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Secured Credit in Personal Property Transactions: An Introduction to Article 9 of the Uniform Commercial Code

WILLARD D. LORENSEN

Article 9 of the Uniform Commercial Code deals with the creation, perfection and enforcement of security interests in personal property, both, tangible and intangible. This paper generally outlines the provisions and ideas of article 9 and make some comparisons with existing West Virginia law. Article 9 is attached as an appendix to this paper to permit easy reference to specific sections of the article for more detailed information where the reader so desires. This paper is not intended to be an exhaustive treatment of article 9 but rather it is intended to be an introduction to and general explanation of that article.

The most unique feature of article 9 is its comprehensive, unified approach to the law of personal property security as a single homogeneous body of law. This approach is both novel and practical. Present law in the area is a conglomeration. It is a mixture of many things: the modern progeny of the ancient fraudulent conveyance statutes of England, general recording statutes, the court-made fraud-in-law concept, fairly modern “device” control statutes such as the Uniform Conditional Sales Act and the Uniform Trust Receipts Act. And underlying it all are the mystic powers of the trustee in bankruptcy which are enough to scare the daylights out of any lending institution. In short, the law of personal property security today is enough to bewilder most.

This orderly arrangement and simplification of the law of personal property security can fairly be described as a logical step forward. Since it is logical indeed, the organization of this paper

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6 Associate Professor of Law, West Virginia University.
6 MACLACHLAN, BANKRUPTCY 283-84 (1956).
is based upon the organization of article 9 of the Code with "relation back"8 to the existing law.

In very broad terms, here are the major aims of article 9:

First, general rules for personal property security are established and these apply according to the type of collateral involved, not according to the type of security device used to create the security interest. Thus, under article 9, when a merchant sells a refrigerator to a householder, it matters not whether he retains a security interest for the purchase price by means of a chattel deed of trust or a conditional sale contract. The rules governing the creation, perfection and enforcement of the seller's security interest in the refrigerator are governed by the article 9 provisions relating to "consumer goods."

Second, the "floating lien" becomes practical under the article. That is, a valid security interest may be retained in a shifting stock of goods or a changing group of accounts. The fraud-in-law concept is abandoned.

Third, public filing of security interests is required in transactions which presently go unfiled. For example, an assignment by a building contractor to secure a loan is a "general contract right" and to be perfected, such a security interest must be filed.9

Fourth, a uniform set of terms are employed to describe the persons and transactions and interests employed throughout the article. Thus, the creditor's interest in the collateral is denominated the "security interest;" the creditor retaining or obtaining that interest is called the "secured party;" the arrangement between the debtor and the secured party is the "security agreement;" be it a chattel deed of trust or an assignment or in whatever form; a "financing statement" is that notice which must be filed when filing is required.10

Fifth, a conflict of laws rule is established to ease the deter-

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8 Relation back is a term of art in personal property security law. See Sexton v. Kessler, 225 U.S. 90 (1911) where the Supreme Court held that an ear-marking of certain securities by a debtor fixed the date of transfer in a bankruptcy challenge based on a later actual physical delivery of the securities to the creditor. The delivery "related back" to the time of the setting aside of the securities by the bankrupt debtor, the court held.


mination of what law applies where a multistate financing transaction is involved.

Article 9 is broad in scope but compact in size. It is divided into five parts: The first part deals with the scope of the article, transactions and interests excluded from its operation and the definition of terms employed; Part 2 is concerned with the validity of the security agreement between the immediate parties; Part 3 provides rules for perfecting security interests and lays down detailed rules of priority; Part 4 establishes rules in regard to filing, and designates the place, form and effect of filing; Part 5 governs the powers of the secured party and the rights of the debtor upon default.

As previously noted, variations in rules applicable to personal property security are based principally upon the kind of collateral involved. Tangible personal property—goods—is divided into four categories. Intangible property is divided into six. The basic rules for creation perfection and enforcement of security interests remain relatively stable throughout the article, but variations are needed to avoid fitting square pegs in round holes in the name of simplicity. The classes of tangible property distinguished in the Code are consumer goods, equipment, inventory and farm products. The classes of intangibles are contract rights, chattel paper (e.g., conditional sales contracts), accounts, instruments (e.g., negotiable notes), documents (e.g., bills of lading), and general intangibles (a catch-all). These various classifications are described in more detail under a discussion of the variations in general rules related to them.

I. GENERAL POLICIES AND RULES

The remainder of this paper is divided into two major portions: First, the general rules of the article will be summarized and second, the variations as to specific classes of collateral will be noted.

A. Scope of Article 9

Article 9 is intended to have very broad application. Section 9-102 provides that the article will apply to any transaction intended to create a security interest in personal property or fixtures within the jurisdiction of the state and in addition it is intended to apply any sale of accounts, contract rights or chattel paper. Having thrown out this blanket coverage, certain specific forms of
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security transactions are excluded. Those excluded are listed in section 9-104 and include such interests as the landlord's right of distraint, wage assignments, rights represented by judgments, security interests created under federal law, and certain other forms of personal property security.

Another form of limitation upon the application of article 9 once it is adopted within a given jurisdiction is found in the conflict of laws provision found in section 9-103. Under certain circumstances, the laws of another state may apply to the property involved. For example, where a security interest in construction equipment used in more than one state exists, the laws of the state wherein the debtor's chief place of business is located control. Also covered under this section is the problem of property brought into this state (a permanent relocation of personal property) which was subject to a security interest in the former state. Under present West Virginia law, the secured party has three months in which to "record"11 his interest in West Virginia.12 Under the Code provision, the secured party would have four months to accomplish this. It is suggested that section 9-103 be subjected to a careful reading once a general understanding of the various classes of property distinguished under the Code is in hand.

B. The Floating Lien

Certainly one of the chief aims of article 9 is to provide a reliable and safe means of obtaining and perfecting a security interest in a mass or pool of property, such as inventory or accounts, which the debtor is permitted to deal with as his own. This is the floating lien that rides on top an ever changing mass of property held by the debtor. A cluster of sections within article 9 is aimed at this end. Section 9-205 provides that a security interest is "not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral ..." without accounting to the secured party. Section 9-204 specifically gives validity to after-acquired property clauses (with some limitation). Section 9-306 grants the secured party an interest in "proceeds"—a term of art under article 9—and permits extension of this interest by proper notice of an interest in

11 The Code relies on notice filing rather than a recording of the instrument creating the security interest.
“proceeds” in the public filing. And section 9-108 provides that a security interest in after-acquired property shall not be deemed to have been taken for an antecedent debt. (This latter clause, a direct concern with bankruptcy problems.) Two major threats pose serious problems for the attempted use of changing collateral as security today: First the fraud-in-law concept which deems a security interest in property left with the debtor for his disposal without accounting an automatic fraud upon creditors; Second, the powerful preference voidance powers of the trustee in bankruptcy.

1. FRAUD-IN-LAW

West Virginia committed itself judicially to the fraud-in-law concept in 1909 in the decision in Gilbert v. Peppers.\(^\text{13}\) The concept is precisely stated in the third syllabus to that opinion:

“A deed of trust on a stock of merchandise, disclosing on its face intention to permit the debtor to remain in possession and sell and dispose of the property, replenishing the sold goods by new purchases, is fraudulent per se and void as to creditors, subsequent as well as existing.”

