

Misc.  
Drafting  
Materials

99-1446  
↓  
Into  
01-0028

Revised 4/13/00

MEMORANDUM

TO: Peter Dykman

RE: Revised UCC Article 9

Here is the response of our Committee to the inquiries set forth in the draft of the Act emailed to us. The responses are cross-referenced to the page on which, and line number before which, your question appears.

- 1) Page 5; line 4: No
- 2) Page 6; top (before line 1): No
- 3) Page 6; line 8: The reference should be to §409.317(5).
- 4) Page 6; line 13: The reference should remain only to §409.203.
- 5) Page 7; top (before line 1): The reference (on page 6, line 16) should be to §409.317 only.
- 6) Page 7, line 2: The reference should be to §409.322.
- 7) Page 7; line 16: The reference should be to Ch. 409 (and not to §409.103).
- 8) Page 8, line 7: The draft should not modify the term "secured transaction".
- 9) Page 8, line 11: The draft should not modify the term "secured transaction".
- 10) Page 8, line 17: The draft should not modify the term "secured transaction".
- 11) Page 9, line 2: The draft should not modify the term "secured transaction".
- 12) Page 9, line 6: The draft should not modify the term "secured transaction".
- 13) Page 10, line 2: The sentence beginning in line 13 on page 9 [beginning with "If the lien is on . . ."] through the end bracket should read: If the lien is on personal property, notice of the lien shall be filed in the same manner, form and place as required by Ch. 409. The department of financial institutions shall file the notice of the lien in the same file as financing statements are filed pursuant to Ch. 409.

- 14) Page 10, line 10: The draft should not modify the term “secured transaction”.
- 15) Page 11, line 8: The sentence beginning in line 18 on page 10 [beginning with “If the lien is on . . .”] through the end bracket should read: If the lien is on personal property, notice of the lien shall be filed in the same manner, form and place as required by Ch. 409. The department of financial institutions shall file the notice of the lien in the same file as financing statements are filed pursuant to Ch. 409.
- 16) Page 12; line 5: The cross-reference in lines 13 and 14, on page 11, should be to Ch. 409.
- 17) Page 12; line 16: The cross-reference should be to:  
 (a) as to line 7: §409.523  
 (b) as to line 8: §409.525  
 (c) as to line 14: §409.525
- 18) Page 13; line 2: The cross-reference should not be made more specific.
- 19) Page 13; line 13: The cross-reference should be to Ch. 409.
- 20) Page 14; line 8: The cross-references should be:  
 (a) as to line 17 on page 13: Ch. 409.  
 (b) as to line 2 on page 14: Ch. 409.
- 21) Page 14; line 18: The cross-references should be:  
 (a) as to lines 10, 11, 12 and 13, they should read as follows: “A lien under par. (a) upon personal property takes effect when the department of workforce development or employee files notice of the lien in the same manner, form and place as required by, and pays the fee specified in, Ch. 409, and serves a copy of the notice . . .  
 (b) as to line 17: under Ch. 409.
- 22) Page 15; top of page: The cross-reference need not be made more specific.
- 23) Page 15, line 4: The cross-reference need not be made more specific.
- 24) Page 15; line 13: This draft should not modify the term “secured transaction”.
- 25) Page 15; line 16: The cross-reference to Ch. 409 need not be more specific.
- 26) Page 15; line 18: The cross-reference to Ch. 409 need not be more specific.
- 27) Page 16; line 7: The cross-reference to Ch. 409 need not be more specific.

