

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?

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

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

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

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

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

20 (a) \$ _____ if the financing statement indicates that it is filed in connection with
21 a public-finance transaction; and

1 (b) \$ ____ if the financing statement indicates that it is filed in connection with
2 a manufactured-home transaction.

3 [Alternative A]

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

6 [Alternative B]

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

10 [End of Alternatives]

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

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

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

14 (a) \$ ____ if the request is communicated in writing; and

15 (b) \$ ____ if the request is communicated by another medium authorized by
16 filing-office rule.

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

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

***NOTE: 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:

1 (a) Consistent with this chapter; and

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

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

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

12 (b) Consult the most recent version of the Model Rules promulgated by the
13 International Association of Corporate Administrators or any successor
14 organization; and

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

17 **409.527 Duty to report.** The department of financial institutions shall
18 include in its report under s. 15.04 (1) (d) a report on the operation of the filing office.
19 The report must contain a statement of the extent to which:

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

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

****NOTE: Wisconsin has added to this subject matter. Should it be included in this draft?

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 section might need to be updated and 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)."

1 SUBCHAPTER VI

2 DEFAULT

3 **409.601 Rights after default; judicial enforcement; consignor or buyer**
4 **of accounts, chattel paper, payment intangibles or promissory notes. (1)**

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

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

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

1 (2) RIGHTS AND DUTIES OF SECURED PARTY IN POSSESSION OR CONTROL. A secured
2 party in possession of collateral or control of collateral under s. 409.104, 409.105,
3 409.106 or 409.107 has the rights and duties provided in s. 409.207.

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

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

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

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

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

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

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

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

24 **409.602 Waiver and variance of rights and duties.** Except as otherwise
25 provided in s. 409.624, to the extent that they give rights to a debtor or obligor and

1 impose duties on a secured party, the debtor or obligor may not waive or vary the
2 rules stated in the following listed sections:

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

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

7 (3) Section 409.607 (3), which deals with collection and enforcement of
8 collateral;

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

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

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

16 (7) Sections 409.610 (2), 409.611, 409.613 and 409.614, which deal with
17 disposition of collateral;

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

21 (9) Section 409.616, which deals with explanation of the calculation of a surplus
22 or deficiency;

23 (10) Sections 409.620, 409.621 and 409.622, which deal with acceptance of
24 collateral in satisfaction of obligation;

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

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

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

4 **409.603 Agreement on standards concerning rights and duties. (1)**
5 **AGREED STANDARDS.** The parties may determine by agreement the standards
6 measuring the fulfillment of the rights of a debtor or obligor and the duties of a
7 secured party under a rule stated in s. 409.602 if the standards are not manifestly
8 unreasonable.

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

11 **409.604 Procedure if security agreement covers real property or**
12 **fixtures. (1) ENFORCEMENT: PERSONAL AND REAL PROPERTY.** If a security agreement
13 covers both personal and real property, a secured party may proceed:

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

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

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

21 (a) Under this subchapter; or

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

24 (3) **REMOVAL OF FIXTURES.** Subject to the other provisions of this subchapter, if
25 a secured party holding a security interest in fixtures has priority over all owners and

1 encumbrancers of the real property, the secured party, after default, may remove the
2 collateral from the real property.

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

11 **409.605 Unknown debtor or secondary obligor.** A secured party does not
12 owe a duty based on its status as secured party:

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

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

15 (b) The identity of the person; and

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

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

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

20 (b) The identity of the person.

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

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

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

6 (b) May take any proceeds to which the secured party is entitled under s.
7 409.315;

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

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

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

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

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

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

1 1. A default has occurred; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (2) JUDICIAL AND NONJUDICIAL PROCESS. A secured party may proceed under sub.
4 (1):

5 (a) Pursuant to judicial process; or

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

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

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

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

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

21 (a) At a public disposition; or

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

1 (4) **WARRANTIES ON DISPOSITION.** A contract for sale, lease, license or other
2 disposition includes the warranties relating to title, possession, quiet enjoyment and
3 the like which by operation of law accompany a voluntary disposition of property of
4 the kind subject to the contract.

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

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

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

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

16 **409.611 Notification before disposition of collateral.** (1) **NOTIFICATION**
17 **DATE.** In this section, “notification date” means the earlier of the date on which:

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

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

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

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

- 1 (a) The debtor;
- 2 (b) Any secondary obligor; and
- 3 (c) If the collateral is other than consumer goods:
- 4 1. Any other person from which the secured party has received, before the
- 5 notification date, an authenticated notification of a claim of an interest in the
- 6 collateral;
- 7 2. Any other secured party or lienholder that, 10 days before the notification
- 8 date, held a security interest in or other lien on the collateral perfected by the filing
- 9 of a financing statement that:
- 10 a. Identified the collateral;
- 11 b. Was indexed under the debtor's name as of that date; and
- 12 c. Was filed in the office in which to file a financing statement against the debtor
- 13 covering the collateral as of that date; and
- 14 3. Any other secured party that, 10 days before the notification date, held a
- 15 security interest in the collateral perfected by compliance with a statute, regulation
- 16 or treaty described in s. 409.311 (1).
- 17 (4) SUB. (2) INAPPLICABLE: PERISHABLE COLLATERAL; RECOGNIZED MARKET.
- 18 Subsection (2) does not apply if the collateral is perishable or threatens to decline
- 19 speedily in value or is of a type customarily sold on a recognized market.
- 20 (5) COMPLIANCE WITH SUB. (3) (C) 2. A secured party complies with the
- 21 requirement for notification prescribed by sub. (3) (c) 2. if:
- 22 (a) Not later than 20 days or earlier than 30 days before the notification date,
- 23 the secured party requests, in a commercially reasonable manner, information
- 24 concerning financing statements indexed under the debtor's name in the office
- 25 indicated in sub. (3) (c) 2.; and