The rationale of the Gilbert case could be taken to task here to build a case for the Commercial Code view, but that is wholly unnecessary. The rule has already been gutted by subsequent legislation, but this writer has deep suspicions that this message has never been effectively presented to the West Virginia bar. The legislature of this state has on three separate occasions reversed the fraud-in-law concept of the Gilbert case. It did this first in the rather narrow area of crops and livestock in the Farm Credit Act of 1935.\(^\text{14}\) It did the same on a much broader scale in 1945 when it adopted the Factor’s Lien Act.\(^\text{15}\) The third legislative assault upon the fraud-in-law rule came in 1960 with the adoption of the Uniform Trust Receipts Act.\(^\text{16}\) Each of these acts has permitted a debtor to retain, use and dispose of collateral without undermining the secured party’s security interest under a public filing or recording provision.

The adoption of the Uniform Commercial Code would not sound the death knell of the fraud-in-law concept. That has al-

\(^{13}\) 65 W. Va. 355, 64 S.E. 361 (1909).

\(^{14}\) W. VA. Code, ch. 38, art. 10A (Michie 1961).

\(^{15}\) W. VA. Code, ch. 38, art. 14 (Michie 1961).

\(^{16}\) W. VA. Code, ch. 38, art. 15 (Michie 1961).
ready been done as a matter of legislative policy. The adoption of the Code would be only the *coup de grâce*.

2. **Bankruptcy**

There remains the threat of loss of security interest through the bankruptcy trustee's power of voidance under section 60 of the Bankruptcy Act.\(^\text{17}\) Basically, here is the problem. The bankruptcy trustee may set aside a "transfer" of property occurring within four months of bankruptcy when such transfer was for an antecedent debt. The basic aim of this provision is to deny an insolvent debtor the power to give a creditor a secured position just prior to bankruptcy at the expense of general creditors. The problem arises under the Code in this fashion: Assume a creditor makes a loan to Smith on January 1, taking a security interest in inventory with an after-acquired property clause in the security agreement, and the secured creditor immediately perfects his security interest by filing. Now if Smith receives inventory during the months of March, April, May and June and becomes the subject of a bankruptcy proceeding on July 1, is the inventory received during the four month period subject to the trustee's disposition in bankruptcy for the benefit of general creditors, or is it subject to the secured party's security interest?\(^\text{18}\)

On this point, some mighty arguments have been raised.

Harold Friedman, writing in the *Pennsylvania Law Review* argues principally from the legislative evolution of section 60 of the Bankruptcy Act that the secured party has first crack at the after-acquired inventory.\(^\text{18}\) While the original section 60 did not define transfer, the 1938 Chandler Act defined it too broadly in favor of the trustee, and the revision of 1950 moderated the bankruptcy view of transfer substantially, affording protection to the secured party and his interest in after-acquired property. He points to the section 60 definition of transfer which pegs this crucial time as that point at which a creditor on a simple contract could no longer obtain a lien superior to the secured party's interest by legal or equitable proceedings.\(^\text{19}\) Since the Code perfects the secured party's interest as of the time of the filing, the "transfer" in the bankruptcy sense occurred at the time of the loan and not when the property was acquired by the debtor.


\(^{19}\) Bankruptcy Act § 60 (a) (2), 11 U.S.C. § 96 (a) (2) (1958).
Nahum Gordon objects to this analysis in a subsequent article in the Columbia Law Review principally upon the grounds that there just can't be a transfer until the debtor has rights in the property. Mr. Gordon does not argue that every attachment of the security interest to property acquired by an insolvent debtor during the crucial four month period amounts to a preference. Only when such attachment depletes the bankrupt's estate does a preference arise, under his analysis. His advice:

"An inventory creditor desiring to eliminate all risks should make no advance prior to acquisition by the debtor of a stock of goods sufficient to secure the debt. Thereafter, proceeds should be released only after new merchandise equal in value is received."21

This suggests a pattern of creditor-debtor transactions similar to the revolving credit plans which involve frequent, periodic renegotiation of the loan with a pay-off of the old debt and a new description of collateral for a new loan.22

It is exceedingly unfair, of course, to subject the very thorough analyses of Friedman and Gordon to such extreme condensation. Both articles deserve careful reading. Some credit institutions in Code states are apparently reluctant to cast off their fears of the bankruptcy voidance threat until such time as a federal court of repute rejects the attempts of a bankruptcy trustee to avoid as a preference an after-acquired security interest obtained under the liberal provisions of the Commercial Code.23

C. Creation of Security Interests

Section 9-203 recognizes the two basic forms of creating security interest—the pledge and the consensual agreement. This section is primarily concerned with the validity of the security agreement as between the immediate parties, not as to third parties. Perfection of the security interest against third parties is dealt with below.

1. General Requisites

A signed writing describing the collateral or an actual change of possession is necessary for a valid security agreement between

21 Id., at 72.
22 For a general description of the techniques employed in revolving credit plans, see Note, 101 U. Pa. L. Rev. 392 (1952).
the original parties under this section of the Code. This means that in effect, a statute of frauds applies to security agreements. An oral promise to pledge or an oral grant of an immediate interest in property remaining in the hands of a debtor, where given to create a security interest in the promisee, is not enforceable against even the promisor under the Code.

This technically changes West Virginia law.

While there is no direct requirement that the granting of a consensual security interest in personality must be in writing under present West Virginia law, the only means of filing such an interest and thus perfecting it against third parties involves a writing.

And two West Virginia cases have held that a present promise to pledge property in the future gives rise to a valid security interest capable of specific enforcement as against subsequent third party interests attaching to such property.24 This in effect intimates that a pledge may be effective not only as between the parties but also as to third parties before a change of possession actually occurs.

Two other points should be noted in regard to pledge transactions. First, there is a certain limited number of property interests which may not be perfected by pledge. The Code excludes accounts, contract rights and general intangibles from that category of property in which a security interest may be perfected by transfer of possession. It should be emphasized that this rule deals with perfection as to third parties, and not as to validity as between original parties.

Secondly, the Code intends that where possession shifts to an agent of the secured party in order to accomplish the pledge transaction, that agent must be free of control by the debtor.25 This is important to note in field warehousing transactions where the bulkiness of the collateral makes impracticable the actual physical movement of the collateral for any substantial distance. Field warehousing contemplates a pledge of goods to the secured party at or near the debtor's place of business, with the pledged

25 U.C.C. § 9-305, Comment 2. See 12 C.F.R. § 201.3 (c) (Supp. 1962) (Federal Reserve Board regulations concerning discount of acceptances secured by warehouse receipts, noting the warehouseman must be independent of the customer).
property being under the control of an agent of the secured party, or under the control of an independent warehouseman who issues a warehouse receipt for the goods which is placed under control of the secured party.26 The West Virginia case of First National Bank v. Harkness27 apparently would permit the agent in actual physical control of the pledged goods to remain under the debtor's control to some extent. Under the Code, it is clear that the person in actual physical control of the pledged goods must be free of control of the debtor.28

The consensual security agreement not involving a change of possession must meet two mechanical requirements for validity under article 9. First, it must be "signed." Second, it must describe the collateral.29

The signing requirement is simple to meet. Under the general article of the Code, it is provided that a writing is "signed" when any symbol executed or adopted by a party with a present intention to authenticate a writing is placed upon that writing.30 There are no further formal requirements, such as acknowledgement.31

The description element is easily complied with also. First, section 9-110 provides that a description is sufficient if it "reasonably identifies that which is described." This applies to both real estate and personalty. Thus a formal mistake in description which is not misleading would not affect the validity of the security agreement. One specific requirement as to description is raised by section 9-203, viz., "when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned" must be included. Another combination of provisions of the Code makes the extension of a security interest to cover proceeds simple to accomplish. The word "proceeds" is made a term of art and is defined under section 9-306 (bearing directly upon priorities) as anything received from the sale or other disposition of collateral. And section 9-302 (b) states "In describing collateral, the word 'proceeds' is sufficient without further description to cover proceeds of any character."

