

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: Should the bracketed material be deleted?

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

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

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

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

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

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

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

\*\*\*NOTE: Which of the bracketed alternatives should be deleted from this draft?

\*\*\*NOTE: 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).

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. (2), the fee for filing and indexing a record under this subchapter or  
9 for responding to a request for information from the filing office, including for  
10 communicating whether there is on file any financing statement naming a particular  
11 debtor, shall be prescribed by the department of financial institutions by rule.

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

17           **409.526 Filing office rules. (1) ADOPTION OF FILING-OFFICE RULES.** The  
18 secretary of financial institutions shall promulgate filing-office rules to implement  
19 this chapter. The filing-office rules must be:

20           (a) Consistent with this chapter; and

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

22           (2) **HARMONIZATION OF RULES.** To keep the filing-office rules and practices of the  
23 filing office in harmony with the rules and practices of filing offices in other  
24 jurisdictions that enact substantially this subchapter, and to keep the technology  
25 used by the filing office compatible with the technology used by filing offices in other

1 jurisdictions that enact substantially this subchapter, the secretary of financial  
2 institutions, so far as is consistent with the purposes, policies and provisions of this  
3 chapter, in promulgating filing-office rules, shall:

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

6 (b) Consult the most recent version of the Model Rules promulgated by the  
7 International Association of Corporate Administrators or any successor  
8 organization; and

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

11 **409.527 Duty to report.** The department of financial institutions shall  
12 include in its report under s. 15.04 (1) (d) a report on the operation of the filing office.  
13 The report must contain a statement of the extent to which:

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

17 (2) The filing-office rules are not in harmony with the most recent version of  
18 the Model Rules promulgated by the International Association of Corporate  
19 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)."

**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) COMMERCIALY 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.

14 **409.611 Notification before disposition of collateral.** (1) NOTIFICATION  
15 DATE. In this section, “notification date” means the earlier of the date on which:

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

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

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

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

24 (a) The debtor;

25 (b) Any secondary obligor; and

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

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

5 2. Any other secured party or lienholder that, 10 days before the notification  
6 date, held a security interest in or other lien on the collateral perfected by the filing  
7 of a financing statement that:

8 a. Identified the collateral;

9 b. Was indexed under the debtor's name as of that date; and

10 c. Was filed in the office in which to file a financing statement against the debtor  
11 covering the collateral as of that date; and

12 3. Any other secured party that, 10 days before the notification date, held a  
13 security interest in the collateral perfected by compliance with a statute, regulation  
14 or treaty described in s. 409.311 (1).

15 (4) SUB. (2) INAPPLICABLE: PERISHABLE COLLATERAL; RECOGNIZED MARKET.  
16 Subsection (2) does not apply if the collateral is perishable or threatens to decline  
17 speedily in value or is of a type customarily sold on a recognized market.

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

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

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

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

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

4           **409.612 Timeliness of notification before disposition of collateral. (1)**

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

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

11           **409.613 Contents and form of notification before disposition of**  
12 **collateral: general.** Except in a consumer-goods transaction, the following rules  
13 apply:

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

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

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

17           (c) States the method of intended disposition;

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

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

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

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



- 1 (a) Information not specified by sub. (1); or  
2 (b) Minor errors that are not seriously misleading.  
3 (4) A particular phrasing of the notification is not required.  
4 (5) The following form of notification and the form appearing in s. 409.614 (3),  
5 when completed, each provides sufficient information:

6 **NOTIFICATION OF DISPOSITION OF COLLATERAL**

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

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

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

10 *[For a public disposition:]*

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

13 Day and Date:

14 Time:

15 Place:

16 *[For a private disposition:]*

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

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

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

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

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

16 An example may be helpful in understanding this issue. Let's say that State  
17 X has a statute that provides that State X tax liens on a taxpayer's goods located in  
18 State X are to be recorded in the office where a financing statement would be filed  
19 to perfect against the taxpayer a security interest in the goods under Article 9.  
20 Debtor is a corporation organized under the laws of State Y. If no change were made  
21 to State X's statute, then, upon Revised Article 9 becoming effective, State X tax liens  
22 would need to be filed in State Y. This is because, under Section 9-301 of Revised  
23 Article 9, perfection by filing is to be made by a filing where the debtor is located and,  
24 under Section 9-307 of Revised Article 9, that type of debtor is located in State Y, not

1 State X. State X, of course, would prefer to require its tax lien filings on goods located  
2 in State X to continue to be made in State X.

3 To address this issue, we recommend that the non-UCC lien recording statutes  
4 be amended to refer to Revised Article 9 but to add words such as "as if the debtor  
5 were located in this State." In our example, that would mean that the statute would  
6 be amended to provide that State X tax liens on a taxpayer's goods located in State  
7 X are recorded in the office where a financing statement would be filed to perfect  
8 against the taxpayer a security interest in the goods under Revised Article 9 as if  
9 the debtor were located in State X. In this way, the recordings would be made in the  
10 jurisdiction's own central filing office for the recording of financing statements even  
11 if under Section 9-307 the debtor were located in another jurisdiction.

12 Statutes Assuming the Scope of or Definitions in Former Article 9. The  
13 legislature should consider whether provisions of other laws affected by the  
14 expansion of the scope of Revised Article 9 from that in former Article 9, or the change  
15 in definitions in Revised Article 9 from those in former Article 9, will necessitate  
16 changes in other statutes of the jurisdiction. For example, a statute in the  
17 jurisdiction may address the assignment of certain payment rights (e.g.  
18 health-care-insurance receivables or commercial tort claims) that are not within the  
19 scope of former Article 9 but are within the scope of Revised Article 9. A statute of  
20 the jurisdiction might also use former Article 9 terms (e.g. accounts) which have  
21 different meanings under Revised Article 9 than under former Article 9.  
22 Amendments to these statutes should be considered so that the statutes, as  
23 amended, are consistent with or are subject to Revised Article 9. Indeed, in some  
24 cases the best solution would be to repeal the statute if the matters addressed in the  
25 statute would be fully addressed in Revised Article 9.



1           **Part III - Non-Codified Special Transitional Provisions to be**  
2           **Considered**

3           Special Transitional Provisions Generally. Revised Article 9 contains in Part  
4           7 its own effective date and transition provisions. A special transitional provision  
5           may be advisable if the place of recording for non-UCC liens is being changed. For  
6           example, if a non-UCC lien is currently required to be recorded in a local filing office  
7           in a dual filing jurisdiction but, upon the effectiveness of Revised Article 9, the lien  
8           will be required to be recorded in a central filing office, a special transitional  
9           provision to protect existing non-UCC liens recorded in the local filing office may be  
10          necessary. The following is a sample special transitional provision for the legislature  
11          to consider when Revised Article 9 is combined with other non-UCC statutory  
12          amendments in a single legislative bill:

13           This Act takes effect on July 1, 2001, and applies to any transaction or lien as  
14          provided in the transition provisions of Part 7 of [cite section of legislation containing  
15          Revised Article 9] of this Act. A lien, other than a security interest, that is perfected  
16          on July 1, 2001, by compliance with a statute of this State which referred to the  
17          provisions of former Article 9 of [the Uniform Commercial Code] for the perfection  
18          of the lien shall continue to be perfected and to be entitled to priority upon the same  
19          terms as those set forth in the transition provisions of Part 7 of [cite section of  
20          legislation containing Revised Article 9], as if the lien were a security interest.

21           Special Transitional Provisions Dealing with Concerns About Loss of Revenue  
22          on Local Filings. We discussed in Part I of this paper the concern that local filing  
23          offices may lose revenue to the extent that, under Revised Article 9, filings are no  
24          longer made in a local filing office. As mentioned, generally the jurisdictions affected  
25          are those that have enacted either the Second Alternative Subsection (1) or the Third

1 Alternative Subsection (1) of Section 9–401 of former Article 9 or some other  
2 alternative other than the First Alternative Subsection (1) of Section 9–401.

