

- 1 "Certificated security". Section 8-102.
- 2 "Check". Section 3-104.
- 3 "Clearing corporation". Section 8-102.
- 4 "Contract for sale". Section 2-106.
- 5 "Control" (with respect to a document of title) Section 7-106.
- 6 "Customer". Section 4-104.
- 7 "Entitlement holder". Section 8-102.
- 8 "Financial asset". Section 8-102.
- 9 "Holder in due course". Section 3-302.
- 10 "Issuer" (with respect to a letter of credit or letter-of-credit right). Section 5-102.
- 11 "Issuer" (with respect to a security). Section 8-201.
- 12 "Lease". Section 2A-103.
- 13 "Lease agreement". Section 2A-103.
- 14 "Lease contract". Section 2A-103.
- 15 "Leasehold interest". Section 2A-103.
- 16 "Lessee". Section 2A-103.
- 17 "Lessee in ordinary course of business". Section 2A-103.
- 18 "Lessor". Section 2A-103.
- 19 "Lessor's residual interest". Section 2A-103.
- 20 "Letter of credit". Section 5-102.
- 21 "Merchant". Section 2-104.
- 22 "Negotiable instrument". Section 3-104.

- 1 "Nominated person". Section 5-102.
2 "Note". Section 3-104.
3 "Proceeds of a letter of credit". Section 5-114.
4 "Prove". Section 3-103.
5 "Sale". Section 2-106.
6 "Securities account". Section 8-501.
7 "Securities intermediary". Section 8-102.
8 "Security". Section 8-102.
9 "Security certificate". Section 8-102.
10 "Security entitlement". Section 8-102.
11 "Uncertificated security". Section 8-102.

12 **OFFICIAL COMMENT**

13 * * * *

14 16. "**Document.**" The definition of "document" ~~is unchanged in substance from the corresponding definitions in~~
15 ~~former Section 9-105; incorporates both tangible and electronic documents of title.~~ See Section 1-201(15)[16] and
16 Comment 15 [16].

17
18 **SECTION 9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST;**
19 **PROCEEDS; SUPPORTING OBLIGATIONS; FORMAL REQUISITES.**

20 * * * *

21 (b) [**Enforceability.**] Except as otherwise provided in subsections (c) through (i), a security
22 interest is enforceable against the debtor and third parties with respect to the collateral only if :

23 (1) value has been given;

24 (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to

1 a secured party; and

2 (3) one of the following conditions is met:

3 (A) the debtor has authenticated a security agreement that provides a description of the
4 collateral and, if the security interest covers timber to be cut, a description of the land concerned;

5 (B) the collateral is not a certificated security and is in the possession of the secured party
6 under Section 9-313 pursuant to the debtor's security agreement;

7 (C) the collateral is a certificated security in registered form and the security certificate
8 has been delivered to the secured party under Section 8-301 pursuant to the debtor's security
9 agreement; or

10 (D) the collateral is deposit accounts, electronic chattel paper, investment property, ~~or~~
11 letter-of-credit rights, or electronic documents, and the secured party has control under Section 9-
12 104, 9-105, 9-106, ~~or~~ 9-107, or 7-106 pursuant to the debtor's security agreement.

13 * * * *

14 OFFICIAL COMMENT

15 * * * *

16 **4. Possession, Delivery, or Control Pursuant to Security Agreement.** The other alternatives in subsection (b)(3)
17 dispense with the requirement of an authenticated security agreement and provide alternative evidentiary tests. Under
18 paragraph (3)(B), the secured party's possession substitutes for the debtor's authentication under paragraph (3)(A) if the
19 secured party's possession is "pursuant to the debtor's security agreement." That phrase refers to the debtor's agreement
20 to the secured party's possession for the purpose of creating a security interest. The phrase should not be confused with
21 the phrase "debtor has authenticated a security agreement," used in paragraph (3)(A), which contemplates the debtor's
22 authentication of a record. In the unlikely event that possession is obtained without the debtor's agreement, possession
23 would not suffice as a substitute for an authenticated security agreement. However, once the security interest has become
24 enforceable and has attached, it is not impaired by the fact that the secured party's possession is maintained without the
25 agreement of a subsequent debtor (e.g., a transferee). Possession as contemplated by Section 9-313 is possession for
26 purposes of subsection (b)(3)(B), even though it may not constitute possession "pursuant to the debtor's agreement" and
27 consequently might not serve as a substitute for an authenticated security agreement under subsection (b)(3)(A).
28 Subsection (b)(3)(C) provides that delivery of a certificated security to the secured party under Section 8-301 pursuant
29 to the debtor's security agreement is sufficient as a substitute for an authenticated security agreement. Similarly, under
30 subsection (b)(3)(D), control of investment property, a deposit account, electronic chattel paper, ~~or~~ a letter-of-credit right,
31 or electronic documents satisfies the evidentiary test if control is pursuant to the debtor's security agreement.