26 See Vold, Sales § 69 (2d ed. 1959).
27 42 W. Va. 156, 24 S.E. 548 (1896).
28 See note 25, supra.
29 U.C.C. § 9-203.
30 U.C.C. § 1-201 (39).
2. When Security Interest Attaches

A security interest attaches under the provisions of section 9-204 when three events occur: (1) there is agreement that it attach; (2) value is given; and (3) the debtor has rights in the collateral. Subsection (2) of this provision spells out specific rules as to when a debtor's rights in certain kinds of property may arise, e.g., a debtor has no rights in crops until planted, in timber until cut, etc. These rules expressed here are limited by the phrase "for purposes of this section," as rights in such property may arise differently under the sales article of the Code and elsewhere.

This section also states generally that after-acquired property clauses are valid. This is a part of the general aim of the article to make possible the use of inventory and other "turn over" property as collateral. Two general exceptions to the general validity of after-acquired property provisions are carved out: crops and consumer goods. The crops exclusion is discussed later in the paper under the specific discussion of farm products as collateral. The consumer goods exception prevents such goods obtained more than ten days after value is given from becoming subject to the prior security agreement. The principal advantage of giving validity to after-acquired property clauses is the freedom it permits in the financing of business establishments and it is deemed inappropriate to extend the same liberal rules as to security interests to a householder's personal property.

3. Future Advances

Subsection (5) of section 9-204 states the article's rule on future advances. It provides that a creditor may make a future advance under a prior security agreement and retain the priority under the original financing agreement as to his later advances of credit. This alters the rule presently existing in West Virginia in favor of the secured creditor. The present West Virginia rule is that the first secured party may rely upon his prior security if he has no actual knowledge of any intervening interests in the collateral. The practical effect of the Code provision would be to tie up the collateral subject to the security interest and make it

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32 See text infra at notes 46, 47.
extremely risky for another creditor to rely upon the same collateral for subsequent extensions of credit.

There are two ways in which the prior security agreement may be subjected to a subsequent interests. First, by consensual arrangement, the prior interest may be subordinated.\textsuperscript{34} Second, a purchase money security interest is given special protection under the article. A purchase money security interest is defined in section 9-107 and covers generally a sellor's lien retained to secure payment of the purchase price and advances made to enable a debtor to acquire rights in collateral where the funds or credit advanced are in fact so used.

D. Perfection of Security Interests

As a preface to the discussion of the schemes of perfecting security interests under article 9, some mention should be made of a flexible priority rules involved in the article. Perfection is aimed at obtaining a priority, and the two subjects are closely related. Present personal property security law tends to treat the security interest as good or bad as against third parties generally. Statutory additions to personal property law have made such distinctions with a bit more finesse, marking differences between lien creditors and buyers of merchandise held for sale, etc. This is true, for example, in the Conditional Sales Act\textsuperscript{35} and the Trust Receipts Act.\textsuperscript{36} Thus, while a creditor may obtain a valid security interest in shifting inventory under the Code, and this interest is perfected by filing as against subsequent lien creditors, the purchaser in the ordinary course of business who buys goods from the merchant takes free and clear of the secured party's interest even though he has actual knowledge of that interest. Thus, perfection of a security interest does not necessarily give iron clad protection against subsequent third-party rights in the collateral. Significant limitations upon the perfected interest will be noted throughout the following general discussion of perfection of security interests under the plan of article 9.

Notice filing and change of possession are the principal forms of perfection acknowledged by the Code. A substantial degree

\textsuperscript{34} U.C.C. § 9-316.
\textsuperscript{36} Uniform Trust Receipts Act § 9; W Va. Code, ch. 38, art. 15 § 9 (Michie 1961).
of perfection results from the mere creation of the security interest in some situations.

The requirement of filing in order to perfect an interest is extended to certain forms of security interests which presently are protected from subsequent third party interest by their mere creation. General contract rights, accounts and the like may be assigned under present West Virginia law and there is no need to, nor any means provided for, the filing or recording of such assignments. 37 First in time is first in right according to present West Virginia law. 38 The Code would require the filing of a financing statement in order to protect such interest from third party interests.

Section 9-302 is the key to the perfection provisions of the Code. It states the general rule that filing is required to perfect a security interest and then states a number of specific exceptions. Chief among these exceptions are: (1) security interests created by a change of possession, viz., pledges; (2) purchase money security interests in consumer goods and farm equipment; and (3) security interests which must be indicated upon a certificate of title, e.g., motor vehicles liens. These are not the only exceptions, but these are no doubt the ones of principal interest.

Security interests created by pledge or change of possession are covered in section 9-305. Pledge is not an effective means of perfecting security interests in accounts, contract rights or general intangibles. These forms of collateral are excluded from section 9-305. Contrawise, the Code recognizes that the pledge is the only effective means of protecting security interests in some forms of security—e.g., negotiable instruments and documents of title. Section 9-308 and 9-309 give varying measures of protection to purchasers of negotiable instruments, documents of title, non-negotiable instruments and chattel paper. As to these later forms of collateral a filing is not always and sometimes never an adequate method of perfecting an interest.

37 Campbell v. Hutchinson Lumber Co., 108 W. Va. 143, 154, 145 S.E. 160 (1928): "We have no statute which would require recordation of an assignment, legal or equitable, of a chose in action . . . . We have construed [the general recording statute] to apply to 'goods and chattels' which are visible, tangible and movable, and not to a mere chose in action, such as a debt, or a claim on another for money due . . . ."

Purchase money interests in farm equipment and consumer goods not in excess of 2,500 dollars is protected in most instances without filing. The perfection-without-filing rule is excepted where the consumer item or piece of farm equipment is a fixture or a motor vehicle required to be licensed. Though deemed perfected against lien creditors and the like, a buyer "takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations..."39 This is one example of the flexibility found in the Code's system of perfection and priorities.

In 1961, West Virginia adopted the Motor Vehicle Lien Law40 providing that liens against motor vehicles must be shown upon the face of the certificate of title. This technique has been adopted in a number of states and the Commercial Code specifically provides for a continuation of this manner of perfecting such liens.

The Code offers alternative plans for establishing places of filing, moving more than existing law toward centralized filing in many instances. West Virginia has already moved in this direction in recent years in its Uniform Trust Receipts Act and the Motor Vehicle Lien Law. Centralized filing, with the Secretary of State, for example, offers the convenience of a single set of files to check outstanding security interests as to any given would-be borrower. Local filing is of course of greater local convenience. Recognizing the traditions and varieties of financing patterns within the various states may demand varying treatment the Code affords three alternative plans of filing. Within the categories of property distinguished within the Code, the filing patterns revolve around the following groups of property interests: (1) consumer goods; (2) farm-related property; (3) fixtures; and (4) all others.