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

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

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

6 **409.612 Timeliness of notification before disposition of collateral. (1)**

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

9 (2) TEN-DAY PERIOD SUFFICIENT IN NON-CONSUMER TRANSACTION. In a transaction
10 other than a consumer transaction, a notification of disposition sent after default and
11 10 days or more before the earliest time of disposition set forth in the notification is
12 sent within a reasonable time before the disposition.

13 **409.613 Contents and form of notification before disposition of**
14 **collateral: general.** Except in a consumer-goods transaction, the following rules
15 apply:

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

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

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

19 (c) States the method of intended disposition;

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

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

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

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

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

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

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

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

8 **NOTIFICATION OF DISPOSITION OF COLLATERAL**

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

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

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

12 *[For a public disposition:]*

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

15 Day and Date:

16 Time:

17 Place:

18 *[For a private disposition:]*

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

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

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

25 **[End of Form]**

1 **409.614 Contents and form of notification before disposition of**
2 **collateral: consumer-goods transaction.** In a consumer-goods transaction, the
3 following rules apply:

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

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

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

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

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

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

13 (3) The following form of notification, when completed, provides sufficient
14 information:

15 [Name and address of secured party]

16 [Date]

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

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

19 Subject: [Identification of Transaction]

20 We have your [describe collateral] , because you broke promises in our
21 agreement.

22 [For a public disposition:]

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

25 Date:

1 Time:

2 Place:

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

4 *[For a private disposition:]*

5 We will sell *[describe collateral]* at private sale sometime after *[date]*

. A sale could include a lease or license.

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

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

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

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

20 We are sending this notice to the following other people who have an interest
21 in *[describe collateral]* or who owe money under your agreement:

22 *[Names of all other debtors and obligors, if any]*

23

[End of Form]

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

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

6 (6) If a notification under this section is not in the form of sub. (3), law other
7 than this chapter determines the effect of including information not required by sub.
8 (1).

9 **409.615 Application of proceeds of disposition; liability for deficiency**
10 **and right to surplus. (1) APPLICATION OF PROCEEDS.** A secured party shall apply
11 or pay over for application the cash proceeds of disposition in the following order to:

12 (a) The reasonable expenses of retaking, holding, preparing for disposition,
13 processing and disposing, and, to the extent provided for by agreement and not
14 prohibited by law, reasonable attorney's fees and legal expenses incurred by the
15 secured party;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 **409.616 Explanation of calculation of surplus or deficiency. (1)**

22 **DEFINITIONS.** In this section:

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

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

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

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

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

8 (b) “Request” means a record:

9 1. Authenticated by a debtor or consumer obligor;

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

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

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

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

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

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

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

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

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

5 1. If the secured party takes or receives possession of the collateral after
6 default, not more than 35 days before the secured party takes or receives possession;
7 or

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

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

12 (c) The aggregate amount of the obligations after deducting the amount of
13 proceeds;

14 (d) The amount, in the aggregate or by type, and types of expenses, including
15 expenses of retaking, holding, preparing for disposition, processing and disposing of
16 the collateral and attorney's fees secured by the collateral which are known to the
17 secured party and relate to the current disposition;

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

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

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

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

6 **409.617 Rights of transferee of collateral. (1) EFFECTS OF DISPOSITION.** A
7 secured party's disposition of collateral after default:

- 8 (a) Transfers to a transferee for value all of the debtor's rights in the collateral;
9 (b) Discharges the security interest under which the disposition is made; and
10 (c) Discharges any subordinate security interest or other subordinate lien other
11 than liens held by this state or a local governmental unit, as defined in s. 19.42 (7u).

 ****NOTE: The last line is substituted for the bracketed material in the uniform act.

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

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

- 17 (a) The debtor's rights in the collateral;
18 (b) The security interest or agricultural lien under which the disposition is
19 made; and
20 (c) Any other security interest or other lien.

21 **409.618 Rights and duties of certain secondary obligors. (1) RIGHTS AND**
22 **DUTIES OF SECONDARY OBLIGOR.** A secondary obligor acquires the rights and becomes
23 obligated to perform the duties of the secured party after the secondary obligor:

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

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

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

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

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

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

8 **409.619 Transfer of record or legal title. (1) TRANSFER STATEMENT.** In this
9 section, “transfer statement” means a record authenticated by a secured party
10 stating:

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

13 (b) That the secured party has exercised its post-default remedies with respect
14 to the collateral;

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

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

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

24 (a) Accept the transfer statement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 3. Does not receive a notification of objection authenticated by the debtor within
17 20 days after the proposal is sent.