32 * * * *

1 **SECTION 9-207. RIGHTS AND DUTIES OF SECURED PARTY HAVING POSSESSION**
2 **OR CONTROL OF COLLATERAL.**

3 * * * *

4 (c) **[Duties and rights when secured party in possession or control.]** Except as otherwise
5 provided in subsection (d), a secured party having possession of collateral or control of collateral
6 under Section 9-104, 9-105, 9-106, or 9- 107, or 7-106:

7 (1) may hold as additional security any proceeds, except money or funds, received from the
8 collateral;

9 (2) shall apply money or funds received from the collateral to reduce the secured obligation,
10 unless remitted to the debtor; and

11 (3) may create a security interest in the collateral.

12 * * * *

13 **SECTION 9-208. ADDITIONAL DUTIES OF SECURED PARTY HAVING CONTROL OF**
14 **COLLATERAL.**

15 (a) **[Applicability of section.]** This section applies to cases in which there is no outstanding
16 secured obligation and the secured party is not committed to make advances, incur obligations, or
17 otherwise give value.

18 (b) **[Duties of secured party after receiving demand from debtor.]** Within 10 days after
19 receiving an authenticated demand by the debtor:

20 (1) a secured party having control of a deposit account under Section 9- 104(a)(2) shall send
21 to the bank with which the deposit account is maintained an authenticated statement that releases
22 the bank from any further obligation to comply with instructions originated by the secured party;

1 (2) a secured party having control of a deposit account under Section 9- 104(a)(3) shall:

2 (A) pay the debtor the balance on deposit in the deposit account; or

3 (B) transfer the balance on deposit into a deposit account in the debtor's name;

4 (3) a secured party, other than a buyer, having control of electronic chattel paper under
5 Section 9-105 shall:

6 (A) communicate the authoritative copy of the electronic chattel paper to the debtor or
7 its designated custodian;

8 (B) if the debtor designates a custodian that is the designated custodian with which the
9 authoritative copy of the electronic chattel paper is maintained for the secured party, communicate
10 to the custodian an authenticated record releasing the designated custodian from any further
11 obligation to comply with instructions originated by the secured party and instructing the custodian
12 to comply with instructions originated by the debtor; and

13 (C) take appropriate action to enable the debtor or its designated custodian to make
14 copies of or revisions to the authoritative copy which add or change an identified assignee of the
15 authoritative copy without the consent of the secured party;

16 (4) a secured party having control of investment property under Section 8- 106(d)(2) or 9-
17 106(b) shall send to the securities intermediary or commodity intermediary with which the security
18 entitlement or commodity contract is maintained an authenticated record that releases the securities
19 intermediary or commodity intermediary from any further obligation to comply with entitlement
20 orders or directions originated by the secured party; ~~and~~

21 (5) a secured party having control of a letter-of-credit right under Section 9-107 shall send
22 to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to

1 the secured party an authenticated release from any further obligation to pay or deliver proceeds of
2 the letter of credit to the secured party; and

3 (6) a secured party having control of an electronic document shall:

4 (A) give control of the electronic document to the debtor or its designated custodian;

5 (B) if the debtor designates a custodian that is the designated custodian with which the
6 authoritative copy of the electronic document is maintained for the secured party, communicate to
7 the custodian an authenticated record releasing the designated custodian from any further obligation
8 to comply with instructions originated by the secured party and instructing the custodian to comply
9 with instructions originated by the debtor; and

10 (C) take appropriate action to enable the debtor or its designated custodian to make
11 copies of or revisions to the authoritative copy which add or change an identified assignee of the
12 authoritative copy without the consent of the secured party.

13 **OFFICIAL COMMENT**

14 * * * *

15 2. **Scope and Purpose.** This section imposes duties on a secured party who has control of a deposit account,
16 electronic chattel paper, investment property, or a letter-of-credit right, or electronic documents of title. The duty to
17 terminate the secured party's control is analogous to the duty to file a termination statement, imposed by Section 9- 513.
18 Under subsection (a), it applies only when there is no outstanding secured obligation and the secured party is not
19 committed to give value. The requirements of this section can be varied by agreement under Section 1-102(3). For
20 example, a debtor could by contract agree that the secured party may comply with subsection (b) by releasing control
21 more than 10 days after demand. Also, duties under this section should not be read to conflict with the terms of the
22 collateral itself. For example, if the collateral is a time deposit account, subsection (b)(2) should not require a secured
23 party with control to make an early withdrawal of the funds (assuming that were possible) in order to pay them over to
24 the debtor or put them in an account in the debtor's name.

25 * * * *

26 **SECTION 9-301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY**
27 **INTERESTS.**

28 Except as otherwise provided in Sections 9-303 through 9-306, the following rules determine
29 the law governing perfection, the effect of perfection or nonperfection, and the priority of a security

1 interest in collateral:

2 (1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the
3 local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the
4 priority of a security interest in collateral.

5 (2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs
6 perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest
7 in that collateral.