- 28) Page 17; line 9: The cross-reference to Ch. 409 need not be more specific.
- 29) Page 17; line 16: The cross-reference to Ch. 409 need not be more specific.
- 30) Page 18; line 8: The reference should be to §409.203.
- 31) Page 18; line 19: The cross-references should be:  
 (a) as to line 13, page 18: Ch. 409  
 (b) as to line 18, page 18: Ch. 409  
 Current §409.312(2) should not be included. Whether Appendix II is included is a policy choice, although the policy of uniformity would indicate exclusion, as it was not included in the uniform act. It is our understanding that the states that have adopted Revised Article 9 have not included Appendix II.
- 32) Page 19; line 11: The cross references should be to Ch. 409.
- 33) Page 20; top of page and line 4: The cross reference should be to §§409.301 – 409.307 (based on NCCUSL’s proposed conforming amendment to §1-105).
- 34) Page 22; line 6: The cross reference to §409.203 remains accurate.
- 35) Page 49; line 4: Under the Revised Article 9, Section 9-103(d), the consignor’s interest is equivalent to that of a purchase-money security interest and the requirements for giving notice are treated consistently with those of a purchase-money secured party (see §409-324). No changes to model provisions are recommended.
- 36) Page 51; line 10: See the comment to §409.502(2) (#60, referring to page 128; line 9).
- 37) Page 56; line 6: Sub 2 should read: “A transaction subject to this chapter is subject to any applicable rule of law which establishes a different rule for consumers and Chs. 138, 421 to 427, 429, and §182.025”.  
 We are not aware of any other statutes that should be cross-referenced.
- 38) Page 58; top of page: The use of the word “signed” in lines 21 and 22 should be changed to “authenticated” to be consistent with new Article 9 terminology. This section, 2m, is more appropriate after section 4 and should be labeled (4m).
- 39) Page 75, line 3: We are not aware of any Wisconsin statutes conflicting with §409.308(5).

- 40) Page 75; line 8: We think new §409.309(1) is consistent with old §409.302(d) and that the fixture provisions of new §409.334 adequately set forth the requirements for priority for fixtures. Therefore, the last clause of current 409.302(1)(d) need not be included.
- 41) Page 76; line 4: We think new §409.309(10) is consistent with old §409.302(1)(h) and need not be further modified. Generally, Revised Article 9 should be uniformly adopted. Non-uniform changes should be avoided.
- 42) Page 76; line 12 The careful plan for when filing is required should be uniformly adopted. The master lease provisions no longer seem necessary, but this may be a policy choice.
- 43) Page 78; line 2: We think the language of new §409.311 is sufficient and preferable in the interests of uniformity.
- 44) Page 78; line 10: The list [342.19, 342.20, 342.284 and 342.285] should be included. The additional language of current §409.302(3)(b) [beginning “but during any period . . .”] need not be retained because that idea is covered in new §409.311(4).
- 45) Page 78; line 11: The list [30.57, 30.572 and 30.573] should be included. We believe the additional language of current §409.302(3) (bm) [beginning “but during any period . . .”] need not be retained because that idea is covered in new §409.311(4).
- 46) Page 78; line 16: We concur with your draft §409.311(d).
- 47) Page 85; line 13 and Page 86; line 2 and line 9: Old §409-306(3m) does not need to be maintained as it is covered by new §409.315(4) and (5). The uniformity of those new provisions should be maintained.
- 48) Page 89; line 16: See comment to pages 85 and 86 above (Comment #47).
- 49) Page 91; line 16: We think the uniform language of new §409.320(2) is preferable, and the continuation of the old language is confusing. Revised Article 9 should be uniformly adopted. Non-uniform changes should be avoided.
- 50) Page 97; line 19: We recommend maintaining the “within 5 years” in new 409.324(2)(c) to maintain uniformity. This is consistent with the requirement of continuing the financing statement every five years.
- 51) Page 99; line 21: See Comment #50.

- 52) Page 107; line 2: The “or is in possession of the real estate” language should stay in the new code (§409.334(4)), to maintain uniformity. As to mobile homes, the clarification of old §409.313(9) is found in new §409.334(5)(d), so nccd not be retained here.
- 53) Page 107; line 12: See Comment #52.
- 54) Page 109; line 8: Current §409.312(2) should not be included as it is not included in the uniform act. Whether Appendix II should be included is a policy choice. The policy of uniformity suggests that Appendix II not be included. We understand that the other states that have adopted Revised Article 9 have not included Appendix II.
- 55) Page 109; line11: We are not aware of any statutes inconsistent with proposed §409.334(9). We believe therefore that §409.334(10) can be omitted.
- 56) Page 112; line 11: Continuation of old §409.315(9) is unnecessary. The carve out for manufactured homes is already clear in Revised Article 9; see §409.334(5)(d).
- 57) Page 120; line 9 We are not aware of any provisions inconsistent with new §409.406 (other than the prohibition on the assignment of lottery winnings in section 565.30(6)); there is apparently no state “assignment of claims” act to be concerned with. Moreover, new §409.406 is critical to an overall objective of new Article 9, to broaden its scope of coverage. Therefore, we recommend that new §409.406(10) provide: “This section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section, and states that the provision prevails over this section.” This is the language suggested by the enactment guide. The assignability of lottery winnings is a policy issue, although revised section 409.102 (ag) clearly contemplates that they will be assignable. The language proposed above would require the legislature to address this issue specifically in light of revised article 9, which seems to be the right result.