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

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

22 (b) In other cases:

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

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

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

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

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

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

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

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

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

16 **409.621 Notification of proposal to accept collateral.** **(1) PERSONS TO**
17 **WHICH PROPOSAL TO BE SENT.** A secured party that desires to accept collateral in full
18 or partial satisfaction of the obligation it secures shall send its proposal to:

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

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

25 1. Identified the collateral;

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

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

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

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

11 **409.622 Effect of acceptance of collateral. (1) EFFECT OF ACCEPTANCE.** A
12 secured party's acceptance of collateral in full or partial satisfaction of the obligation
13 it secures:

14 (a) Discharges the obligation to the extent consented to by the debtor;

15 (b) Transfers to the secured party all of a debtor's rights in the collateral;

16 (c) Discharges the security interest or agricultural lien that is the subject of the
17 debtor's consent and any subordinate security interest or other subordinate lien; and

18 (d) Terminates any other subordinate interest.

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

22 **409.623 Right to redccm collateral. (1) PERSONS THAT MAY REDEEM.** A debtor,
23 any secondary obligor or any other secured party or lienholder may redeem
24 collateral.

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

- 1 (a) Fulfillment of all obligations secured by the collateral; and
- 2 (b) The reasonable expenses and attorney's fees described in s. 409.615 (1) (a).
- 3 (3) WHEN REDEMPTION MAY OCCUR. A redemption may occur at any time before
- 4 a secured party:
- 5 (a) Has collected collateral under s. 409.607;
- 6 (b) Has disposed of collateral or entered into a contract for its disposition under
- 7 s. 409.610; or
- 8 (c) Has accepted collateral in full or partial satisfaction of the obligation it
- 9 secures under s. 409.622.

10 **409.624 Waiver. (1) WAIVER OF DISPOSITION NOTIFICATION.** A debtor or secondary

11 obligor may waive the right to notification of disposition of collateral under s. 409.611

12 only by an agreement to that effect entered into and authenticated after default.

13 (2) WAIVER OF MANDATORY DISPOSITION. A debtor may waive the right to require

14 disposition of collateral under s. 409.620 (5) only by an agreement to that effect

15 entered into and authenticated after default.

16 (3) WAIVER OF REDEMPTION RIGHT. Except in a consumer-goods transaction, a

17 debtor or secondary obligor may waive the right to redeem collateral under s. 409.623

18 only by an agreement to that effect entered into and authenticated after default.

19 **409.625 Remedies for secured party's failure to comply with chapter.**

20 (1) JUDICIAL ORDERS CONCERNING NONCOMPLIANCE. If it is established that a secured

21 party is not proceeding in accordance with this chapter, a court may order or restrain

22 collection, enforcement or disposition of collateral on appropriate terms and

23 conditions.

24 (2) DAMAGES FOR NONCOMPLIANCE. Subject to subs. (3), (4) and (6), a person is

25 liable for damages in the amount of any loss caused by a failure to comply with this

1 chapter. Loss caused by a failure to comply with a request under s. 409.210 may
2 include loss resulting from the debtor's inability to obtain, or increased costs of,
3 alternative financing.

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

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

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

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

20 (5) STATUTORY DAMAGES: NONCOMPLIANCE WITH SPECIFIED PROVISIONS. In addition
21 to any damages recoverable under sub. (2), the debtor, consumer obligor or person
22 named as a debtor in a filed record, as applicable, may recover \$500 in each case from
23 a person that:

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

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

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

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

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

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

7 (6) STATUTORY DAMAGES: NONCOMPLIANCE WITH S. 409.210. A debtor or consumer
8 obligor may recover damages under sub. (2) and, in addition, \$500 in each case from
9 a person that, without reasonable cause, fails to comply with a request under s.
10 409.210. A recipient of a request under s. 409.210 which never claimed an interest
11 in the collateral or obligations that are the subject of a request under that section has
12 a reasonable excuse for failure to comply with the request within the meaning of this
13 subsection.

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

19 **409.626 Action in which deficiency or surplus is in issue.** (1) APPLICABLE
20 RULES IF AMOUNT OF DEFICIENCY OR SURPLUS IN ISSUE. In an action arising from a
21 transaction, other than a consumer transaction, in which the amount of a deficiency
22 or surplus is in issue, the following rules apply:

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

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

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

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

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

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

17 (e) If a deficiency or surplus is calculated under s. 409.615 (6), the debtor or
18 obligor has the burden of establishing that the amount of proceeds of the disposition
19 is significantly below the range of prices that a complying disposition to a person
20 other than the secured party, a person related to the secured party or a secondary
21 obligor would have brought.

22 (2) NON-CONSUMER TRANSACTIONS; NO INFERENCE. The limitation of the rules in
23 sub. (1) to transactions other than consumer transactions is intended to leave to the
24 court the determination of the proper rules in consumer transactions. The court may

1 not infer from that limitation the nature of the proper rule in consumer transactions
2 and may continue to apply established approaches.