8 (3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods,
9 instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that
10 jurisdiction governs:

11 (A) perfection of a security interest in the goods by filing a fixture filing;

12 (B) perfection of a security interest in timber to be cut; and

13 (C) the effect of perfection or nonperfection and the priority of a nonpossessory security
14 interest in the collateral.

15 (4) The local law of the jurisdiction in which the wellhead or minehead is located governs
16 perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-
17 extracted collateral.

18 **OFFICIAL COMMENT**

19 * * * *

20 **5. Law Governing Perfection: Exceptions.** The general rule is subject to several exceptions. It does not apply to
21 goods covered by a certificate of title (see Section 9-303), deposit accounts (see Section 9-304), investment property (see
22 Section 9-305), or letter-of-credit rights (see Section 9-306). Nor does it apply to possessory security interests, i.e.,
23 security interests that the secured party has perfected by taking possession of the collateral (see paragraph (2)), security
24 interests perfected by filing a fixture filing (see subparagraph (3)(A)), security interests in timber to be cut (subparagraph
25 (3)(B)), or security interests in as-extracted collateral (see paragraph (4)).

26 a. **Possessory Security Interests.** Paragraph (2) applies to possessory security interests and provides that perfection
27 is governed by the local law of the jurisdiction in which the collateral is located. This is the rule of former Section 9-
28 103(1)(b), except paragraph (2) eliminates the troublesome "last event" test of former law.

1 The distinction between nonpossessory and possessory security interests creates the potential for the same
2 jurisdiction to apply two different choice- of-law rules to determine perfection in the same collateral. For example, were
3 a secured party in possession of an instrument or a tangible document to relinquish possession in reliance on temporary
4 perfection, the applicable law immediately would change from that of the location of the collateral to that of the location
5 of the debtor. The applicability of two different choice-of-law rules for perfection is unlikely to lead to any material
6 practical problems. The perfection rules of one Article 9 jurisdiction are likely to be identical to those of another.
7 Moreover, under paragraph (3), the relative priority of competing security interests in tangible collateral is resolved by
8 reference to the law of the jurisdiction in which the collateral is located, regardless of how the security interests are
9 perfected.

10 * * * *

11 **7. Law Governing Effect of Perfection and Priority: Goods, Documents, Instruments, Money, Negotiable**
12 **Documents, and Tangible Chattel Paper.** Under former Section 9-103, the law of a single jurisdiction governed both
13 questions of perfection and those of priority. This Article generally adopts that approach. See paragraph (1). But the
14 approach may create problems if the debtor and collateral are located in different jurisdictions. For example, assume a
15 security interest in equipment located in Pennsylvania is perfected by filing in Illinois, where the debtor is located. If
16 the law of the jurisdiction in which the debtor is located were to govern priority, then the priority of an execution lien
17 on goods located in Pennsylvania would be governed by rules enacted by the Illinois legislature.

18 To address this problem, paragraph (3)(C) divorces questions of perfection from questions of "the effect of
19 perfection or nonperfection and the priority of a security interest." Under paragraph (3)(C), the rights of competing
20 claimants to tangible collateral are resolved by reference to the law of the jurisdiction in which the collateral is located.
21 A similar bifurcation applied to security interests in investment property under former Section 9-103(6). See Section 9-
22 305.

23 Paragraph (3)(C) applies the law of the situs to determine priority only with respect to goods (including fixtures),
24 instruments, money, tangible negotiable documents, and tangible chattel paper. Compare former Section 9-103(1), which
25 applied the law of the location of the collateral to documents, instruments, and "ordinary" (as opposed to "mobile")
26 goods. This Article does not distinguish among types of goods. The ordinary/mobile goods distinction appears to address
27 concerns about where to file and search, rather than concerns about priority. There is no reason to preserve this
28 distinction under the bifurcated approach.

29 Particularly serious confusion may arise when the choice-of-law rules of a given jurisdiction result in each of two
30 competing security interests in the same collateral being governed by a different priority rule. The potential for this
31 confusion existed under former Section 9-103(4) with respect to chattel paper: Perfection by possession was governed
32 by the law of the location of the paper, whereas perfection by filing was governed by the law of the location of the
33 debtor. Consider the mess that would have been created if the language or interpretation of former Section 9-308 were
34 to differ in the two relevant States, or if one of the relevant jurisdictions (e.g., a foreign country) had not adopted Article
35 9. The potential for confusion could have been exacerbated when a secured party perfected both by taking possession
36 in the State where the collateral is located (State A) and by filing in the State where the debtor is located (State B)--a
37 common practice for some chattel paper financiers. By providing that the law of the jurisdiction in which the collateral
38 is located governs priority, paragraph (3) substantially diminishes this problem.