Under the option providing for maximum local filing, all groups just described would be filed locally with one exception—the filing of a security interest under group four designated above when the debtor involved has places of business in more than one county. In this situation, there would be a filing only at the state level. Contrawise, if the debtor has a place of business in only one county, then the filing would be required at both the county

and the state level. This means that security interest in accounts, inventory, chattel paper, and the like, will always be filed at the state level.

The maximum central filing plan under the Code would provide for centralized filing of all classes of property described above with the exception of group (3), fixtures. Such filings would be made wherever a mortgage affecting the reality involved would be filed (not necessarily where the debtor resides).

The midway alternative is much like the maximum local filing outlined above with the exception that local filing would never be required in group (4) transactions. This would merely eliminate the local filing where the debtor has a place of business in only one county.

The heavy emphasis of the Code on centralizing filing may appear burdensome, but the burden is lightened by the fact that (1) the most numerous security transactions—consumer sales—receive substantial protection with no filing at all; (2) a single security agreement may cover future advances and thus may run for a period of time covering a number of individual transactions; and (3) the financing statement that is filed does not need to be an elaborate document.

The formal requisites of the financing statement which must be filed are set out in section 9-402. It must contain the signatures of the debtor and the secured party, both their addresses and a “statement indicating the types, or describing the items, of collateral.” Security interests in proceeds is extended if the financing statement indicates the security interest extends to proceeds. This means that the financing agreement, spelling out in detail, the obligations and internal arrangements between the parties need not be made a matter of public record. It may be employed as the filed public notice if it contains the minimum information outlined in section 9-402.

A detailed discussion of priorities will not be undertaken here. This could provide the basis for an independent study all its own. What does deserve mention here is that the unified and comprehensive approach of the Code to all forms of personal property security set the stage for the first broad consideration of this problem as a single entity.
II. Specific Category Rules

The various classes of property distinguished under the Code are described below and special rules relating to them are noted as to each class. Some of these special rules have been mentioned earlier in this paper to afford some indication of the general scheme of the Code. Tangible, then intangible property, will be discussed below:

A. Tangibles

Consumer Goods: Goods are "consumer goods" under the Code if they are "used or bought for use primarily for personal, family or household purposes . . ."[41] The principal advantage of the Code as respects consumer goods is that the creation or retention of a security interest in such goods for purchase money is protected against most third party interests with no filing. Where the original purchase price was less than 2,500 and a subsequent buyer takes for his own personal use without knowledge of the security interest, the security interest will be cut off. Even this risk can be eliminated by a filing.[42] But a major form of protection is thus available with no filing at all. Two exceptions should be noted to the general policies applicable to consumer goods. First, if the consumer items is a motor vehicle, the notation of the lien on the certificate of title would still be required.[43] Second, the priorities provisions relating to fixtures, section 9-313, permit certain subsequent third party interests to gain priorities over a security interest in fixtures unless that security interest is previously perfected by filing. Incidentally, the Code permits the secured party to remove his fixture even when material damage to the realty would occur—if the secured party bears the cost of repair occasioned by the removal.

Equipment: Goods are equipment under the Code "if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included" in any other "goods" category under the Code. Thus, when the goods fit in no other particular category, they are deemed equipment. Like consumer goods generally, a limited perfection-without-filing provision applies to one narrow category

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43 U.C.C. § 9-302 (1) (c).
of equipment—farm equipment which is not a motor vehicle, with an original purchase price of less than 2,500 dollars. Otherwise, all interest in equipment would have to be filed in order to be perfected. Equipment may involve fixtures also and references should be had to the discussion of fixtures priorities generally in section 9-313, briefly outlined above under consumer goods.

Inventory: Goods are inventory “if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or material used or consumed in business.” The significant thing about inventory collateral is the fact that the Code would make this a practical form of collateral, with a note of caution here about the bankruptcy threat. The prior discussion of the floating lien relates most of the significant points concerning inventory security interests.

Farm Products: This class of goods is defined by the Code as follows:

“Goods are...

(3) ‘Farm products’ if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory.”

Farm products is a peculiar class of goods. The concept of “potential possession” and the subsequent law of after-acquired property sprung from a case involving crops. A number of West Virginia statutory provisions give special treatment to the problem of farm products security interests. The Code provisions bearing on this subject would essentially elaborate and clarify the existing law on these subjects. Some changes are involved, but none are of extravagant nature.

A security agreement in crops, under the Code, must describe the land concerned to be valid. A debtor can have no rights in crops until they are planted or becoming growing crops (as with perennial crops, such as apples) nor in the young of animals until

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they are conceived. This limits the committing of future crops to obtain present credit. By the terms of the general after-acquired property provision of the article, a security interest may not attach to crops which become such more than a year after the execution of the security agreement. This is a continuation of an old policy aimed at preventing a form of agricultural peonage.\textsuperscript{45} An exception to this long-term interest in crops is made for certain limited circumstances where the security agreement is given in connection with a lease of the land upon which the crops are to be grown or in conjunction with a security interest in the land where such security is granted to finance the purchase of the land or to make an improvement upon the land. An escape clause to this long term security is afforded under section 312(2) to permit a subsequent advance of credit to intervene over the prior security interest where such is employed for immediate crop production. This parallels the general preference afforded purchase money security interests under the article.

Presently, West Virginia has two sets of statutes dealing with the creation and perfection of security interest in farm products. One series of statutes grew from depression era federal legislation aimed at making more credit available to the farming community.\textsuperscript{46} The second group of provisions arose shortly before this and was aimed at providing means for establishing security interest in crops for private rather than public credit.\textsuperscript{47} None of these acts has been dealt with in published opinions of the West Virginia Supreme Court of Appeals or in federal courts.

Generally, the pattern of these acts is to provide that security interest in crops may be created, the security agreement may be recorded to perfect it against other lienors, and, under the public credit provisions, specific attention is paid to the debtor's right to consume or dispose of the goods subject to the security agreement without invalidating the security interests.\textsuperscript{48} This was the first legislative change of the \textit{Gilbert v. Peppers} fraud-in-law concept discussed earlier in this paper.

One vexing question would be posed by the adoption of the Code and the consequent elimination of these statutes. Both these statutes deal directly with the landlord's lien and give it

\textsuperscript{45} \textit{Vold, Sales} § 45 (2d ed. 1959)
a preferred position. No such special attention is given the land-
lord’s lien under the Code provisions generally. Article 9 merely
provides that the landlord’s lien is not a security interest covered
by the Code. The West Virginia statutes relative to distraint pro-
vide that a security interest attaching to personal property before
it is brought onto the leased premises is valid and superior to the
landlord’s right of distraint—but makes property subject to dis-
traint if the lien is created after the personal property is located
on the leased premises.49 When crops and livestock and other farm
crops come into being on the leased premises, a sticky question
as to the conflict between a perfected security interest and the
landlord’s lien could arise. A number of considerations suggest
themselves, but they will not be pursued at this point. It would
seem advisable however, that an appropriate amendment to the
statutes relating to the landlord’s right of distraint should be
prepared in connection with the Code to permit clarification of
this point.

B. Intangibles

Intangible property is divided into six categories under article 9.
For general introductory purposes, it may be noted that major
distinctions are drawn along three major lines: First, as to accounts,
contract rights and general intangibles, the document evidencing
such rights are not negotiable and have no intrinsic “value” on
their face; Second, at the opposite end are documents and instru-
m ents which are negotiable and which represent intrinsic value
on their face; and Third, a midway category denominated chattel
paper by the Code which combines some of the aspects of the con-
tract right and the negotiable document.