- 58) Page 124; line 22 We are not aware of any provisions inconsistent with new §409.408; there is apparently no state “assignment of claims” act to be concerned with. Moreover, new §409.408 is critical to an overall objective of new Article 9, to broaden its scope of coverage. Therefore, we recommend that new §409.408(5) provide: “This section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section, and states that the provision prevails over this section.” This is the language suggested by the enactment guide.
- 59) Page 127; lines 12-14 We recommend that the bracketed language be included.
- 60) Page 128; line 9: The current non-uniform modifications should not be continued.
- With respect to the note regarding crops, see comments to Page 109; line 8. Note that under new Article 9, crop filings will be with DFI.
- 61) Page 129; line 20: No. The old non-uniform provisions need not be maintained.
- 62) Page 136; line 11 As to §409.512(a), 409.518(b), 409.519(f) and 409.522(a), the filing office (DFI) should be consulted. Unless more information is required by the filing office, Alternative A is preferable. We see no reason for the requirement (if Alternative B is adopted) that the “[and time]” bracketed material should be included.
- 63) Page 137; line 6: No changes are needed in this provision of Revised Article 9. Register of Deeds and legal description issues are addressed under the comment to Page 128; line 9. Fees are addressed in a separate section (§409.525).
- 64) Page 139; line 2: Non-uniform changes should be avoided. New §409.513 sets forth the obligation to file termination statements under new Article 9.
- 65) Page 146; line 16: See Comment #62.
- 66) Page 146; line 19: See Comment #62.
- 67) Page 149; line 7: See Comment #62.
- 68) Page 149; line 17: We believe subsection 409.519(9) need not be included.
- 69) Page 152; line 3: We believe the bracketed language should be excluded.

- 70) Page 152; line 7: Current 409.402(3)(m) should not be included. A key to the uniform act is a national standard financing statement. What the filing office is entitled to refuse is now set forth in §409.516(2) as stated in §409.520(1).
- 71) Page 159; line 18: See Comment #62.
- 72) Page 160; line 20: We agree with the inclusion of the bracketed language. The filing office should be consulted, however.
- 73) Page 161; line 7: We agree with the inclusion of the second bracketed material.
- 74) Page 161; line 15: We believe “filing office” is the appropriate reference in line 12. References to fees are addressed in a separate section (§409.525). All other non-uniform changes should be avoided.
- 75) Page 162; line 10: The filing office (DFI) should be consulted. The bracketed material in line 10 on page 162 should be included if there is an additional fee for financing statements with more than one name (if Alternative B is adopted).
- 76) Page 163; line 9: Consult filing office.
- 77) Page 163; line 21: Consult filing office.
- 78) Page 164; line 11: Consult filing office.
- 79) Page 166; line 14: Old §409.409 is not needed. Its content is covered by new §409.522(2). Old 409.410 is a policy choice, but may need to be updated if included.
- 80) Page 176; line 13: Revised Article 9 should be uniformly adopted. Non-uniform changes should be avoided.
- 81) Page 177; line 16: Revised Article 9 should be uniformly adopted. Non-uniform changes should be avoided.
- 82) Page 188; line 16: All subordinate liens should be discharged; no bracketed language should be included.
- 83) Page 192; line 13: Revised Article 9 should be uniformly adopted. Non-uniform changes should be avoided.
- 84) Page 194; line 7: Revised Article 9 should be uniformly adopted. Non-uniform changes should be avoided.
- 85) Page 195; line 22: Revised Article 9 should be uniformly adopted. Non-uniform changes should be avoided.
- 86) Page 197; line 12: Revised Article 9 should be uniformly adopted. Non-uniform changes should be avoided.