39 * * * *

40 **SECTION 9-308. WHEN SECURITY INTEREST OR AGRICULTURAL LIEN IS**
41 **PERFECTED; CONTINUITY OF PERFECTION.**

42 **OFFICIAL COMMENT**

43 * * * *

44 **4. Continuous Perfection.** The following example illustrates the operation of subsection (c):

45 **Example 1:** Debtor, an importer, creates a security interest in goods that it imports and the documents of title that
46 cover the goods. The secured party, Bank, takes possession of a tangible negotiable bill of lading covering certain
47 imported goods and thereby perfects its security interest in the bill of lading and the goods. See Sections 9-313(a), 9-

1 312(c)(1). Bank releases the bill of lading to the debtor for the purpose of procuring the goods from the carrier and
2 selling them. Under Section 9-312(f), Bank continues to have a perfected security interest in the document and goods
3 for 20 days. Bank files a financing statement covering the collateral before the expiration of the 20-day period. Its
4 security interest now continues perfected for as long as the filing is good.

5 If the successive stages of Bank's security interest succeed each other without an intervening gap, the security
6 interest is "perfected continuously," and the date of perfection is when the security interest first became perfected (i.e.,
7 when Bank received possession of the tangible bill of lading). If, however, there is a gap between stages--for example,
8 if Bank does not file until after the expiration of the 20-day period specified in Section 9-312(f) and leaves the collateral
9 in the debtor's possession--then, the chain being broken, the perfection is no longer continuous. The date of perfection
10 would now be the date of filing (after expiration of the 20-day period). Bank's security interest would be vulnerable to
11 any interests arising during the gap period which under Section 9-317 take priority over an unperfected security interest.
12

* * * *

13 **SECTION 9-310. WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR**
14 **AGRICULTURAL LIEN; SECURITY INTERESTS AND AGRICULTURAL LIENS TO**
15 **WHICH FILING PROVISIONS DO NOT APPLY.**

16 * * * *

17 (b) [Exceptions: filing not necessary.] The filing of a financing statement is not necessary to
18 perfect a security interest:

19 (1) that is perfected under Section 9-308(d), (e), (f), or (g);

20 (2) that is perfected under Section 9-309 when it attaches;

21 (3) in property subject to a statute, regulation, or treaty described in Section 9-311(a);

22 (4) in goods in possession of a bailee which is perfected under Section 9-312(d)(1) or (2);

23 (5) in certificated securities, documents, goods, or instruments which is perfected without
24 filing, control, or possession under Section 9-312(e), (f), or (g);

25 (6) in collateral in the secured party's possession under Section 9-313;

26 (7) in a certificated security which is perfected by delivery of the security certificate to the
27 secured party under Section 9-313;

28 (8) in deposit accounts, electronic chattel paper, electronic documents, investment property,
29 or letter-of-credit rights which is perfected by control under Section 9-314;

1 (9) in proceeds which is perfected under Section 9-315; or

2 (10) that is perfected under Section 9-316.

3 * * * *

4 **SECTION 9-312. PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER,**
5 **DEPOSIT ACCOUNTS, DOCUMENTS, GOODS COVERED BY DOCUMENTS,**
6 **INSTRUMENTS, INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS, AND**
7 **MONEY; PERFECTION BY PERMISSIVE FILING; TEMPORARY PERFECTION**
8 **WITHOUT FILING OR TRANSFER OF POSSESSION.**

9 * * * *

10 (e) [Temporary perfection: new value.] A security interest in certificated securities, negotiable
11 documents, or instruments is perfected without filing or the taking of possession or control for a
12 period of 20 days from the time it attaches to the extent that it arises for new value given under an
13 authenticated security agreement.

14 * * * *

15 **OFFICIAL COMMENTS**

16 * * * *

17 3. **Chattel Paper; Negotiable Documents.** Subsection (a) further provides that filing is available as a method of
18 perfection for security interests in chattel paper and negotiable documents. Tangible chattel paper is sometimes delivered
19 to the assignee, and sometimes left in the hands of the assignor for collection. Subsection (a) allows the assignee to
20 perfect its security interest by filing in the latter case. Alternatively, the assignee may perfect by taking possession. See
21 Section 9-313(a). An assignee of electronic chattel paper may perfect by taking control. See Sections 9-314(a), 9-105.
22 The security interest of an assignee who takes possession or control may qualify for priority over a competing security
23 interest perfected by filing. See Section 9-330.

24 Negotiable documents may be, and usually are, delivered to the secured party. See Article 1, Section 1-201
25 (definition of "delivery"). The secured party's taking possession of a tangible document or control of an electronic
26 document will suffice as a perfection step. See Sections 9-313(a), 9-314 and 7-106. However, as is the case with chattel
27 paper, a security interest in a negotiable document may be perfected by filing.

28 * * * *

29 7. **Goods Covered by Document of Title.** Subsection (c) applies to goods in the possession of a bailee who has
30 issued a negotiable document covering the goods. Subsection (d) applies to goods in the possession of a bailee who has
31 issued a nonnegotiable document of title, including a document of title that is "non- negotiable" under Section 7-104.
32 Section 9-313 governs perfection of a security interest in goods in the possession of a bailee who has not issued a

1 document of title.

2 Subsection (c) clarifies the perfection and priority rules in former Section 9-304(2). Consistently with the provisions
3 of Article 7, subsection (c) takes the position that, as long as a negotiable document covering goods is outstanding, title
4 to the goods is, so to say, locked up in the document. Accordingly, a security interest in goods covered by a negotiable
5 document may be perfected by perfecting a security interest in the document. The security interest also may be perfected
6 by another method, e.g., by filing. The priority rule in subsection (c) governs only priority between (i) a security interest
7 in goods which is perfected by perfecting in the document and (ii) a security interest in the goods which becomes
8 perfected by another method while the goods are covered by the document.

9 **Example 1:** While wheat is in a grain elevator and covered by a negotiable warehouse receipt, Debtor creates a
10 security interest in the wheat in favor of SP-1 and SP-2. SP-1 perfects by filing a financing statement covering "wheat."
11 Thereafter, SP-2 perfects by filing a financing statement describing the warehouse receipt. Subsection (c)(1) provides
12 that SP-2's security interest is perfected. Subsection (c)(2) provides that SP-2's security interest is senior to SP-1's.

13 **Example 2:** The facts are as in Example 1, but SP-1's security interest attached and was perfected before the goods
14 were delivered to the grain elevator. Subsection (c)(2) does not apply, because SP-1's security interest did not become
15 perfected during the time that the wheat was in the possession of a bailee. Rather, the first-to-file-or-perfect priority rule
16 applies. See Sections 9-322 and 7-503.

17 A secured party may become "a holder to whom a negotiable document of title has been duly negotiated" under
18 Section 7-501. If so, the secured party acquires the rights specified by Article 7. Article 9 does not limit those rights,
19 which may include the right to priority over an earlier-perfected security interest. See Section 9-331(a).

20 Subsection (d) takes a different approach to the problem of goods covered by a nonnegotiable document. Here, title
21 to the goods is not looked on as being locked up in the document, and the secured party may perfect its security interest
22 directly in the goods by filing as to them. The subsection provides two other methods of perfection: issuance of the
23 document in the secured party's name (as consignee of a straight bill of lading or the person to whom delivery would be
24 made under a non-negotiable warehouse receipt) and receipt of notification of the secured party's interest by the bailee.
25 Perfection under subsection (d) occurs when the bailee receives notification of the secured party's interest in the goods,
26 regardless of who sends the notification. Receipt of notification is effective to perfect, regardless of whether the bailee
27 responds. Unlike former Section 9-304(3), from which it derives, subsection (d) does not apply to goods in the possession
28 of a bailee who has not issued a document of title. Section 9-313(c) covers that case and provides that perfection by
29 possession as to goods not covered by a document requires the bailee's acknowledgment.

30 **8. Temporary Perfection Without Having First Otherwise Perfected.** Subsection (e) follows former Section
31 9-304(4) in giving perfected status to security interests in certificated securities, instruments, and negotiable documents
32 for a short period (reduced from 21 to 20 days, which is the time period generally applicable in this Article), although
33 there has been no filing and the collateral is in the debtor's possession or control. The 20-day temporary perfection runs
34 from the date of attachment. There is no limitation on the purpose for which the debtor is in possession, but the secured
35 party must have given "new value" (defined in Section 9-102) under an authenticated security agreement.

36 **9. Maintaining Perfection After Surrendering Possession.** There are a variety of legitimate reasons--many of them
37 are described in subsections (f) and (g)--why certain types of collateral must be released temporarily to a debtor. No
38 useful purpose would be served by cluttering the files with records of such exceedingly short term transactions.

39 Subsection (f) affords the possibility of 20-day perfection in negotiable documents and goods in the possession of
40 a bailee but not covered by a negotiable document. Subsection (g) provides for 20-day perfection in certificated securities
41 and instruments. These subsections derive from former Section 9-305(5). However, the period of temporary perfection
42 has been reduced from 21 to 20 days, which is the time period generally applicable in this Article, and "enforcement"
43 has been added in subsection (g) as one of the special and limited purposes for which a secured party can release an
44 instrument or certificated security to the debtor and still remain perfected. The period of temporary perfection runs from
45 the date a secured party who already has a perfected security interest turns over the collateral to the debtor. There is no
46 new value requirement, but the turnover must be for one or more of the purposes stated in subsection (f) or (g). The 20-
47 day period may be extended by perfecting as to the collateral by another method before the period expires. However,
48 if the security interest is not perfected by another method until after the 20-day period expires, there will be a gap during
49 which the security interest is unperfected.

50 Temporary perfection extends only to the negotiable document or goods under subsection (f) and only to the
51 certificated security or instrument under subsection (g). It does not extend to proceeds. If the collateral is sold, the
52 security interest will continue in the proceeds for the period specified in Section 9-315.