Accounts: Scattered throughout this paper thus far have been
references to the major change in regard to accounts, viz., the
rejection of the fraud-in-law concept and the liberal provisions
relating to proceeds and after-acquired property make accounts
a practical form of collateral. Two points deserve specific men-
tion here: First, the sale of accounts falls within the scope of this
article and must be perfected by filing unless it falls within the
scope of the exception stated in section 9-320 9-302 (1) (e) re-
garding a sale or assignment which does not “transfer a significant
part of the outstanding accounts or contract rights of the assignor;
...” and, Second, filing is the only means of perfecting a security

interest in accounts. Pledge, notification of the account debtor or notation on the accounts themselves are not effective means of perfecting such a security interest. Certain rules peculiar to the assignment of accounts are spelled out in some detail in section 9-318. Of particular interest here is the fact that that provision creates a presumption that the assignor has the authority to make commercially reasonable compromises with the account debtor. The security agreement between the assignor and the secured party may provide differently, but if it does not, the assignor retains this freedom of action. This is another manifestation of the Code’s willingness to permit a debtor to deal freely with collateral as a matter of business convenience without undermining the validity of the secured party’s interest in the collateral. This section also maintains the standard rule that defenses arising in favor of an account debtor as against the assignor are valid against the assignee (the secured party) unless they arise after the account debtor has been notified of the assignment.

Contract Rights: Contract rights generally are not subject to any present requirement of perfection. First in time is first in right under existing West Virginia law. Contract right is defined in the Code as “any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper.” Where the assignee is to do the performance under the contract, the provisions of article 9 do not apply. A typical illustration of the reach of article 9 under the contract rights provisions may be found in the assignment by a building contractor of his rights to payment under a construction contract to secure funds to perform the contract. This form of transaction would fall under the scope of article 9 and the credit institution should file a financing statement in such cases to protect its security interest from subsequent third party rights.

General Intangibles: This category is a catch-all in the intangible property category under article 9, much as equipment is under the tangible property categories. The following portion of the comment under the definition section of article 9 indicates the general purpose of this classification:

"The term 'general intangibles' brings under this article miscellaneous types of contractual rights and other personal prop-

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50 See note 38, supra.
51 U.C.C. § 9-108.
52 U.C.C. § 9-104(f).
erty which are used or may become customarily used as commercial security. Examples are goodwill, literary rights and rights to performance. . . .”

The Code here anticipates further development of the use of personal property security and has by this provision made allowance for such growth. As with the two categories just discussed, a security interest in general intangibles may be perfected only by filing.

Documents and Instruments: These two classes of property cover generally documents of title, such as bills of lading and warehouse receipts and, negotiable instruments and securities. While permissive filing affords some measure of protection to a security interest in these types of documents, the principal form of perfection depends upon pledge. The Code here generally follows the established patterns of the trust receipt transaction and recognizes the traditional rights of holders in due course of negotiable instruments and documents of title.

Under normal trust receipt financing arrangements, the secured party (called the entrustor under the Uniform Trust Receipts Act) gives negotiable documents of title or goods to the debtor (called the trustee) and obtains a measure of short-term protection by virtue of public filing indicating the trust receipt transactions between the secured party and the debtor. While the debtor has the power to cut off the secured party’s interest by negotiation of the documents to a holder in due course (and herein the “trust” element of the transaction is found) the secured party is protected for a period against lien creditors of the debtor. Sections 9-304, -308 and -309 deal generally with the problems of the secured party’s temporary perfection of a security interest in negotiable papers and documents and the possible supervening rights of purchasers and holders.

Chattel Paper: The following is the Code description of this class of intangible property:

“‘Chattel paper’ means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and an instrument or

53 U.C.C. § 9-106.
a series of instruments, the group of writings taken together constitutes chattel paper; ...”

The conditional sale contract and the bailment lease are typical forms of chattel paper. Merchants use these devices to retain security interest in goods sold, and in turn use their retained security interest as collateral for obtaining credit to their own account. Two methods of perfection are available, filing and pledge. Filing grants only a limited degree of protection. Section 9-308 is of particular interest here. A purchaser who takes chattel paper for an advance of new value and who takes possession of such paper in the ordinary course of business without knowledge that that specific paper is subject to a security interest takes priority over a prior security interest even though the prior interest may have been perfected by filing. Where the prior security interest attaches only because the chattel paper is proceeds of an inventory security interest, the purchaser who takes under generally the same conditions as just outlined gains a prior position as to the chattel paper even though he knew of the other security interest.

III. CONCLUSION

Article 9 would replace a mass of specialized legislation with one comparatively compact general law bearing upon security interests in personal property. It would provide a very sensible reordering and rethinking of the law in this area.
Appendix

PART 1

Section 9-101. Short Title.

This Article shall be known and may be cited as Uniform Commercial Code—Secured Transactions.

Section 9-102. Policy and Scope of Article.

(1) Except as otherwise provided in Section 9-103 on multiple state transactions and in Section 9-104 on excluded transactions, this Article applies so far as concerns any personal property and fixtures within the jurisdiction of this state

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

(b) to any sale of accounts, contract rights or chattel paper.

(2) This article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor’s lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This Article does not apply to statutory liens except as provided in Section 9-310.

(3) The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

Section 9-103. Accounts, Contract Rights, General Intangibles and Equipment Relating to Another Jurisdiction; and Incoming Goods Already Subject to a Security Interest.

(1) If the office where the assignor of accounts or contract rights keeps his records concerning them is in this state, the validity and perfection of a security interest therein and the possibility and
effect of proper filing is governed by this Article; otherwise by the law (including the conflict of law rules) of the jurisdiction where such office is located.

(2) If the chief place of business of a debtor is in this state, this Article governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this state.

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this state, the validity of the security interest in this state is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this state and it was brought into this state within 30 days after the security interest attached for purposes other than transportation through this state, then the validity of the security interest in this state is to be determined by the law of this state. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for four months and also thereafter if within the four month period it is perfected in this state. The security interest may also be perfected in this state after the expiration of the four month period; in such case perfection dates from the time of perfection in this state. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, it may be perfected in this state; in such case perfection dates from the time of perfection in this state.
(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

Section 9-104. Transactions Excluded From Article.

This Article does not apply

(a) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for services or materials except as provided in Section 9-310 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or

(e) to an equipment trust covering railway rolling stock; or

(f) to a sale of accounts, contracts rights or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts, contract rights or chattel paper which is for the purpose of collection only, or a transfer of a contract right to an assignee who is also to do the performance under the contract; or

(g) to a transfer of an interest or claim in or under any policy of insurance; or

(h) to a right represented by a judgment; or

(i) to any right of set-off; or

(j) except to the extent that provision is made for fixtures in Section 9-313 to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or
(k) to a transfer in whole or in part of any of the following: any claim arising out of tort; any deposit, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization.

Section 9-105. Definitions and Index Definitions.

(1) In this Article unless the context otherwise requires:

(a) “Account debtor” means the person who is obligated on an account, chattel paper, contract right or general intangible;

(b) “Chattel paper” means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) “Collateral” means the property subject to a security interest, and includes accounts, contract rights and chattel paper which have been sold;

(d) “Debtor” means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, contract rights or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term “debtor” means the owner of the collateral in any provision of the Article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) “Document” means document of title as defined in the general definitions of Article 1 (Section 1-201);

(f) “Goods” includes all things which are movable at the time the security interest attaches or which are fixtures (Section 9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. “Goods” also include the unborn young of animals and growing crops;
(g) "Instrument" means a negotiable instrument (defined in section 3-104), or a security (defined in Section 8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

(h) "Security agreement" means an agreement which creates or provides for a security interest;

(i) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(2) Other definitions applying to this Article and the sections in which they appear are:

<table>
<thead>
<tr>
<th>Definition</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;Account&quot;</td>
<td>Section 9-106.</td>
</tr>
<tr>
<td>&quot;Consumer goods&quot;</td>
<td>Section 9-109(1).</td>
</tr>
<tr>
<td>&quot;Contract right&quot;</td>
<td>Section 9-106.</td>
</tr>
<tr>
<td>&quot;Equipment&quot;</td>
<td>Section 9-109(2).</td>
</tr>
<tr>
<td>&quot;Farm products&quot;</td>
<td>Section 9-109(3).</td>
</tr>
<tr>
<td>&quot;General intangibles&quot;</td>
<td>Section 9-106.</td>
</tr>
<tr>
<td>&quot;Inventory&quot;</td>
<td>Section 9-109(4).</td>
</tr>
<tr>
<td>&quot;Lien creditor&quot;</td>
<td>Section 9-301(3).</td>
</tr>
<tr>
<td>&quot;Proceeds&quot;</td>
<td>Section 9-306(1).</td>
</tr>
<tr>
<td>&quot;Purchase money security interest&quot;</td>
<td>Section 9-107.</td>
</tr>
</tbody>
</table>

(3) The following definitions in other Articles apply to this Article:

<table>
<thead>
<tr>
<th>Definition</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;Check&quot;</td>
<td>Section 3-104.</td>
</tr>
<tr>
<td>&quot;Contract for sale&quot;</td>
<td>Section 2-106.</td>
</tr>
<tr>
<td>&quot;Holder in due course&quot;</td>
<td>Section 3-302.</td>
</tr>
<tr>
<td>&quot;Note&quot;</td>
<td>Section 3-104</td>
</tr>
<tr>
<td>&quot;Sale&quot;</td>
<td>Section 2-106.</td>
</tr>
</tbody>
</table>
(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.


“Account” means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. “Contract right” means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper. “General intangibles” means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, document and instruments.


A security interest is a “purchase money security interest” to the extent that is is

(a) taken or retained by the seller of the collateral to secure all or part of its price; or
(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.


Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.


Goods are

(1) “consumer goods” if they are used or bought for use primarily for personal, family or household purposes;
(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

Section 9-110. Sufficiency of Description.

For the purposes of this Article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

Section 9-111. Applicability of Bulk Transfer Laws.

The creation of a security interest is not a bulk transfer under Article 6 (see Section 6-103).

Section 9-112. Where Collateral Is Not Owned by Debtor.

Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under Section 9-502(2) or under Section 9-504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor

(a) to receive statements under Section 9-208;

(b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under Section 9-505;

(c) to redeem the collateral under Section 9-506;
(d) to obtain injunction or other relief under Section 9-507(1); and

(e) to recover losses caused to him under Section 9-208(2).

Section 9-113. Security Interests Arising Under Article on Sales.

A security interest arising solely under the Article on Sales (Article 2) is subject to the provisions of this Article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

(a) no security agreement is necessary to make the security interest enforceable; and

(b) no filing is required to perfect the security interest; and

(c) the rights of the secured party on default by the debtor are governed by the Article on Sales (Article 2).

PART 2

Section 9-201. General Validity of Security Agreement.

Except as otherwise provided by this Act a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this Article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

Section 9-202. Title to Collateral Immaterial.

Each provision of this Article with regards to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

Section 9-203. Enforceability of Security Interest; Proceeds, Formal Requisites.

(1) Subject to the provisions of Section 4-208 on the security interest of a collecting bank and Section 9-113 on a security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties unless
(a) the collateral is in the possession of the secured party; or

(b) the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word “proceeds” is sufficient without further description to cover proceeds of any character.

(2) A transaction, although subject to this Article, is also subject to *__, and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable state has only the effect which is specified therein.

**Note:** At * in subsection (2) insert reference to any local statute regulating small loans, retail installment sales and the like.

The foregoing subsection (2) is designed to make it clear that certain transactions, although subject to this Article, must also comply with other applicable legislation.

This Article is designed to regulate all the “security” aspects of transactions within its scope. There is, however, much regulatory legislation, particularly in the consumer field, which supplements this Article and should not be repealed by its enactment. Examples are small loan acts, retail installment selling acts and the like. Such acts may provide for licensing and rate regulation and may prescribe particular forms of contract. Such provisions should remain in force despite the enactment of this Article. On the other hand if a Retail Installment Selling Act contains provisions on filing, rights on default, etc., such provisions should be repealed as inconsistent with this Article.

**Section 9-204. When Security Interest Attaches; After-Acquired Property; Future Advances.**

(1) A security interest cannot attach until there is agreement (subsection (3) of Section 1-201) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as
all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

(2) For the purposes of this section the debtor has no rights
(a) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;
(b) in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;
(c) in a contract right until the contract has been made;
(d) in an account until it comes into existence.

(3) Except as provided in subsection (4) a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.

(4) No security interest attaches under an after-acquired property clause
(a) to crops which become such more than one year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed of trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction;
(b) to consumer goods other than accessions (Section 9-314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(5) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment.

Section 9-205. Use or Disposition of Collateral Without Accounting Permissible.

A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, contract rights or
chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

Section 9-206. Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Agreement Exists.

(1) Subject to any statute or decision which establishes a different rule for buyers of consumer goods, an agreement by a buyer that he will not assert against an assignee any claim or defense which he may have against the seller is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Article on Commercial Paper (Article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the Article on Sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller’s warranties.

Section 9-207. Rights and Duties When Collateral Is in Secured Party’s Possession.

(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party’s possession

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;
(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

Section 9-208. Request for Statement of Account or List of Collateral.

(1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply.
If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding $10 for each additional statement furnished.

PART 3
Section 9-301. Persons Who Take Priority Over Unperfected Security Interests; “Lien Creditor”.

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(a) persons entitled to priority under Section 9-312;

(b) a person who becomes a lien creditor without knowledge of the security interest and before it is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts, contract rights, and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A “lien creditor” means a creditor who has acquired a lien on the property involved by attachment, levy or the like and
includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest.

Section 9-302. When Filing Is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of This Article Do Not Apply.

(1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under section 9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under Section 9-304 or in proceeds for a 10 day period under Section 9-306;

(c) a purchase money security interest in farm equipment having a purchase price not in excess of $2500; but filing is required for a fixture under Section 9-313 or for a motor vehicle required to be licensed;

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under Section 9-313 or for a motor vehicle required to be licensed;

(e) an assignment of accounts or contracts rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assigner;

(f) a security interest of a collecting bank (Section 4-208) or arising under the Article on Sales (see Section 9-113) or covered in subsection (3) of this section.

(2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the per-
fected status of the security interest against creditors of and trans-
ferees from the original debtor.

(3) The filing provisions of this Article do not apply to a security interest in property subject to a statute

(a) of the United States which provides for a national registration or filing of all security interests in such property; or

NOTE: States to select either Alternative A or Alternative B.

Alternative A—

(b) of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

Alternative B—

(b) of this state which provides for central filing of security interests in such property, or in a motor vehicle which is not inventory held for sale for which a certificate of title is required under the statutes of this state if a notation of such a security interest can be indicated by a public official on a certificate or a duplicate thereof.

(4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.

Section 9-303. When Security Interest Is Perfected; Continuity of Perfection.

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in Sections 9-302, 9-304, 9-305 and 9-306. If such steps are taken before the security interest attaches, it is perfected at the time it attaches.

(2) If a security interest is originally perfected in any way permitted under this Article and is subsequently perfected in some other way under this Article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Article.
Section 9-304. Perfection of Security Interest in Instruments, Documents, and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5).

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.
(6) After the 21 day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this Article.


A security interest in letters of credit and advices of credit (subsection (2) (a) of Section 5-116), goods, instruments, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party.


(1) “Proceeds” includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks and the like are “cash proceeds”. All other proceeds are “non-cash proceeds.”

(2) Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof by the debtor unless his action was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covering the original collateral also covers proceeds; or
(b) the security interest in the proceeds is perfected before the expiration of the ten day period.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest

(a) in identifiable non-cash proceeds;

(b) in identifiable cash proceeds in the form of money which is not commingled with other money or deposited in a bank account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and

(d) in all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph (d) is

(i) subject to any right of set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the ten day period.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is
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required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under Section 9-308.

(c) An unpaid transferee of the account has a security interested in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.


(1) A buyer in ordinary course of business (subsection (9) of Section 1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of $2500 (other than fixtures, see Section 9-313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods.


A purchaser of chattel paper or a nonnegotiable instrument who gives a new value and takes possession of it in the ordinary course of his business and without knowledge that the specific paper or instrument is subject to a security interest has priority over
a security interest which is perfected under Section 9-304 (permissible filing and temporary perfection). A purchaser of chattel paper who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in chattel paper which is claimed merely as proceeds of inventory subject to a security interest (Section 9-306), even though he knows that the specific paper is subject to the security interest.

Section 9-309. Protection of Purchasers of Instruments and Documents.

Nothing in this Article limits the rights of a holder in due course of a negotiable instrument (Section 3-302) or a holder to whom a negotiable document of title has been duly negotiated (Section 7-501) or a bona fide purchased of a security (Section 8-301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Article does not constitute notice of the security interest to such holders or purchasers.

Section 9-310. Priority of Certain Liens Arising by Operation of Law.

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.


The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

Section 9-312. Priorities Among Conflicting Security Interests in the Same Collateral.

(1) The rules of priority stated in the following sections shall govern where applicable: Section 4-208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; Section 9-301 on certain priorities; Section
9-304 on goods covered by documents; Section 9-306 on proceeds and repossession; Section 9-307 on buyers of goods; Section 9-308 on possessory again nonpossessory interests in chattel paper or non-negotiable instruments; Section 9-309 on security interests in negotiable instruments, documents or securities; Section 9-310 on priorities between perfected security interest and liens by operation of law; Section 9-313 on security interests in fixtures as against interests in real estate; Section 9-314 on security interests in accessions as against interest in goods; Section 9-315 on conflicting security interests where goods lose their identity or become part of a product; and Section 9-316 on contractual subordination.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the collateral; and

(b) any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

(c) such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.
(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchased money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section) priority between conflicting security interests in the same collateral shall be determined as follows:

(a) in the order of filing if both are perfected by filing, regardless of which security interest attached first under Section 9-204(1) and whether it attached before or after filing;

(b) in the order of perfection unless both are perfected by filing, regardless of which security interest attached first under Section 9-204(1) and, in the case of a filed security interest, whether it attached before or after filing; and

(c) in the order of attachment under Section 9-204(1) so long as neither is perfected.

(6) For the purpose of the priority rules of the immediately preceding subsection, a continuously perfected security interest shall be treated at all times as if perfected by filing if it was originally so perfected and it shall be treated at all times as if perfected otherwise than by filing if it was originally perfected otherwise than by filing.

Section 9-313. Priority of Security Interests in Fixtures.

(1) The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, title, cement, glass, metal work and the like and no security interest in them exists under this Article unless the structure remains personal property under applicable law. The law of this state other than this Act determines whether and when other goods become fixtures. This Act does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate.

(2) A security interest which attaches to goods before they become fixtures takes priority as to the goods over the claims of all
persons who have an interest in the real estate except as stated in subsection (4).

(3) A security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate except as stated in subsection (4) but is invalid against any person with an interest in the real estate at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as fixtures.

(4) The security interests described in subsections (2) and (3) do not take priority over
   (a) a subsequent purchaser for value of any interest in the real estate; or
   (b) a creditor with a lien on the real estate subsequently obtained by judicial proceedings; or
   (c) a creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings is obtained, or the subsequent advance under the prior encumbrance is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the real estate at a foreclosure sale other than an encumbrancer purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(5) When under subsections (2) or (3) and (4) a secured party has priority over the claims of all persons who have interests in the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

Section 9-314. Accessions.

(1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the
goods installed or affixed (called in this section "accessions") over 
the claims of all persons to the whole except as stated in subsection 
(3) and subject to Section 9–315(1).

(2) A security interest which attaches to goods after they be- 
come part of a whole is valid against all persons subsequently ac-
quiring interests in the whole except as stated in subsection (3) 
but is invalid against any person with an interest in the whole at 
the time the security interest attaches to the goods who has not 
in writing consented to the security interest or disclaimed an in-
terest in the goods as part of the whole.

(3) The security interests described in subsections (1) and 
(2) do not take priority over

(a) a subsequent purchaser for value of any interest in 
the whole; or

(b) a creditor with a lien on the whole subsequently 
obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in 
the whole to the extent that he makes subsequent 
advances

if the subsequent purchase is made, the lien by judicial proceed-
ings obtained or the subsequent advance under the prior perfected 
security interest is made or contracted for without knowledge of 
the security interest and before it is perfected. A purchaser of 
the whole at a foreclosure sale other than the holder of a perfected 
security interest purchasing at his own foreclosure sale is a sub-
sequent purchaser within this section.

(4) When under subsection (1) or (2) and (3) a secured 
party has an interest in accessions which has priority over the 
claims of all persons who have interests in the whole, he may on 
default subject to the provisions of Part 5 remove his collateral 
from the whole but he must reimburse any encumbrancer or own-
er of the whole who is not the debtor and who has not otherwise 
agreed for the cost of repair of any physical injury but not for any 
diminution in value of the whole caused by the absence of the 
goods removed or by any necessity for replacing them. A person 
entitled to reimbursement may refuse permission to remove until 
the secured party gives adequate security for the performance of 
this obligation.
Section 9-315. Priority When Goods Are Commingled or Processed.

(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if

(a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under Section 9-314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

Section 9-316. Priority Subject to Subordination.

Nothing in this Article prevents subordination by agreement by any person entitled to priority.


The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

Section 9-318. Defenses Against Assignee; Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment.

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in Section 9-206 the rights of an assignee are subject to
(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment under an assigned contract right has not already become an account, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the account has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties is ineffective.

PART 4

Section 9-401. Place of Filing; Erroneous Filing; Removal of Collateral.

(1) The proper place to file in order to perfect a security interest is as follows:

Optional paragraph (a)

(a) when the collateral is equipment used in farming operations, or farm products, or accounts, contract rights or general intangibles arising from or relating
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to the sale of farm products by a farmer, or consumer goods, then in the office of the—
in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the— in the county where the goods are kept, and in addition when the collateral is crops in the office of the — in the county where the land on which the crops are growing or to be grown is located;

(b) when the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

Optional paragraph (c)

(c) in all other cases, in the office of the [Secretary of State] [and in addition, if the debtor has a place of business in only one county of this state, also in the office of — of such county, or, if the debtor has no place of business in this state, but resides in the state, also in the office of — of the county in which he resides.]

Note: Paragraph (a) may be omitted, in which case all of the subject matter thereof will be governed by new paragraph (c), and only filing in the office of the Secretary of State will be required. In that case, the optional language in paragraph (c) requiring local filing should be omitted. If paragraph (a) is omitted, the subsequent paragraphs should be relettered.

If, however, paragraph (a) is adopted, paragraph (c) can be adopted with or without the optional language requiring local filing under the conditions specified.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this Article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.
A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

**Alternative subsection (3)**

[(3) A filing which is made in the proper county continues effective for four months after a change to another county of the debtor's residence or place of business or the location of the collateral, whichever controlled the original filing. It becomes ineffective thereafter unless a copy of the financing statement signed by the secured party is filed in the new county within said period. The security interest may also be perfected in the new county after the expiration of the four-month period; in such case perfection dates from the time of perfection in the new county. A change in the use of the collateral does not impair the effectiveness of the original filing.]

(4) If collateral is brought into this state from another jurisdiction, the rules stated in Section 9–103 determine whether filing is necessary in this state.

**Section 9-402. Formal Requisites of Financing Statement; Amendments.**

(1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

(2) A financing statement which otherwise complies with subsection (1) is sufficient although it is signed only by the secured party when it is filed to perfect a security interest in

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state.
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Such a financing statement must state that the collateral was brought into this state under such circumstances.

(b) proceeds under Section 9—306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) ____________________________

Address ____________________________

Name of secured party (or assignee) ____________________________

Address ____________________________

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

   (Describe) ____________________________

2. (If collateral is crops) The above described crops are growing or are to be grown on:

   (Describe Real Estate) ____________________________

3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:

   (Describe Real Estate) ____________________________

4. (If proceeds or products of collateral are claimed)

   Proceeds—Products of the collateral are also covered.

   Signature of Debtor (or Assignor) ____________________________

   Signature of Secured Party (or Assignee) ____________________________

(4) The term "financing statement" as used in this Article means the original financing statement and any amendments but if any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.

(5) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.
Section 9-403. What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officer.

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Article.

(2) A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such sixty day period after a stated maturity date or on the expiration of such five year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected.

(3) A continuation statement may be filed by the secured party (i) within six months before and sixty days after a stated maturity date of five years or less, and (ii) otherwise within six months prior to the expiration of the five year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

(4) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be $__________.
Section 9-404. Termination Statement

(1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof shall be $_______. If the affected secured party fails to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark “terminated” and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto.

(3) The uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be $_________.

Section 9-405. Assignment of Security Interest; Duties of Filing Officer; Fees.

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in Section 9-403(4). The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be $_______.

https://researchrepository.wvu.edu/wvlr/vol64/iss5/2
(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be $\ldots\ldots$.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

Section 9-406. Release of Collateral; Duties of Filing Officer; Fees.

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be $\ldots\ldots$.

[Section 9-407. Information From Filing Officer.

(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement.
naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be $\ldots$ for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of $\ldots$ per page.]

**Note:** This new section is proposed as an optional provision to require filing officers to furnish certificates. Local law and practices should be consulted with regard to the advisability of adoption.

**PART 5**

**Section 9-501. Default; Procedure When Security Agreement Covers Both Real and Personal Property.**

(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this Part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in Section 9–207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this Part, those provided in the security agreement and those provided in Section 9–207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (1) of Section 9–505) and with respect to redemption of collateral (Section 9–506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:
(a) subsection (2) of Section 9–502 and subsection (2) of Section 9–504 insofar as they require accounting for surplus proceeds of collateral;

(b) subsection (3) of Section 9-504 and subsection (1) of Section 9–505 which deal with disposition of collateral;

(c) subsection (2) of Section 9–505 which deals with acceptance of collateral as discharge of obligation;

(d) Section 9–506 which deals with redemption of collateral; and

(e) subsection (1) of Section 9–507 which deals with the secured party's liability for failure to comply with this Part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this Part do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.


(1) When so agreed and in event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under Section 9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse
against the debtor and who undertakes to collect from the account
debtors or obligors must proceed in a commercially reasonable
manner and may deduct his reasonable expenses of realization
from the collections. If the security agreement secures an indebt-
edness, the secured party must account to the debtor for any
surplus, and unless otherwise agreed the debtor is liable for any
deficiency. But, if the underlying transaction was a sale of ac-
counts, contract rights, or chattel paper, the debtor is entitled to
any surplus or is liable for any deficiency only if the security
agreement so provides.

Section 9-503. Secured Party's Right to Take Possession After
Default.

Unless otherwise agreed a secured party has on default the
right to take possession of the collateral. In taking possession a
secured party may proceed without judicial process if this can be
done without breach of the peace or may proceed by action. If the
security agreement so provides the secured party may require the
debtor to assemble the collateral and make it available to the se-
cured party at a place to be designated by the secured party which
is reasonably convenient to both parties. Without removal a
secured party may render equipment unusable, and may dispose
doollateral on the debtor's premises under Section 9-504.

Section 9-504. Secured Party's Right to Dispose of Collateral After
Default; Effect of Disposition.

(1) A secured party after default may sell, lease or otherwise
dispose of any or all of the collateral in its then condition or follow-
ing any commercially reasonable preparation or processing. Any
sale of goods is subject to the Article on Sales (Article 2). The
proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, prepar-
ing for sale, selling and the like and, to the extent
provided for in the agreement and not prohibited by
law, the reasonable attorneys' fees and legal ex-
enses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the se-
curity interest under which the disposition is made;

(c) the satisfaction of the indebtedness secured by any
subordinate security interest in the collateral if writ-
ten notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or who is known by the secured party to have a security interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this Part or of any judicial proceedings.
(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party; other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this Article.

Section 9-505. Compulsory Disposition of Collateral; Acceptance of the Collateral as Discharge of Obligation.

(1) If the debtor has paid sixty per cent of the cash price in the case of a purchase money security interest in consumer goods or sixty per cent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this Part a secured party who has taken possession of collateral must dispose of it under Section 9-504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under Section 9-507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor and except in the case of consumer goods to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or is known by the secured party in possession to have a security interest in it. If the debtor or other person entitled to receive notification objects in writing within thirty days from the receipt of the notification or if any other secured party objects in writing within thirty days after the secured party obtains possession the secured party must dispose of the collateral under Section 9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

Section 9-506. Debtor's Right to Redeem Collateral.

At any time before the secured party has disposed of collateral
or entered into a contract for its disposition under Section 9-504 or before the obligation has been discharged under Section 9-505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law his reasonable attorney fees and legal expenses.

Section 9-507. Secured Party's Liability for Failure to Comply With This Part.

(1) If it is established that the secured party is not proceeding in accordance with the provision of this Part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this Part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten per cent of the principal amount of the debt or the time price differential plus ten per cent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.