3 **409.627 Determination of whether conduct was commercially**
4 **reasonable. (1) GREATER AMOUNT OBTAINABLE UNDER OTHER CIRCUMSTANCES; NO**
5 **PRECLUSION OF COMMERCIAL REASONABLENESS.** The fact that a greater amount could
6 have been obtained by a collection, enforcement, disposition or acceptance at a
7 different time or in a different method from that selected by the secured party is not
8 of itself sufficient to preclude the secured party from establishing that the collection,
9 enforcement, disposition or acceptance was made in a commercially reasonable
10 manner.

11 **(2) DISPOSITIONS THAT ARE COMMERCIALY REASONABLE.** A disposition of collateral
12 is made in a commercially reasonable manner if the disposition is made:

13 (a) In the usual manner on any recognized market;

14 (b) At the price current in any recognized market at the time of the disposition;

15 or

16 (c) Otherwise in conformity with reasonable commercial practices among
17 dealers in the type of property that was the subject of the disposition.

18 **(3) APPROVAL BY COURT OR ON BEHALF OF CREDITORS.** A collection, enforcement,
19 disposition or acceptance is commercially reasonable if it has been approved:

20 (a) In a judicial proceeding;

21 (b) By a bona fide creditors' committee;

22 (c) By a representative of creditors; or

23 (d) By an assignee for the benefit of creditors.

24 **(4) APPROVAL UNDER SUB. (3) NOT NECESSARY; ABSENCE OF APPROVAL HAS NO EFFECT.**

25 Approval under sub. (3) need not be obtained, and lack of approval does not mean

1 that the collection, enforcement, disposition or acceptance is not commercially
2 reasonable.

3 **409.628 Nonliability and limitation on liability of secured party;**
4 **liability of secondary obligor. (1) LIMITATION OF LIABILITY TO DEBTOR OR OBLIGOR.**

5 Unless a secured party knows that a person is a debtor or obligor, knows the identity
6 of the person and knows how to communicate with the person:

7 (a) The secured party is not liable to the person, or to a secured party or
8 lienholder that has filed a financing statement against the person, for failure to
9 comply with this chapter; and

10 (b) The secured party's failure to comply with this chapter does not affect the
11 liability of the person for a deficiency.

12 **(2) LIMITATION OF LIABILITY TO DEBTOR, OBLIGOR, ANOTHER SECURED PARTY, OR**
13 **LIENHOLDER. A secured party is not liable because of its status as secured party:**

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

15 1. That the person is a debtor or obligor;

16 2. The identity of the person; and

17 3. How to communicate with the person; or

18 (b) To a secured party or lienholder that has filed a financing statement against
19 a person, unless the secured party knows:

20 1. That the person is a debtor; and

21 2. The identity of the person.

22 **(3) LIMITATION OF LIABILITY IF REASONABLE BELIEF THAT TRANSACTION NOT A**
23 **CONSUMER-GOODS TRANSACTION OR CONSUMER TRANSACTION. A secured party is not**
24 **liable to any person, and a person's liability for a deficiency is not affected, because**
25 **of any act or omission arising out of the secured party's reasonable belief that a**

1 transaction is not a consumer-goods transaction or a consumer transaction or that
2 goods are not consumer goods, if the secured party's belief is based on its reasonable
3 reliance on:

4 (a) A debtor's representation concerning the purpose for which collateral was
5 to be used, acquired or held; or

6 (b) An obligor's representation concerning the purpose for which a secured
7 obligation was incurred.

8 (4) LIMITATION OF LIABILITY FOR STATUTORY DAMAGES. A secured party is not liable
9 to any person under s. 409.625 (3) (b) for its failure to comply with s. 409.616.

10 (5) LIMITATION OF MULTIPLE LIABILITY FOR STATUTORY DAMAGES. A secured party
11 is not liable under s. 409.625 (3) (b) more than once with respect to any one secured
12 obligation.

13 SUBCHAPTER VII

14 TRANSITION

15 **409.702 Savings clause. (1) PRE-EFFECTIVE-DATE TRANSACTIONS OR LIENS.**
16 Except as otherwise provided in this subchapter, 1999 Wisconsin Act (this act)
17 applies to a transaction or lien within its scope, even if the transaction or lien was
18 entered into or created before the effective date of this subsection [revisor inserts
19 date].

20 (2) CONTINUING VALIDITY. Except as otherwise provided in sub. (3) and ss.
21 409.703 to 409.708:

22 (a) Transactions and liens that were not governed by ch. 409, 1999 stats., were
23 validly entered into or created before effective date of this paragraph [revisor
24 inserts date], and would be subject to 1999 Wisconsin Act (this act) if they had
25 been entered into or created on or after the effective date of this paragraph [revisor

1 inserts date], and the rights, duties and interests flowing from those transactions
2 and liens remain valid on and after the effective date of this paragraph [revisor
3 inserts date]; and

4 (b) The transactions and liens may be terminated, completed, consummated
5 and enforced as required or permitted by 1999 Wisconsin Act (this act) or by the
6 law that otherwise would apply if this paragraph had not taken effect.

7 (3) ~~PRE-EFFECTIVE-DATE PROCEEDINGS.~~ 1999 Wisconsin Act (this act) does not
8 affect an action, case or proceeding commenced before the effective date of this
9 subsection [revisor inserts date].

