
2 made; and

3 (c) Any other security interest or other lien.

4 **409.618 Rights and duties of certain secondary obligors. (1) RIGHTS AND**  
5 **DUTIES OF SECONDARY OBLIGOR.** A secondary obligor acquires the rights and becomes  
6 obligated to perform the duties of the secured party after the secondary obligor:

7 (a) Receives an assignment of a secured obligation from the secured party;

8 (b) Receives a transfer of collateral from the secured party and agrees to accept  
9 the rights and assume the duties of the secured party; or

10 (c) Is subrogated to the rights of a secured party with respect to collateral.

11 **(2) EFFECT OF ASSIGNMENT, TRANSFER OR SUBROGATION.** An assignment, transfer  
12 or subrogation described in sub. (1):

13 (a) Is not a disposition of collateral under s. 409.610; and

14 (b) Relieves the secured party of further duties under this chapter.

15 **409.619 Transfer of record or legal title. (1) TRANSFER STATEMENT.** In this  
16 section, “transfer statement” means a record authenticated by a secured party  
17 stating:

18 (a) That the debtor has defaulted in connection with an obligation secured by  
19 specified collateral;

20 (b) That the secured party has exercised its post–default remedies with respect  
21 to the collateral;

22 (c) That, by reason of the exercise, a transferee has acquired the rights of the  
23 debtor in the collateral; and

24 (d) The name and mailing address of the secured party, debtor and transferee.



1           **(2) EFFECT OF TRANSFER STATEMENT.** A transfer statement entitles the transferee  
2 to the transfer of record of all rights of the debtor in the collateral specified in the  
3 statement in any official filing, recording, registration or certificate-of-title system  
4 covering the collateral. If a transfer statement is presented with the applicable fee  
5 and request form to the official or office responsible for maintaining the system, the  
6 official or office shall:

7           (a) Accept the transfer statement;

8           (b) Promptly amend its records to reflect the transfer; and

9           (c) If applicable, issue a new appropriate certificate of title in the name of the  
10 transferee.

11           **(3) TRANSFER NOT A DISPOSITION; NO RELIEF OF SECURED PARTY'S DUTIES.** A transfer  
12 of the record or legal title to collateral to a secured party under sub. (2) or otherwise  
13 is not of itself a disposition of collateral under this chapter and does not of itself  
14 relieve the secured party of its duties under this chapter.

15           **409.620 Acceptance of collateral in full or partial satisfaction of**  
16 **obligation; compulsory disposition of collateral. (1) CONDITIONS TO**  
17 **ACCEPTANCE IN SATISFACTION.** Except as otherwise provided in sub. (7), a secured party  
18 may accept collateral in full or partial satisfaction of the obligation it secures only  
19 if:

20           (a) The debtor consents to the acceptance under sub. (3);

21           (b) The secured party does not receive, within the time set forth in sub. (4), a  
22 notification of objection to the proposal authenticated by:

23           1. A person to which the secured party was required to send a proposal under  
24 s. 409.621; or

1           2. Any other person, other than the debtor, holding an interest in the collateral  
2 subordinate to the security interest that is the subject of the proposal;

3           (c) If the collateral is consumer goods, the collateral is not in the possession of  
4 the debtor when the debtor consents to the acceptance; and

5           (d) Subsection (5) does not require the secured party to dispose of the collateral  
6 or the debtor waives the requirement pursuant to s. 409.624.

7           **(2) PURPORTED ACCEPTANCE INEFFECTIVE.** A purported or apparent acceptance  
8 of collateral under this section is ineffective unless:

9           (a) The secured party consents to the acceptance in an authenticated record or  
10 sends a proposal to the debtor; and

11           (b) The conditions of sub. (1) are met.

12           **(3) DEBTOR'S CONSENT.** For purposes of this section:

13           (a) A debtor consents to an acceptance of collateral in partial satisfaction of the  
14 obligation it secures only if the debtor agrees to the terms of the acceptance in a  
15 record authenticated after default; and

16           (b) A debtor consents to an acceptance of collateral in full satisfaction of the  
17 obligation it secures only if the debtor agrees to the terms of the acceptance in a  
18 record authenticated after default or the secured party:

19           1. Sends to the debtor after default a proposal that is unconditional or subject  
20 only to a condition that collateral not in the possession of the secured party be  
21 preserved or maintained;

22           2. In the proposal, proposes to accept collateral in full satisfaction of the  
23 obligation it secures; and

24           3. Does not receive a notification of objection authenticated by the debtor within  
25 20 days after the proposal is sent.