53 Subsections (f) and (g) deal only with perfection. Other sections of this Article govern the priority of a security

1 interest in goods after surrender of possession or control of the document covering them. In the case of a purchase-money
2 security interest in inventory, priority may be conditioned upon giving notification to a prior inventory financier. See
3 Section 9-324.

4
5 **SECTION 9-313. WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY**
6 **PERFECTS SECURITY INTEREST WITHOUT FILING.**

7 (a) [**Perfection by possession or delivery.**] Except as otherwise provided in subsection (b), a
8 secured party may perfect a security interest in tangible negotiable documents, goods, instruments,
9 money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect
10 a security interest in certificated securities by taking delivery of the certificated securities under
11 Section 8-301.

12 * * * *

13 **OFFICIAL COMMENT**

14 * * * *

15 2. **Perfection by Possession.** As under the common law of pledge, no filing is required by this Article to perfect
16 a security interest if the secured party takes possession of the collateral. See Section 9-310(b)(6).

17 This section permits a security interest to be perfected by the taking of possession only when the collateral is goods,
18 instruments, tangible negotiable documents, money, or tangible chattel paper. Accounts, commercial tort claims, deposit
19 accounts, investment property, letter-of-credit rights, letters of credit, and oil, gas, or other minerals before extraction
20 are excluded. (But see Comment 6, below, regarding certificated securities.) A security interest in accounts and payment
21 intangibles--property not ordinarily represented by any writing whose delivery operates to transfer the right to payment--
22 may under this Article be perfected only by filing. This rule would not be affected by the fact that a security agreement
23 or other record described the assignment of such collateral as a "pledge." Section 9-309(2) exempts from filing certain
24 assignments of accounts or payment intangibles which are out of the ordinary course of financing. These exempted
25 assignments are perfected when they attach. Similarly, under Section 9-309(3), sales of payment intangibles are
26 automatically perfected.

27
28 **SECTION 9-314. PERFECTION BY CONTROL.**

29 (a) [**Perfection by control.**] A security interest in investment property, deposit accounts, letter-
30 of-credit rights, ~~or~~ electronic chattel paper, or electronic documents may be perfected by control of
31 the collateral under Section 9-104, 9-105, 9-106, ~~or~~ 9- 107, or 7-106.

1 (b) [Specified collateral: time of perfection by control; continuation of perfection.] A
2 security interest in deposit accounts, electronic chattel paper, ~~or~~ letter-of-credit rights, or electronic
3 documents is perfected by control under Section 9-104, 9-105, ~~or~~ 9-107, or 7-106 when the secured
4 party obtains control and remains perfected by control only while the secured party retains control.

5 (c) [Investment property: time of perfection by control; continuation of perfection.] A
6 security interest in investment property is perfected by control under Section 9-106 from the time
7 the secured party obtains control and remains perfected by control until:

8 (1) the secured party does not have control; and

9 (2) one of the following occurs:

10 (A) if the collateral is a certificated security, the debtor has or acquires possession of the
11 security certificate;

12 (B) if the collateral is an uncertificated security, the issuer has registered or registers the
13 debtor as the registered owner; or

14 (C) if the collateral is a security entitlement, the debtor is or becomes the entitlement
15 holder.

16 OFFICIAL COMMENT

17 * * * *

18 2. **Control.** This section provides for perfection by control with respect to investment property, deposit accounts,
19 letter-of-credit rights, ~~and~~ electronic chattel paper, and electronic documents. For explanations of how a secured party
20 takes control of these types of collateral, see Sections 9-104 through 9-107 and Section 7-106. Subsection (b) explains
21 when a security interest is perfected by control and how long a security interest remains perfected by control. Like
22 Section 9-313(d) and for the same reasons, subsection (b) makes no reference to the doctrine of "relation back." See
23 Section 9-313, Comment 5. As to an electronic document that is reissued in a tangible medium, Section 7-105, a secured
24 party that is perfected by control in the electronic document should file as to the document before relinquishing control
25 in order to maintain continuous perfection in the document. See Section 9-308.

26
27 SECTION 9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF

1 **SECURITY INTEREST OR AGRICULTURAL LIEN.**

2 * * * *

3 (b) **[Buyers that receive delivery.]** Except as otherwise provided in subsection (e), a buyer,
4 other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a
5 security certificate takes free of a security interest or agricultural lien if the buyer gives value and
6 receives delivery of the collateral without knowledge of the security interest or agricultural lien and
7 before it is perfected.

8 (c) **[Lessees that receive delivery.]** Except as otherwise provided in subsection (e), a lessee of
9 goods takes free of a security interest or agricultural lien if the lessee gives value and receives
10 delivery of the collateral without knowledge of the security interest or agricultural lien and before
11 it is perfected.

12 (d) **[Licensees and buyers of certain collateral.]** A licensee of a general intangible or a buyer,
13 other than a secured party, of accounts, electronic chattel paper, electronic documents, general
14 intangibles, or investment property other than a certificated security takes free of a security interest
15 if the licensee or buyer gives value without knowledge of the security interest and before it is
16 perfected.