3 By far the best approach is for the jurisdiction to adopt the uniform Official  
4 Text. A substantial effort should be made to obtain the support for that approach.  
5 Only as a last resort, if absolutely necessary to prevent the legislation from being  
6 blocked completely, should any of the following alternatives be explored.  
7 Nevertheless, we discuss here alternatives in order to provide assistance to those  
8 jurisdictions it is necessary to consider other alternatives to ensure prompt  
9 enactment of Revised Article 9.

10 One method of dealing with the revenue loss issue is to provide, for a limited  
11 time period (e.g., five years), that a specified portion (in dollars or as a percentage)  
12 of the central filing office’s filing revenues derived from financing statements  
13 communicated to that office in writing (i.e., paper filings but not electronic filings)  
14 be distributed to the local filing offices (perhaps on a diminishing basis over the five  
15 years) in proportion to the filing volumes experienced by the local filing offices for  
16 the lost types of filings during, for example, calendar year 1998. In order that this  
17 revenue-sharing not come completely at the expense of the central filing office, this  
18 provision could be accompanied by an increase in the filing fee charged by the central  
19 filing office for the same five-year period. The following is an illustration of a  
20 provision providing for the revenue distribution approach to the local filing revenue  
21 loss issue assuming, in this illustration, that the specific dollar amount of the filing  
22 fee charged by the central filing office has been doubled, for the five-year period  
23 commencing on the effective date of Revised Article 9, from the amount of the filing  
24 fee charged under former Article 9:

1           The [Secretary of State or other office identified in Section 9–501(a)(2)] shall  
2           distribute to the [filing offices] of the counties of this State an amount equal to the  
3           fees collected by the [Secretary of State or other office identified in Section  
4           9–501(a)(2)] for filing and indexing financing statements communicated to the office  
5           of the [Secretary of State or other office identified in Section 9–501(a)(2)] in writing  
6           under subsection (a) of Section 9–525 of [Revised Article 9] (i) for the period of July  
7           1, 2001, to June 30, 2002, multiplied by 50%, (ii) for the period of July 1, 2002, to June  
8           30, 2003, multiplied by 40%, (iii) for the period of July 1, 2003, to June 30, 2004,  
9           multiplied by 30%, (iv) for the period of July 1, 2004, to June 30, 2005, multiplied by  
10          20%, and (v) for the period of July 1, 2005, to June 30, 2006, multiplied by 10%. The  
11          [Secretary of State or other office identified in Section 9–501(a)(2)] shall make such  
12          distributions on the basis that the [filing office] of each county shall receive a share  
13          of the aggregate amount so distributed equal, as nearly as may be, to the percentage  
14          that the fees collected by the [filing office] of the county under Part 4 of [former  
15          Article 9] for the calendar year 1998 bore to the total of the fees collected by the [filing  
16          offices] of all counties under Part 4 of [former Article 9] for the calendar year 1998.  
17          The percentage allocations among the [filing offices] of the counties shall be based  
18          upon the fee collection information for calendar year 1998 for each county provided  
19          to the [Secretary of State or other office identified in Section 9–501(a)(2)] on or prior  
20          to April 30, 2001, by the association of county [filing officers] of this State. Such  
21          amounts may be distributed by the [Secretary of State or other office identified in  
22          Section 9–501(a)(2)] from time to time as the [Secretary of State or other office  
23          identified in Section 9–501(a)(2)] may so determine, but no less frequently than  
24          annually and commencing no later than September 30, 2002.

1           Such a provision should be drafted as a special, noncodified transitional  
2 provision of the enacting bill rather than as a nonuniform addition to the transition  
3 provisions in Part 7 of Revised Article 9.