10 **409.703 Security interest perfected before effective date. (1)**
11 CONTINUING PRIORITY OVER LIEN CREDITOR: PERFECTION REQUIREMENTS SATISFIED. A
12 security interest that is enforceable immediately before the effective date of this
13 subsection [revisor inserts date], and would have priority over the rights of a
14 person that becomes a lien creditor at that time is a perfected security interest under
15 1999 Wisconsin Act (this act) if, on the effective date of this subsection [revisor
16 inserts date], the applicable requirements for enforceability and perfection under
17 1999 Wisconsin Act (this act) are satisfied without further action.

18 (2) CONTINUING PRIORITY OVER LIEN CREDITOR: PERFECTION REQUIREMENTS NOT
19 SATISFIED. Except as otherwise provided in s. 409.705, if, immediately before the
20 effective date of this subsection [revisor inserts date], a security interest is
21 enforceable and would have priority over the rights of a person that becomes a lien
22 creditor at that time, but the applicable requirements for enforceability or perfection
23 under 1999 Wisconsin Act (this act) are not satisfied as of the effective date of this
24 subsection [revisor inserts date], the security interest:

1 (a) Is a perfected security interest until one year after the effective date of this
2 paragraph [revisor inserts date];

3 (b) Remains enforceable on and after one year after the effective date of this
4 paragraph [revisor inserts date], only if the security interest becomes enforceable
5 under s. 409.203 before one year after the effective date of this paragraph [revisor
6 inserts date]; and

7 (c) Remains perfected on and after one year after the effective date of this
8 paragraph [revisor inserts date], only if the applicable requirements for perfection
9 under 1999 Wisconsin Act (this act) are satisfied before one year after the effective
10 date of this paragraph [revisor inserts date].

11 **409.704 Security interest unperfected before effective date.** A security
12 interest that is enforceable immediately before the effective date of this section
13 [revisor inserts date], but which would be subordinate to the rights of a person that
14 becomes a lien creditor at that time:

15 (1) Remains an enforceable security interest for one year after the effective date
16 of this paragraph [revisor inserts date];

17 (2) Remains enforceable on and after one year after the effective date of this
18 paragraph [revisor inserts date], if the security interest becomes enforceable
19 under s. 409.203 on the effective date of this paragraph [revisor inserts date], or
20 within one year thereafter; and

21 (3) Becomes perfected:

22 1. Without further action, on the effective date of this subdivision [revisor
23 inserts date], if the applicable requirements for perfection under 1999 Wisconsin Act
24 (this act) are satisfied before or at that time; or

1 2. When the applicable requirements for perfection are satisfied if the
2 requirements are satisfied after that time.

3 **409.705 Effectiveness of action taken before effective date. (1)**

4 ~~PRE-EFFECTIVE-DATE ACTION; ONE-YEAR PERFECTION PERIOD UNLESS REPERFECTED.~~ If
5 action, other than the filing of a financing statement, is taken before the effective
6 date of this subsection [revisor inserts date], and the action would have resulted
7 in priority of a security interest over the rights of a person that becomes a lien
8 creditor had the security interest become enforceable before the effective date of this
9 subsection [revisor inserts date], the action is effective to perfect a security
10 interest that attaches under 1999 Wisconsin Act (this act) before the effective date
11 of this subsection [revisor inserts date]. An attached security interest becomes
12 unperfected one year after the effective date of this subsection [revisor inserts
13 date], unless the security interest becomes a perfected security interest under 1999
14 Wisconsin Act (this act) before one year after the effective date of this subsection
15 [revisor inserts date].

16 **(2) ~~PRE-EFFECTIVE-DATE FILING.~~** The filing of a financing statement before the
17 effective date of this subsection [revisor inserts date], is effective to perfect a
18 security interest to the extent the filing would satisfy the applicable requirements
19 for perfection under 1999 Wisconsin Act (this act).

20 **(3) ~~PRE-EFFECTIVE-DATE FILING IN JURISDICTION FORMERLY GOVERNING PERFECTION.~~**
21 1999 Wisconsin Act (this act) does not render ineffective an effective financing
22 statement that, before the effective date of this subsection [revisor inserts date],
23 is filed and satisfies the applicable requirements for perfection under the law of the
24 jurisdiction governing perfection as provided in s. 409.103, 1999 stats. However,

1 except as otherwise provided in subs. (4) and (5) and s. 409.706, the financing
2 statement ceases to be effective at the earlier of:

3 (a) The time the financing statement would have ceased to be effective under
4 the law of the jurisdiction in which it is filed; or

5 (b) June 30, 2006.

6 (4) CONTINUATION STATEMENT. The filing of a continuation statement on or after
7 the effective date of this subsection [revisor inserts date], does not continue the
8 effectiveness of the financing statement filed before the effective date of this
9 subsection [revisor inserts date]. However, upon the timely filing of a
10 continuation statement on or after the effective date of this subsection [revisor
11 inserts date], and in accordance with the law of the jurisdiction governing perfection
12 as provided in subch. III, the effectiveness of a financing statement filed in the same
13 office in that jurisdiction before the effective date of this subsection [revisor
14 inserts date], continues for the period provided by the law of that jurisdiction.