17 * * * *

18 **OFFICIAL COMMENT**

19 * * * *

20 **6. Purchasers Other Than Secured Parties.** Subsections (b), (c), and (d) afford priority over an unperfected
21 security interest to certain purchasers (other than secured parties) of collateral. They derive from former Sections 9-
22 301(1)(c), 2A-307(2), and 9-301(d). Former Section 9-301(1)(c) and (1)(d) provided that unperfected security interests
23 are "subordinate" to the rights of certain purchasers. But, as former Comment 9 suggested, the practical effect of
24 subordination in this context is that the purchaser takes free of the security interest. To avoid any possible
25 misinterpretation, subsections (b) and (d) of this section use the phrase "takes free."

26 Subsection (b) governs goods, as well as intangibles of the type whose transfer is effected by physical delivery of
27 the representative piece of paper (tangible chattel paper, tangible documents, instruments, and security certificates). To
28 obtain priority, a buyer must both give value and receive delivery of the collateral without knowledge of the existing

1 security interest and before perfection. Even if the buyer gave value without knowledge and before perfection, the buyer
2 would take subject to the security interest if perfection occurred before physical delivery of the collateral to the buyer.
3 Subsection (c) contains a similar rule with respect to lessees of goods. Note that a lessee of goods in ordinary course of
4 business takes free of all security interests created by the lessor, even if perfected. See Section 9-321.

5 Normally, there will be no question when a buyer of tangible chattel paper, tangible documents, instruments, or
6 security certificates "receives delivery" of the property. See Section 1-201 (defining "delivery"). However, sometimes
7 a buyer or lessee of goods, such as complex machinery, takes delivery of the goods in stages and completes assembly
8 at its own location. Under those circumstances, the buyer or lessee "receives delivery" within the meaning of subsections
9 (b) and (c) when, after an inspection of the portion of the goods remaining with the seller or lessor, it would be apparent
10 to a potential lender to the seller or lessor that another person might have an interest in the goods.

11 The rule of subsection (b) obviously is not appropriate where the collateral consists of intangibles and there is no
12 representative piece of paper whose physical delivery is the only or the customary method of transfer. Therefore, with
13 respect to such intangibles (accounts, electronic chattel paper, electronic documents, general intangibles, and investment
14 property other than certificated securities), subsection (d) gives priority to any buyer who gives value without knowledge,
15 and before perfection, of the security interest. A licensee of a general intangible takes free of an unperfected security
16 interest in the general intangible under the same circumstances. Note that a licensee of a general intangible in ordinary
17 course of business takes rights under a nonexclusive license free of security interests created by the licensor, even if
18 perfected. See Section 9-321.

19 Unless Section 9-109 excludes the transaction from this Article, a buyer of accounts, chattel paper, payment
20 intangibles, or promissory notes is a "secured party" (defined in Section 9-102), and subsections (b) and (d) do not
21 determine priority of the security interest created by the sale. Rather, the priority rules generally applicable to competing
22 security interests apply. See Section 9-322.

23 * * * *

24 SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN AND 25 AGRICULTURAL LIENS ON SAME COLLATERAL.

26 OFFICIAL COMMENT

27 * * * *

28 **Example 3:** On October 1, A acquires a temporarily perfected (20-day) security interest, unfiled, in a tangible
29 negotiable document in the debtor's possession under Section 9-312(e). On October 5, B files and thereby perfects a
30 security interest that previously had attached to the same document. On October 10, A files. A has priority, even after
31 the 20-day period expires, regardless of whether A knows of B's security interest when A files. A was the first to perfect
32 and maintained continuous perfection or filing since the start of the 20-day period. However, the perfection of A's
33 security interest extends only "to the extent it arises for new value given." To the extent A's security interest secures
34 advances made by A beyond the 20-day period, its security interest would be subordinate to B's, inasmuch as B was the
35 first to file.

36 * * * *

37 **8. Proceeds of Non-Filing Collateral: Non-Temporal Priority.** Subsection (c)(2) provides a baseline priority rule
38 for proceeds of non-filing collateral which applies if the secured party has taken the steps required for non-
39 temporal priority over a conflicting security interest in non-filing collateral (e.g., control, in the case of deposit accounts, letter-of-
40 credit rights, and investment property, and in some cases, electronic negotiable documents, section 9-331). This rule
41 determines priority in proceeds of non-filing collateral whether or not there exists an actual conflicting security interest
42 in the original non-filing collateral. Under subsection (c)(2), the priority in the original collateral continues in proceeds
43 if the security interest in proceeds is perfected and the proceeds are cash proceeds or non-filing proceeds "of the same
44 type" as the original collateral. As used in subsection (c)(2), "type" means a type of collateral defined in the Uniform
45 Commercial Code and should be read broadly. For example, a security is "of the same type" as a security entitlement
46 (i.e., investment property), and a promissory note is "of the same type" as a draft (i.e., an instrument).