4           Limiting the base for local filing office sharing of central filing office revenue  
5 to the fees collected by the central filing office for financing statements  
6 communicated to the central filing office in writing rather than electronically is  
7 particularly appropriate in cases where the local filing offices are not currently  
8 accepting filings electronically, and will be spared the expense of becoming capable  
9 of doing so, but where the central filing office does or plans to accept financing  
10 statements electronically. Since over time the volume of filings communicated to the  
11 central filing office in writing would then be likely to decrease as the volume of  
12 electronic filings increases, the share of the central filing office revenues allocable to  
13 the local filing offices would decrease until an agreed "sunset" date when all sharing  
14 of central filing office filing revenues with local filing offices would cease.

15           Another, but much less preferred, method for dealing with the revenue loss  
16 issue might involve the statewide filing office designating local filing offices (or those  
17 that wish to be so designated) to be branches of the statewide office for the purpose  
18 of receiving filings and forwarding them into the central database presumably  
19 maintained by the central filing office. This method would inevitably increase costs  
20 to users, entail administrative inefficiencies and hinder national uniformity.

21           Moreover, to pursue this method for dealing with the revenue loss issue, several  
22 matters would need to be addressed by the legislature. First, the filing fees generally  
23 would need to be adjusted so that, if a branch office were to charge a filing fee for a  
24 filing that could also, as an alternative, be made in the central filing office, the  
25 revenue retained by the branch office would still be meaningful. Second, the branch

1 office computer system would need to be integrated with the central filing office  
2 computer system so that filings may be received by the branch office and entered into  
3 the central filing office data base promptly and seamlessly. Third, it would be  
4 necessary to consider whether the approach could be accomplished by  
5 administrative rule without a nonuniform amendment to Part 5 of Revised Article  
6 9. In all events negotiating the details of this arrangement would require time,  
7 requires special expertise and might itself delay enactment of Revised Article 9.

8 Given these matters to be addressed, we doubt that this method is practical,  
9 except possibly for the few jurisdictions that already have such a system in place  
10 under former Article 9. We do not recommend the creation of such a system if it does  
11 not already exist in the jurisdiction.

12 Accordingly, we come back to the revenue-sharing method, as set forth above,  
13 for addressing the revenue loss issue. Should that method be insufficient or not  
14 acceptable, it is suggested that the task force co-chairs be contacted for assistance.  
15

16 **SECTION 63.** 411.103 (3) (a) of the statutes is amended to read:

17 411.103 (3) (a) “Account” — s. ~~409.106~~ 409.102 (1) (ag).

18 *History:* 1991 a. 148.

18 **SECTION 64.** 411.103 (3) (d) of the statutes is amended to read:

19 411.103 (3) (d) “Chattel paper” — s. ~~409.105 (1) (b)~~ 409.102 (1) (cm).

20 *History:* 1991 a. 148.

20 **SECTION 65.** 411.103 (3) (e) of the statutes is amended to read:

21 411.103 (3) (e) “Consumer goods” — s. ~~409.109 (1)~~ 409.102 (1) (fm).

22 *History:* 1991 a. 148.

22 **SECTION 66.** 411.103 (3) (f) of the statutes is amended to read:

23 411.103 (3) (f) “Document” — s. ~~409.105 (1) (f)~~ 409.102 (1) (hg).

*History:* 1991 a. 148.

1           **SECTION 67.** 411.103 (3) (h) of the statutes is amended to read:

2           411.103 (3) (h) “General ~~intangibles~~ intangible” — s. 409.106 ~~109.102 (1) (ks)~~.

History: 1991 a. 148.

3           **SECTION 68.** 411.103 (3) (j) of the statutes is amended to read:

4           411.103 (3) (j) “Instrument” — s. 409.105 (1) (i) 409.102 (1) (Lm).

History: 1991 a. 148.