15 (5) APPLICATION OF SUB. (3) (B) TO TRANSMITTING UTILITY FINANCING STATEMENT.
16 Subsection (3) (b) applies to a financing statement that, before the effective date of
17 this subsection [revisor inserts date], is filed against a transmitting utility and
18 satisfies the applicable requirements for perfection under the law of the jurisdiction
19 governing perfection as provided in s. 409.103, 1999 stats., only to the extent that
20 subch. III provides that the law of a jurisdiction other than jurisdiction in which the
21 financing statement is filed governs perfection of a security interest in collateral
22 covered by the financing statement.

23 (6) APPLICATION OF SUBCH. V. A financing statement that includes a financing
24 statement filed before the effective date of this subsection [revisor inserts date],
25 and a continuation statement filed on or after the effective date of this subsection

1 [revisor inserts date], is effective only to the extent that it satisfies the requirements
2 of subch. V for an initial financing statement.

3 **409.706 When initial financing statement suffices to continue**
4 **effectiveness of financing statement. (1) INITIAL FINANCING STATEMENT IN LIEU**
5 **OF CONTINUATION STATEMENT.** The filing of an initial financing statement in the office
6 specified in s. 409.501 continues the effectiveness of a financing statement filed
7 before the effective date of this subsection ... [revisor inserts date], if:

8 (a) The filing of an initial financing statement in that office would be effective
9 to perfect a security interest under 1999 Wisconsin Act ... (this act);

10 (b) The pre-effective-date financing statement was filed in an office in another
11 state or another office in this state; and

12 (c) The initial financing statement satisfies sub. (3).

13 **(2) PERIOD OF CONTINUED EFFECTIVENESS.** The filing of an initial financing
14 statement under sub. (1) continues the effectiveness of the pre-effective-date
15 financing statement:

16 (a) If the initial financing statement is filed before the effective date of this
17 paragraph ... [revisor inserts date], for the period provided in s. 409.403, 1999 stats.,
18 with respect to a financing statement; and

19 (b) If the initial financing statement is filed on or after the effective date of this
20 paragraph ... [revisor inserts date], for the period provided in s. 409.515 with respect
21 to an initial financing statement.

22 **(3) REQUIREMENTS FOR INITIAL FINANCING STATEMENT UNDER SUB. (1).** To be
23 effective for purposes of sub. (1), an initial financing statement must:

24 (a) Satisfy the requirements of subch. V for an initial financing statement;

1 (b) Identify the pre-effective-date financing statement by indicating the office
2 in which the financing statement was filed and providing the dates of filing and file
3 numbers, if any, of the financing statement and of the most recent continuation
4 statement filed with respect to the financing statement; and

5 (c) Indicate that the pre-effective-date financing statement remains effective.

6 **409.707 Persons entitled to file initial financing statement or**
7 **continuation statement.** A person may file an initial financing statement or a
8 continuation statement under this subchapter if:

9 (1) The secured party of record authorizes the filing; and

10 (2) The filing is necessary under this subchapter:

11 (a) To continue the effectiveness of a financing statement filed before the
12 effective date of this paragraph [revisor inserts date]; or

13 (b) To perfect or continue the perfection of a security interest.

14 **409.708 Priority. (1) LAW GOVERNING PRIORITY.** 1999 Wisconsin Act (this act)
15 determines the priority of conflicting claims to collateral. However, if the relative
16 priorities of the claims were established before the effective date of this subsection
17 [revisor inserts date], ch. 409, 1999 stats., determines priority.

18 (2) PRIORITY IF SECURITY INTEREST BECOMES ENFORCEABLE UNDER S. 409.203. For
19 purposes of s. 409.322 (1), the priority of a security interest that becomes enforceable
20 under s. 409.203 dates from the effective date of this subsection [revisor inserts
21 date], if the security interest is perfected under 1999 Wisconsin Act (this act) by
22 the filing of a financing statement before the effective date of this subsection
23 [revisor inserts date], which would not have been effective to perfect the security
24 interest under ch. 409, 1999 stats. This subsection does not apply to conflicting

1 security interests each of which is perfected by the filing of such a financing
2 statement.

***NOTE: The UCC 9 Enactment guide states:

3 Special Transitional Provision for Maintaining and Searching Local Filing
4 Office Records. After Revised Article 9's effective date, a jurisdiction that has dual
5 filing or other local filing under former Article 9 will need to provide for the continued
6 maintenance of, and access to, financing statements and related records that were
7 filed in the jurisdiction's local filing offices before Revised Article 9's effective date.
8 The following is an example of such a provision. Like the provision dealing with
9 revenue loss, this provision should be drafted as a special, noncodified transitional
10 provision of the enacting bill rather than as a nonuniform addition to the transition
11 provisions in Part 7 of Revised Article 9. But, unlike the provision dealing with
12 revenue loss, this provision, or one like it, is necessary in every dual filing jurisdiction
13 and in every other jurisdiction that has local filing unrelated to real property under
14 its former Article 9.