47 * * * *

1 **SECTION 9-323. FUTURE ADVANCES.**

2 **OFFICIAL COMMENT**

3 * * * *

4 **Example 2:** On October 1, A acquires a temporarily perfected (20-day) security interest, unfiled, in a tangible
5 negotiable document in the debtor's possession under Section 9-312(e) or (f). The security interest secures an advance
6 made on that day as well as future advances. On October 5, B files and thereby perfects a security interest that previously
7 had attached to the same document. On October 8, A makes an additional advance. On October 10, A files. Under
8 Section 9-322(a)(1), because A was the first to perfect and maintained continuous perfection or filing since the start of
9 the 20-day period, A has priority, even after the 20-day period expires. See Section 9- 322, Comment 4, Example 3.
10 However, under this section, for purposes of Section 9-322(a)(1), to the extent A's security interest secures the October
11 8 advance, the security interest was perfected on October 8. Inasmuch as B perfected on October 5, B has priority over
12 the October 8 advance.

13 * * * *

14 **SECTION 9-338. PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN**
15 **PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN**
16 **INCORRECT INFORMATION.**

17 If a security interest or agricultural lien is perfected by a filed financing statement providing
18 information described in Section 9-516(b)(5) which is incorrect at the time the financing statement
19 is filed:

20 (1) the security interest or agricultural lien is subordinate to a conflicting perfected security
21 interest in the collateral to the extent that the holder of the conflicting security interest gives value
22 in reasonable reliance upon the incorrect information; and

23 (2) a purchaser, other than a secured party, of the collateral takes free of the security interest or
24 agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the
25 purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods,
26 instruments, or a security certificate, receives delivery of the collateral.

27
28 **SECTION 9-601. RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT; CONSIGNOR**

January 21, 2008

VIA E-MAIL ONLY

Walter J. Skipper, Esq.
Quarles & Brady, LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202

Dear Mr. Skipper:

I am writing to you in your capacity as Chairperson of the Business Law Section of the State Bar of Wisconsin. A subcommittee of UCC Committee has reviewed the Revised Uniform Commercial Code Article 1 ("Revised UCC-1") and Revised Uniform Commercial Code Article 7 ("Revised UCC-7"). Revised UCC-1 has been introduced into the Assembly as 2007 Assembly Bill 480. Revised UCC-7 has been introduced into the Assembly as 2007 Assembly Bill 481. It is anticipated that they will be addressed and passed together. The subcommittee strongly recommends that the Business Law Section of the State Bar of Wisconsin support their enactment.

Revised UCC-1. Revised UCC-1 was completed in 2001, by the National Conference of Commissioners ("NCUSSL") on Uniform State Laws and the American Law Institute ("ALI"). It has been adopted in at least 27 other jurisdictions. It, as its title "General Provisions" states, sets forth general provisions applicable to all articles of the Uniform Commercial Code. The revisions have been made primarily to modernize Article 1, especially given that the UCC has been entirely amended or revised between 1985 and 2003.

The Committee does recommend one change with respect to AB 480 (Revised UCC-1), and that is that the definition of "Good Faith" retain its current definition in Wis Stats. § 401.201(19) (as "honesty in fact in the conduct or transaction concerned"). Thus the recommended definition would be:

"Good Faith" means honesty in fact in the conduct or transaction concerned.

The subcommittee's recommendation is premised upon the belief that the alternative ("honesty in fact and the observance of reasonable commercial standards") simply invites more litigation.

Revised UCC-7 UCC Article 7 (titled "Documents of Title") primarily governs warehouse receipts and bills of lading. UCC Article 7 has not been revised since the original promulgation of the UCC in 1951. A principle reason for revising it now is to accommodate electronic documents of title, as well as to update it by, for example, deleting references to tariffs and regulations that no longer exist. Revised UCC-7 has been adopted in at least 28 other jurisdictions.

As to Revised UCC-7, the subcommittee also highly recommends that the Business Law Section support its enactment, with the following technical recommended modifications to AB 481:

1. Add "Except as otherwise provided in subsection(c)" to the beginning of § 407.104(1), as found in the official NCUSL/ALI text.
2. Add to sections 407.207(3)(a) and 407.503(a) the cross references to 409.321(3), as found in the official NCUSL/ALI text.

We were advised the drafter had not viewed the most recent NCUSL/ALI version of Revised UCC-7, and that is why these technical points were missed.

Please call if you or the Board have any questions.

Very truly yours,

von BRIESEN & ROPER, s.c.



David I. Cisar

DIC:tjm

cc: Dan Stolper (via e-mail only)
Emory Ireland (via e-mail only)
Jascha Walter (via e-mail only)
Jeffrey Dunn (via e-mail only)
Lisa Baiocchi (via e-mail only)
Miles Mittelstadt (via e-mail only)
Paul LaPlant (via e-mail only)
Ralph Anzivino (via e-mail only)
Timothy S. Crisp (via e-mail only)
Valerie Bailey-Rihn (via e-mail only)