5           **SECTION 69.** 411.103 (3) (L) of the statutes is amended to read:

6           411.103 (3) (L) “Mortgage” — s. 409.105 (1) (j) 409.102 (1) (nm).

History: 1991 a. 148.

7           **SECTION 70.** 411.103 (3) (m) of the statutes is amended to read:

8           411.103 (3) (m) “Pursuant to commitment” — s. 409.105 (1) (k) 409.102 (1) (qs).

History: 1991 a. 148.

9           **SECTION 71.** 411.303 (1) and (2) of the statutes are amended to read:

10           411.303 (1) In this section, “creation of a security interest” includes the sale of  
11           a lease contract that is subject to ch. 409 under s. 409.102 (1) (b) 109.109 (1) (c).

12           (2) Except as provided in ~~subs. sub.~~ (3) and (4) s. 409.407, a provision in a lease  
13           agreement that prohibits the voluntary or involuntary transfer, including a transfer  
14           by sale, sublease, creation or enforcement of a security interest, or attachment, levy,  
15           or other judicial process of an interest of a party under the lease contract or of the  
16           lessor’s residual interest in the goods or that makes such a transfer an event of  
17           default, gives rise to the rights and remedies provided in sub. (5), but a transfer that  
18           is prohibited or is an event of default under the lease agreement is otherwise  
19           effective.

20           **SECTION 72.** 411.303 (3) of the statutes is repealed.

21           **SECTION 73.** 411.303 (5) of the statutes is amended to read:

22           411.303 (5) Subject to ~~subs. sub.~~ (3) and (4) s. 409.407:

History: 1991 a. 148.

1           **SECTION 74.** 411.307 (2) (intro.) and (a) of the statutes are consolidated,  
2           renumbered 411.307 (2) and amended to read:

3           411.307 (2) Except as provided in ~~subs. sub. (3) and (4)~~ and ss. 411.306 and  
4           411.308, a creditor of a lessor takes subject to the lease contract unless ~~any of the~~  
5           ~~following occurs:~~

6           ~~(a) The~~ the creditor holds a lien that attached to the goods before the lease  
7           contract became enforceable.

8           **SECTION 75.** 411.307 (2) (b) and (c) and (4) of the statutes are repealed.

9           ~~History:~~ 1991 a. 148.

10           **SECTION 76.** 411.307 (3) of the statutes is repealed and recreated to read:

11           411.307 (3) Except as otherwise provided in ss. 409.317, 409.321 and 409.323,  
12           a lessee takes a leasehold interest subject to a security interest hold by a crcditor of  
13           the lessor.

14           **SECTION 77.** 411.309 (1) (c) of the statutes is amended to read:

15           411.309 (1) (c) “Fixture filing” means a filing, in the office where a record of a  
16           mortgage on real estate would be filed or recorded, of a financing statement covering  
17           goods that are or are to become fixtures and conforming to the requirements of s.  
18           ~~409.402 (5)~~ 409.502 (1) and (2).

19           ~~History:~~ 1971 c. 239; 1979 c. 89, 177; 1991 a. 148, 304, 315; 1995 a. 329.

20           **SECTION 78.** 421.301 (21) of the statutes is amended to read:

21           421.301 (21) “Goods” has the meaning given in s. 409.102 (1) and includes  
22           goods (s. 409.105) not in existencce at the time the transaction is entered into and  
23           goods which are or are to become fixtures.

24           ~~History:~~ 1971 c. 239; 1973 c. 3; 1975 c. 407; 1979 c. 10, 89; 1983 a. 7; 1991 a. 148, 316; 1993 a. 111, 112; 1995 a. 329; 1997 a. 302.

25           **SECTION 79.** 422.413 (2r) (f) of the statutes is amended to read:

1           422.413 (2r) (f) The satisfaction of indebtedness secured by any subordinate  
2 security interest in the collateral, subject to the restrictions set forth in s. 409.504  
3 (1) (c) [9-610 9-615].