15

16 **409.709 Special transitional provision for maintaining and searching**
17 **local filing office records. (1) DEFINITIONS. In this section:**

18 (a) "Former-Ch. 409 records":

19 1. Means:

20 a. Financing statements and other records that have been filed in a local-filing
21 office before July 1, 2001, and that are, or upon processing and indexing will be,
22 reflected in the index maintained, as of June 30, 2001, by the local-filing office for
23 financing statements and other records filed in the local-filing office before July 1,
24 2001; and

1 b. The index as of June 30, 2001.

2 2. Does not include records presented to a local-filing office for filing after June
3 30, 2001, whether or not the records relate to financing statements filed in the
4 local-filing office before July 1, 2001.

5 (b) “Local-filing office” means a filing office, other than the department of
6 financial institutions, that is designated as the proper place to file a financing
7 statement under s. 409.401(1), 1999 stats., with respect to a record that covers a type
8 of collateral as to which the filing office is designated in that subsection as the proper
9 place to file.

10 (2) PROHIBITION OF FILING AFTER JUNE 30, 2001. A local-filing office shall not accept
11 for filing a record presented after June 30, 2001, whether or not the record relates
12 to a financing statement filed in the local-filing office before July 1, 2001.

13 (3) MAINTENANCE OF RECORDS. Until July 1, 2008, each local-filing office must
14 maintain all former-ch. 409 records in accordance with ch. 409, 1999 stats. A
15 former-ch. 409 record that is not reflected on the index maintained at June 30, 2001,
16 by the local-filing office must be processed and indexed, and reflected on the index
17 as of June 30, 2001, as soon as practicable but in any event no later than July 30,
18 2001.

19 (4) INFORMATION REQUESTS. Until at least June 30, 2008, each local-filing office
20 must respond to requests for information with respect to former-ch. 409 records
21 relating to a debtor [and issue certificates], in accordance with ch. 409, 1999 stats.
22 The fees charged for responding to requests for information relating to a debtor [and
23 issuing certificates] with respect to former-ch. 409 records must be the fees in effect
24 under ch. 409, 1999 stats. on June 30, 2001, unless a different fee is later set by the

1 local-filing office. However, the different fee must not exceed \$__ for responding to
2 a request for information relating to a debtor [or \$__ for issuing a certificate].

3 (5) DESTRUCTION OF RECORDS. After June 30, 2008, each local-filing office may
4 remove and destroy, in accordance with any then applicable record retention law of
5 this state, all former-ch. 409 records, including the related index.

6 (6) EXCLUSION. This section does not apply, with respect to financing statements
7 and other records, to a filing office in which mortgages or records of mortgages on real
8 property are required to be filed or recorded, if:

9 (a) The collateral is timber to be cut or as-extracted collateral; or

10 (b) The record is or relates to a financing statement filed as a fixture filing and
11 the collateral is goods that are or are to become fixtures.

12

***NOTE: The UCC 9 Enactment guide states:

13 **Part II – Related Statutory Amendments to be Considered**

14 Revised Article 9 makes some changes from former Article 9 that may require
15 other statutes in the jurisdiction, other than the Uniform Commercial Code, to be
16 amended so as to be consistent with Revised Article 9. Moreover, because former
17 Article 9 has been in effect in almost all Uniform Commercial Code jurisdictions for
18 a number of years, other statutory provisions in the jurisdiction, other than the
19 Uniform Commercial Code, may directly or indirectly refer to provisions of former
20 Article 9. In connection with the enactment of Revised Article 9, these statutory
21 provisions may have to be modified to refer to Revised Article 9. The following is a
22 list of the types of statutes in the jurisdiction that the legislature may wish to
23 consider amending to conform to Revised Article 9. Some suggestions of amendatory
24 language are also provided.

1 Statutes Inconsistent with Section 9–308(e). Section 9–308(e) provides the
2 following:

3 Perfection of a security interest in a right to payment or performance also
4 perfects a security interest in a security interest, mortgage, or other lien on personal
5 or real property securing the right.

6 Accordingly, a statute dealing with the transferability of, for example, an
7 interest in a motor vehicle or other titled good or in a real property interest may need
8 to be amended if the statute requires recording or other action for the transfer of a
9 security interest in the motor vehicle or real property interest in connection with the
10 transfer of the obligation secured by the security interest. The amendment should
11 provide that such a recording or other transfer would not be required as a condition
12 to perfection of the security interest where the right to payment or performance
13 secured by the security interest is transferred and Section 9–308(e) applies. The
14 following is an example of such an amendment:

15 Except as provided in Section 9–308(e) of [Article 9 of the Uniform Commercial
16 Code], a transfer of any promissory note or other obligation secured by an interest
17 in [the subject property] shall not be effective as against any purchaser of or lien
18 creditor unless such transfer is properly recorded in [emphasis added]

19 Statutes Inconsistent with Section 9–311(b) or other Certificate of Title
20 Provisions in Revised Article 9. Section 9–311(b) provides that compliance with the
21 perfection requirements under a certificate-of-title statute is equivalent to
22 perfection by filing a financing statement under Revised Article 9. The Legislative
23 Note to Section 9–311(b) instructs the legislature to make two changes to the
24 jurisdiction's certificate-of-title statute, if required. The first change is to amend the
25 certificate-of-title statute to provide that perfection occurs upon receipt by the

1 appropriate State official of a properly tendered application for a certificate of title
2 on which the security interest is to be indicated. Some certificate-of-title statutes
3 currently provide that perfection does not occur until the certificate of title is actually
4 issued. The second change is to remove any provision under which perfection relates
5 back to an earlier time, such as attachment of the security interest. A "relation back"
6 provision may be inconsistent with the federal Bankruptcy Code and may create a
7 trap for the unwary. See Official Comment 5 to Section 9-311.