1           (4) EFFECTIVENESS OF NOTIFICATION. To be effective under sub. (1) (b), a  
2 notification of objection must be received by the secured party:

3           (a) In the case of a person to which the proposal was sent pursuant to s. 409.621,  
4 within 20 days after notification was sent to that person; and

5           (b) In other cases:

6           1. Within 20 days after the last notification was sent pursuant to s. 409.621; or

7           2. If a notification was not sent, before the debtor consents to the acceptance  
8 under sub. (3).

9           (5) MANDATORY DISPOSITION OF CONSUMER GOODS. A secured party that has taken  
10 possession of collateral shall dispose of the collateral pursuant to s. 409.610 within  
11 the time specified in sub. (6) if:

12           (a) Sixty percent of the cash price has been paid in the case of a purchase–money  
13 security interest in consumer goods; or

\*\*\*NOTE: This one of two places in this draft that “cash price” is used. The other is s. 409.625 (3) (b)). Current s. 409.505 (1), Wis. stats. defines cash price: “In this subsection “cash price” means the seller’s price in dollars for the sale of the goods and the transfer of unqualified title thereto upon the concurrent payment of such price in cash or the equivalent thereof.” Current s. 409.507 (1), stats. use “cash price” without defining it. Current ss. 218.01 (1) (b) and 421.301 (7), Wis. stats., also define the term. Should this definition be included in this draft? That subsection also states: “loan’ refers to the principal and does not include interest or service charges.”. “Loan” appears to have been changed to obligation in this draft. Should this last sentence be included in this draft but using obligation?

\*\*\*NOTE: Current s. 409.505 (2), Wis. stats., is another nonuniform provision . The 2nd and 3rd sentences are the nonuniform parts. The table of disposition of current provisions lists 9–620, 9–621 and 9–624 as sources for 9–504. Should any of the nonuniform provisions be included in this draft?

\*\*\*NOTE: [new 9–620 9–621 9–624] 409.505 – ANNOT.

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

1 (b) Sixty percent of the principal amount of the obligation secured has been paid  
2 in the case of a non-purchase-money security interest in consumer goods.

3 (6) COMPLIANCE WITH MANDATORY DISPOSITION REQUIREMENT. To comply with sub.  
4 (5), the secured party shall dispose of the collateral:

5 (a) Within 90 days after taking possession; or

6 (b) Within any longer period to which the debtor and all secondary obligors have  
7 agreed in an agreement to that effect entered into and authenticated after default.

8 (7) NO PARTIAL SATISFACTION IN CONSUMER TRANSACTION. In a consumer  
9 transaction, a secured party may not accept collateral in partial satisfaction of the  
10 obligation it secures.

11 **409.621 Notification of proposal to accept collateral.** (1) PERSONS TO  
12 WHICH PROPOSAL TO BE SENT. A secured party that desires to accept collateral in full  
13 or partial satisfaction of the obligation it secures shall send its proposal to:

14 (a) Any person from which the secured party has received, before the debtor  
15 consented to the acceptance, an authenticated notification of a claim of an interest  
16 in the collateral;

17 (b) Any other secured party or lienholder that, 10 days before the debtor  
18 consented to the acceptance, held a security interest in or other lien on the collateral  
19 perfected by the filing of a financing statement that:

20 1. Identified the collateral;

21 2. Was indexed under the debtor's name as of that date; and

22 3. Was filed in the office or offices in which to file a financing statement against  
23 the debtor covering the collateral as of that date; and

1 (c) Any other secured party that, 10 days before the debtor consented to the  
2 acceptance, held a security interest in the collateral perfected by compliance with a  
3 statute, regulation or treaty described in s. 409.311 (1).

4 (2) PROPOSAL TO BE SENT TO SECONDARY OBLIGOR IN PARTIAL SATISFACTION. A  
5 secured party that desires to accept collateral in partial satisfaction of the obligation  
6 it secures shall send its proposal to any secondary obligor in addition to the persons  
7 described in sub. (1).

\*\*\*NOTE: [new 9-620 9-621 9-624] 409.505 – ANNOT.

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

8 **409.622 Effect of acceptance of collateral. (1) EFFECT OF ACCEPTANCE.** A  
9 secured party’s acceptance of collateral in full or partial satisfaction of the obligation  
10 it secures:

- 11 (a) Discharges the obligation to the extent consented to by the debtor;  
12 (b) Transfers to the secured party all of a debtor’s rights in the collateral;  
13 (c) Discharges the security interest or agricultural lien that is the subject of the  
14 debtor’s consent and any subordinate security interest or other subordinate lien; and  
15 (d) Terminates any other subordinate interest.

16 (2) DISCHARGE OF SUBORDINATE INTEREST NOTWITHSTANDING NONCOMPLIANCE. A  
17 subordinate interest is discharged or terminated under sub. (1), even if the secured  
18 party fails to comply with this chapter.

1           **409.623 Right to redeem collateral.** (1) PERSONS THAT MAY REDEEM. A debtor,  
2 any secondary obligor or any other secured party or lienholder may redeem  
3 collateral.

4           (2) REQUIREMENTS FOR REDEMPTION. To redeem collateral, a person shall tender:

5           (a) Fulfillment of all obligations secured by the collateral; and

6           (b) The reasonable expenses and attorney's fees described in s. 409.615 (1) (a).

7           (3) WHEN REDEMPTION MAY OCCUR. A redemption may occur at any time before  
8 a secured party:

9           (a) Has collected collateral under s. 409.607;

10           (b) Has disposed of collateral or entered into a contract for its disposition under  
11 s. 409.610; or

12           (c) Has accepted collateral in full or partial satisfaction of the obligation it  
13 secures under s. 409.622.

14           **409.624 Waiver.** (1) WAIVER OF DISPOSITION NOTIFICATION. A debtor or secondary  
15 obligor may waive the right to notification of disposition of collateral under s. 409.611  
16 only by an agreement to that effect entered into and authenticated after default.

17           (2) WAIVER OF MANDATORY DISPOSITION. A debtor may waive the right to require  
18 disposition of collateral under s. 409.620 (5) only by an agreement to that effect  
19 entered into and authenticated after default.

20           (3) WAIVER OF REDEMPTION RIGHT. Except in a consumer-goods transaction, a  
21 debtor or secondary obligor may waive the right to redeem collateral under s. 409.623  
22 only by an agreement to that effect entered into and authenticated after default.

\*\*\*\*NOTE: Current s. 409.504 (3) is a nonuniform provision. Wisconsin adds the third sentence and deletes the 4th and 5th sentences. The conversion list gives that subsection as the source for new 9-610, 9-611 and 9-624. Should this draft include the nonuniform provisions in that subsection? The subsection reads: "409.504 (3) Disposition of the collateral may be by public or private proceedings and may be made by way of one

or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if the debtor has not signed after default a statement renouncing or modifying the debtor's right to notification of sale and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations the secured party may buy at private sale.”

\*\*\*NOTE: [ new 9-610 9-611 9-624] 409.504 – ANNOT.

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

\*\*\*NOTE: [new 9-620 9-621 9-624] 409.505 – ANNOT.

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

1           **409.625 Remedies for secured party's failure to comply with chapter.**

2           **(1) JUDICIAL ORDERS CONCERNING NONCOMPLIANCE.** If it is established that a secured  
3 party is not proceeding in accordance with this chapter, a court may order or restrain  
4 collection, enforcement or disposition of collateral on appropriate terms and  
5 conditions.

6           **(2) DAMAGES FOR NONCOMPLIANCE.** Subject to subs. (3), (4) and (6), a person is  
7 liable for damages in the amount of any loss caused by a failure to comply with this  
8 chapter. Loss caused by a failure to comply with a request under s. 409.210 may

1 include loss resulting from the debtor's inability to obtain, or increased costs of,  
2 alternative financing.

3 **(3) PERSONS ENTITLED TO RECOVER DAMAGES; STATUTORY DAMAGES IN**  
4 **CONSUMER-GOODS TRANSACTION. Except as otherwise provided in s. 409.628:**

5 (a) A person that, at the time of the failure, was a debtor, was an obligor or held  
6 a security interest in or other lien on the collateral may recover damages under sub.  
7 (2) for its loss; and

8 (b) If the collateral is consumer goods, a person that was a debtor or a secondary  
9 obligor at the time a secured party failed to comply with this subchapter may recover  
10 for that failure in any event an amount not less than the credit service charge plus  
11 10% of the principal amount of the obligation or the time-price differential plus 10%  
12 of the cash price.

\*\*\*\*NOTE: This one of two places in this draft that "cash price" is used. The other is s. 409.620 (5) (a). Current s. 409.505 (1), Wis. stats. defines cash price: "In this subsection "cash price" means the seller's price in dollars for the sale of the goods and the transfer of unqualified title thereto upon the concurrent payment of such price in cash or the equivalent thereof." Current s. 409.507 (1), stats., use "cash price" without defining it. Current ss. 218.01 (1) (b) and 421.301 (7), Wis. stats., also define the term. Should this definition be included in this draft? That subsection also states "loan' refers to the principal and does not include interest or service charges." "Loan" appears to have been changed to obligation in this draft. Should this last sentence be included in this draft but using obligation?

13 **(4) RECOVERY WHEN DEFICIENCY ELIMINATED OR REDUCED.** A debtor whose  
14 deficiency is eliminated under s. 409.626 may recover damages for the loss of any  
15 surplus. However, a debtor or secondary obligor whose deficiency is eliminated or  
16 reduced under s. 409.626 may not otherwise recover under sub. (2) for noncompliance  
17 with the provisions of this subchapter relating to collection, enforcement, disposition  
18 or acceptance.

19 **(5) STATUTORY DAMAGES: NONCOMPLIANCE WITH SPECIFIED PROVISIONS.** In addition  
20 to any damages recoverable under sub. (2), the debtor, consumer obligor or person



1 named as a debtor in a filed record, as applicable, may recover \$500 in each case from  
2 a person that:

3 (a) Fails to comply with s. 409.208;

4 (b) Fails to comply with s. 409.209;

5 (c) Files a record that the person is not entitled to file under s. 409.509 (1);

6 (d) Fails to cause the secured party of record to file or send a termination  
7 statement as required by s. 409.513 (1) or (3);

8 (e) Fails to comply with s. 409.616 (2) (a) and whose failure is part of a pattern,  
9 or consistent with a practice, of noncompliance; or

10 (f) Fails to comply with s. 409.616 (2) (b).

11 **(6) STATUTORY DAMAGES: NONCOMPLIANCE WITH S. 409.210.** A debtor or consumer  
12 obligor may recover damages under sub. (2) and, in addition, \$500 in each case from  
13 a person that, without reasonable cause, fails to comply with a request under s.  
14 409.210. A recipient of a request under s. 409.210 which never claimed an interest  
15 in the collateral or obligations that are the subject of a request under that section has  
16 a reasonable excuse for failure to comply with the request within the meaning of this  
17 subsection.

18 **(7) LIMITATION OF SECURITY INTEREST: NONCOMPLIANCE WITH S. 409.210.** If a secured  
19 party fails to comply with a request regarding a list of collateral or a statement of  
20 account under s. 409.210, the secured party may claim a security interest only as  
21 shown in the statement included in the request as against a person that is reasonably  
22 misled by the failure.

23 **409.626 Action in which deficiency or surplus is in issue. (1) APPLICABLE**  
24 **RULES IF AMOUNT OF DEFICIENCY OR SURPLUS IN ISSUE.** In an action arising from a

1 transaction, other than a consumer transaction, in which the amount of a deficiency  
2 or surplus is in issue, the following rules apply:

3 (a) A secured party need not prove compliance with the provisions of this  
4 subchapter relating to collection, enforcement, disposition or acceptance unless the  
5 debtor or a secondary obligor places the secured party's compliance in issue.

6 (b) If the secured party's compliance is placed in issue, the secured party has  
7 the burden of establishing that the collection, enforcement, disposition or acceptance  
8 was conducted in accordance with this subchapter.

9 (c) Except as otherwise provided in s. 409.628, if a secured party fails to prove  
10 that the collection, enforcement, disposition or acceptance was conducted in  
11 accordance with the provisions of this subchapter relating to collection, enforcement,  
12 disposition or acceptance, the liability of a debtor or a secondary obligor for a  
13 deficiency is limited to an amount by which the sum of the secured obligation,  
14 expenses and attorney's fees exceeds the greater of:

15 1. The proceeds of the collection, enforcement, disposition or acceptance; or

16 2. The amount of proceeds that would have been realized had the noncomplying  
17 secured party proceeded in accordance with the provisions of this subchapter  
18 relating to collection, enforcement, disposition or acceptance.

19 (d) For purposes of par. (c) 2., the amount of proceeds that would have been  
20 realized is equal to the sum of the secured obligation, expenses and attorney's fees  
21 unless the secured party proves that the amount is less than that sum.

22 (e) If a deficiency or surplus is calculated under s. 409.615 (6), the debtor or  
23 obligor has the burden of establishing that the amount of proceeds of the disposition  
24 is significantly below the range of prices that a complying disposition to a person