\*\*\*\*NOTE: What cross references should be substituted in this draft?

History: 1971 c. 239; 1973 c. 2; 1979 c. 10; 1983 a. 389; 1985 a. 331; 1993 a. 368; 1995 a. 329; 1997 a. 302.

4           **SECTION 80.** 425.105 (4) of the statutes is amended to read:

5           425.105 (4) With respect to consumer credit transactions in which the creditor  
6 has a security interest in, and possession of, instruments or documents (~~s. 409.105~~)  
7 as defined in s. 409.102 (1) which threaten to decline speedily in value, this section  
8 does not restrict the creditor's rights to dispose of such property pursuant to s.  
9 409.504 [9-610 9-615 9-624 9-617 9-618] and the terms of the creditor's security  
10 agreement.

\*\*\*\*NOTE: What cross references should be substituted in this draft?

History: 1971 c. 239; 1975 c. 407, 421; 1991 a. 316.

11           **SECTION 81.** 425.203 (3) (intro.) of the statutes is amended to read:

12           425.203 (3) (intro.) Following recovery of collateral pursuant to a judgment  
13 under sub. (2), the merchant may either retain the collateral in full satisfaction of  
14 the customer's obligation pursuant to s. 409.505 [9-620 9-621 9-624], in which  
15 event the merchant shall satisfy the judgment obtained pursuant to sub. (2); or shall  
16 dispose of the collateral pursuant to s. 409.504 [9-610 9-615 9-624 9-617 9-618],  
17 in which event:

\*\*\*\*NOTE: What cross references should be substituted in this draft?

History: 1971 c. 239; 1975 c. 407, 421.

18           **SECTION 82.** 425.204 (2) of the statutes is amended to read:

19           425.204 (2) The rights and obligations of the merchant and customer with  
20 respect to collateral voluntarily surrendered as defined in this section shall be



1 governed by ss. 409.504 to 409.507 [9-610 9-615 9-611 9-624 9-617 9-618 9-620  
2 9-621 9-623 9-625 9-627], and are not subject to this subchapter.

\*\*\*NOTE: What cross references should be substituted in this draft?

History: 1971 c. 239; 1991 a. 316.

3 **SECTION 83.** 425.207 (2) of the statutes is amended to read:

4 425.207 (2) A merchant who reasonably believes that a customer has  
5 abandoned collateral or goods subject to a consumer lease may take possession of  
6 such collateral or leased goods and preserve it. However, the customer may recover  
7 such collateral or leased goods upon request unless at the time of request the  
8 customer has surrendered the collateral or leased goods, or judgment for the  
9 merchant has been entered in a proceeding for recovery of collateral or leased goods  
10 under s. 425.205 or in a judgment described in s. 425.203 (2). A merchant taking  
11 possession of collateral or leased goods pursuant to this section shall promptly send  
12 notification to the customer's last-known address of such action and of the  
13 customer's right to recover such collateral or leased goods under this section. If the  
14 collateral or leased goods are recovered by the customer pursuant to this section, it  
15 shall be returned to the customer at the location where the merchant took possession  
16 of such collateral or leased goods pursuant to this section or, at the option of the  
17 merchant, at such other location designated by the customer; and any expense  
18 incurred by the merchant in taking possession of, holding and returning the  
19 collateral or leased goods to the customer shall be borne by the merchant. If after  
20 taking possession of collateral or leased goods pursuant to this subsection, the  
21 merchant perfects the right to possession through a surrender by the customer or a  
22 judgment under s. 425.203 (2) or 425.205, the customer is liable for the expenses set  
23 forth in s. 409.504 (1) [9-610 9-615]. In determining such expenses, leased goods

1 shall be considered collateral under s. 409.504 (1) [9-610 9-615]. However, a  
 2 customer is not liable for expenses of holding the collateral or leased goods from the  
 3 time the merchant takes possession until the merchant perfects the right to  
 4 possession in the manner provided in this subsection.