8 More generally, the legislature should review its certificate-of-title statutes to
9 determine whether there are in those statutes other inconsistencies with the
10 treatment of titled goods under Revised Article 9 that would need to be eliminated.
11 See Sections 9-303, 9-311 and 9-316(d) and (e) as well as Official Comment 6 to
12 Section 9-303. For example, the enacting jurisdiction's certificate-of-title statute
13 might contain a provision dealing with loss of perfection of a secured party's security
14 interest when goods titled in another jurisdiction and subject to the security interest
15 perfected under the certificate of title laws of the other jurisdiction are brought into
16 the enacting jurisdiction and are titled in the enacting jurisdiction. That provision
17 might not be consistent with Sections 9-316(d) and (e). If so, the provision should
18 be amended to be consistent or should be deleted in deference to the overlapping
19 provisions contained in Revised Article 9. Early coordination with the jurisdiction's
20 legal staff administering the certificate of title scheme for a particular type of titled
21 goods is, of course, encouraged.

22 Statutes Inconsistent with Section 9-334(i). Section 9-334(i) provides that a
23 perfected security interest in crops growing on real property prevails over a
24 conflicting real estate mortgage, other real estate encumbrance or other real estate
25 interest. If a statute of the jurisdiction provides otherwise, the statute should be

1 listed in Section 9-334(j) or the statute should be amended to be subject to Section
2 9-334(i).

3 Statutes Inconsistent with Section 9-406. If the legislature decides not to list
4 statutes conflicting with Sections 9-406(d) and (f) in Section 9-406(j) and not to rely
5 upon the general language of Sections 9-406(d) and (f) to prevail over those statutes,
6 the legislature should amend statutes in conflict with Sections 9-406(d) and (f) to
7 give Sections 9-406(d) and (f) superiority. If the legislature decides to use the
8 suggested language for Section 9-406 set forth above and the legislature also decides
9 to exclude from Section 9-406, or one or more subsections thereof, a particular type
10 of assignment prohibited by another statute of the jurisdiction, that statute should
11 be amended so that it states that it prevails over Section 9-406 or its relevant
12 subsections.

13 Statutes Inconsistent with Section 9-408. If the legislature decides not to list
14 statutes conflicting with Sections 9-408(a) and (c) in Section 9-408(e) and not to rely
15 upon the general language of Sections 9-408(a) and (c) to prevail over those statutes,
16 the legislature should amend statutes in conflict with Sections 9-408(a) and (c) so
17 that they are subject to Sections 9-408(a) and (c).

18 Agricultural Lien Statutes Inconsistent with Revised Article 9. Revised Article
19 9 includes within its scope an agricultural lien as defined in Section 9-102(a)(5).
20 That definition requires that the agricultural lien be, among other things, both
21 statutory and nonpossessory. Revised Article 9 then provides some rules for the
22 creation, perfection and priority of an agricultural lien. Generally, the holder of an
23 agricultural lien must file a financing statement to perfect the lien, and the lien is,
24 but for Section 9-322(g), subject to the general "first to file or perfect" priority rule
25 contained in Section 9-322(a). Revised Article 9, however, does not address proceeds

1 in the context of an agricultural lien. The legislature may wish to review its
2 agricultural lien statutes to remove any inconsistencies in those statutes with the
3 treatment of agricultural liens under Revised Article 9. In addition, if the legislature
4 elects to enact the product-money security interest provisions in Appendix II, any
5 similar production-money security interest statute of the jurisdiction should be
6 repealed.

7 Statutes Dealing with the Place of Filing of non-UCC Liens by Reference to
8 Former Article 9. Statutes in the jurisdiction may provide for various non-UCC liens
9 to be recorded by reference to provisions of former Article 9. These non-UCC liens
10 might include, for example, the liens of lien creditors (.e.g., attachment liens and
11 judgment liens), state tax liens or environmental liens.

12 It will usually not be sufficient for these statutes to be amended merely to refer
13 to the filing requirements of Revised Article. That is because Revised Article 9 makes
14 two relevant but significant changes in the filing rules. First, it provides for
15 perfection by filing in a single location for all assets, including goods, in which a
16 security interest may be perfected by filing. Second, Revised Article 9 provides for
17 the filing to be made where the debtor is located. Under Section 9-307, the debtor's
18 location may be determined to be in another jurisdiction. Accordingly, if these
19 non-UCC lien recording statutes are amended merely to refer to Revised Article 9
20 instead of former Article 9, the jurisdiction may be requiring recording of these
21 non-UCC liens in another jurisdiction instead of its own jurisdiction.

22 An example may be helpful in understanding this issue. Let's say that State
23 X has a statute that provides that State X tax liens on a taxpayer's goods located in
24 State X are to be recorded in the office where a financing statement would be filed
25 to perfect against the taxpayer a security interest in the goods under Article 9.