\*\*\*\*NOTE: What cross references should be substituted in this draft?

History: 1971 c. 239; Sup. Ct. Order, 67 W (2d) 585, 776 (1975); 1975 c. 407, 421, 422; 1979 c. 10; 1981 c. 314 s. 146; 1997 a. 302.

5 **SECTION 84.** 425.208 (6) of the statutes is amended to read:

6 425.208 (6) The creditor shall not dispose of the collateral or enter into a  
 7 contract for the disposition of the collateral, until the expiration of the period for  
 8 redemption provided in this section, unless the collateral is perishable or threatens  
 9 to decline speedily in value. Upon the expiration of such period any disposition of the  
 10 collateral shall be subject to ss. 409.504, 409.505 and 409.506 [9-610 9-615 9-611  
 11 9-624 9-617 9-618 9-620 9-621 9-623], except that the customer may be liable for  
 12 a deficiency only to the extent provided in ss. 425.209 and 425.210.

\*\*\*\*NOTE: What cross references should be substituted in this draft?

History: 1971 c. 239; 1979 c. 10, 89; 1983 a. 389; 1991 a. 316; 1997 a. 302.

13 **SECTION 85.** 779.48 (2) of the statutes is amended to read:

14 779.48 (2) Every person given a lien by ss. 779.41 and 779.43 (3) may in case  
 15 the claim remains unpaid for 2 months after the debt is incurred, and a person given  
 16 a lien under s. 779.47 (2) may if the claim remains unpaid 90 days after the lien is  
 17 perfected, enforce such lien by sale of the property substantially in conformity with  
 18 ss. ~~409.501 to 409.507~~ 409.601 to 409.627 and the lien claimant shall have the rights  
 19 and duties of a secured party thereunder. When such sections are applied to the  
 20 enforcement of such lien the word debtor or equivalent when used therein shall be  
 21 deemed to refer to the owner of the property and any other person having an interest  
 22 shown by instrument filed as required by law or shown in the records of the

1 department of transportation, and the word indebtedness or equivalent shall include  
2 all claims upon which such lien is based.

3 **History:** 1977 c. 29 s. 1654 (7) (b); 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.48; 1983 a. 500 s. 43; 1993 a. 328.

3 **SECTION 86.** 779.91 (2) of the statutes is amended to read:

4 779.91 (2) Upon discharge of a prepaid maintenance lien, any customer who  
5 filed the lien as permitted in s. 779.89 is subject to the requirements of s. 409.404  
6 409.513.

7 **History:** 1977 c. 296; 1979 c. 32 ss. 57, 92 (9); Stats. 1979 s. 779.91.

7 **SECTION 87.** 779.97 (4) (a) 1. of the statutes is amended to read:

8 779.97 (4) (a) 1. With the department of financial institutions, the filing officer  
9 shall cause the notice to be marked, held and indexed in accordance with s. ~~409.403~~  
10 ~~(4) 409.519~~ as if the notice were a financing statement within the meaning of chs. 401  
11 to 411; or

12 **History:** 1977 c. 29, 418; 1979 c. 89, 177, 223, 312, 355; Stats. 1979 s. 779.97; 1991 a. 39, 148, 304, 315; 1993 a. 70, 172, 214; 1995 a. 27, 201, 417.

12 **SECTION 88.** 779.97 (4) (b) 1. of the statutes is amended to read:

13 779.97 (4) (b) 1. If a refiling of a notice of lien is presented to the department  
14 of financial institutions for filing, the filing officer shall cause the refiled notice of  
15 federal lien to be marked, held and indexed in accordance with s. 409.403 [9-516 (a)  
16 9-515 9-522 9-519 9-525] as if the refiling were a continuation statement within  
17 the meaning of chs. 401 to 411, except that the time period in par. (d) shall apply  
18 instead of the time period in s. 409.403 (2) and (3) [9-515 9-522].

\*\*\*NOTE: What cross references should be substituted in this draft?

19 **History:** 1977 c. 29, 418; 1979 c. 89, 177, 223, 312, 355; Stats. 1979 s. 779.97; 1991 a. 39, 148, 304, 315; 1993 a. 70, 172, 214; 1995 a. 27, 201, 417.

19 **SECTION 89.** 779.97 (4) (b) 2. of the statutes is amended to read:

20 779.97 (4) (b) 2. If a certificate of release is presented to the department of  
21 financial institutions for filing, the filing officer shall cause the certificate to be  
22 marked, held and indexed in accordance with s. ~~409.404~~ 409.513 as if the certificate

1 were a termination statement within the meaning of chs. 401 to 411, and the filing  
2 officer may remove the notice of federal lien and any related refile of a notice of lien,  
3 certificate of nonattachment, discharge or subordination from the files at any time  
4 after receipt of the certificate of release, but the department of financial institutions  
5 shall keep the certificate of release or a microfilm or other photographic record or  
6 optical disk or electronic record of the certificate of release in a file, separate from  
7 those containing currently effective notices of liens, for a period of 30 years after the  
8 date of filing of the certificate of release.

**History:** 1977 c. 29, 418; 1979 c. 89, 177, 223, 312, 355; Stats. 1979 s. 779.97; 1991 a. 39, 148, 304, 315; 1993 a. 70, 172, 214; 1995 a. 27, 201, 417.

9 **SECTION 90.** 815.18 (2) (i) of the statutes is amended to read:

10 815.18 (2) (i) “Farm products” has the meaning given under s. ~~409.109 (3)~~  
11 409.102 (1).

**History:** 1971 c. 154, 172; 1971 c. 211 s. 126; 1971 c. 229 s. 14; Sup. Ct. Order, 67 W (2d) 585, 761 (1975); 1975 c. 94 s. 91 (3), (5); 1975 c. 199, 1975 c. 359 s. 51; Stats. 1975 s. 815.18; 1979 c. 110 s. 60 (4); 1979 c. 191, 265, 355; 1985 a. 37; 1989 a. 56, 278, 359; 1991 a. 39, 221; 1993 a. 112, 399, 491; 1995 a. 27, 403; 1997 a. 39.

12 **SECTION 91.** 815.18 (2) (j) of the statutes is amended to read:

13 815.18 (2) (j) “Inventory” has the meaning given under s. ~~409.109 (4)~~ 409.102  
14 (1).

**History:** 1971 c. 154, 172; 1971 c. 211 s. 126; 1971 c. 229 s. 14; Sup. Ct. Order, 67 W (2d) 585, 761 (1975); 1975 c. 94 s. 91 (3), (5); 1975 c. 199; 1975 c. 359 s. 51; Stats. 1975 s. 815.18; 1979 c. 110 s. 60 (4); 1979 c. 191, 265, 355; 1985 a. 37; 1989 a. 56, 278, 359; 1991 a. 39, 221; 1993 a. 112, 399, 491; 1995 a. 27, 403; 1997 a. 39.

15 **SECTION 92.** 893.36 (3) (b) of the statutes is amended to read:

16 893.36 (3) (b) “Collateral” has the meaning provided by s. ~~409.105 (1) (e)~~  
17 409.102 (1).

**History:** 1979 c. 221 ss. 837m, 2204 (33) (b); 1983 a. 189 s. 329 (24).

18 **SECTION 93.** 893.36 (3) (c) of the statutes is amended to read:

19 893.36 (3) (c) “Debtor” has the meaning provided by s. ~~409.105 (1) (d)~~ 409.102  
20 (1).

**History:** 1979 c. 221 ss. 837m, 2204 (33) (b); 1983 a. 189 s. 329 (24).

21 **SECTION 94.** 893.36 (3) (e) of the statutes is amended to read:

