Commerical Law: Proposed Revisions to Article IX of the UCC - Preliminary Draft No. 2: A Summary

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The Uniform Commercial Code, since its inception in 1951, has been the product of the joint efforts of the American Law Institute and the National Conference of Commissioners on Uniform State Laws. These two bodies created a Permanent Editorial Board in 1961 to consider non-uniform amendments made by the various states and to propose changes to the Code. In 1966 this Board, in turn, selected a Review committee for Article 9. The subject of this article is the Review Committee's Preliminary Draft No. 2, reprinted in the Appendix to this article. This draft has not been reviewed by either the Permanent Editorial Board or the two sponsoring bodies of the Code but has been published in hopes of attracting suggestions for its improvement. The extensiveness of the proposals makes a detailed discussion of them in this article impracticable. Therefore, only the main propositions of Preliminary Draft No. 2 will be discussed.

I. Fixtures

Preliminary Draft No. 1, published in early 1969, was concerned with "fixtures" exclusively; i.e., the priorities as between a personal property financier and a real estate interest in personal property which becomes so affixed or related to real estate that it becomes a "fixture." Although the treatment of "fixtures" as contained in Preliminary Draft No. 1 is deemed abandoned in favor of that in Draft No. 2, the substantive proposals are basically the same. The drafts differ mainly in form. Both drafts introduce and define the requirement of "fixture

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1 Hereafter referred to as "Code."
2 Members of the Article 9 Review Committee are: Herbert Wechsler, New York, Chairman; Joe C. Barrett, Jonesboro, Arkansas; Carl W. Funk, Philadelphia; the Honorable John S. Hastings, Senior Judge, United States Court of Appeals for the Seventh Circuit, Chicago; Robert Haydock, Jr., Boston; Ray D. Henson, Chicago; Harold Marsh, Jr., Los Angeles; William Curtis Pierce, New York; Millard H. Ruud, Austin, Texas; and the Honorable Sterry R. Waterman, St. Johnsbury, Vermont, Judge, United States Court of Appeals for the Second Circuit. Reporter for the Committee is Robert Braucher, Harvard Law School. Associate Reporters are Homer Kripke, New York University Law School, and Soia Mentschikoff, University of Chicago Law School. Consultants to the Committee are Grant Gilmore, University of Chicago Law School, and Peter F. Coogan, Boston.
4 Requests for a copy of Preliminary Draft No. 2 as well as suggestions for its improvement should be addressed to: Secretary of the Permanent Editorial Board for the Uniform Commercial Code, 4025 Chestnut Street, Philadelphia, Pennsylvania 19104.
6 Review Committee for Article 9 on the Uniform Commercial Code, Preliminary Draft No. 2, supra note 3, at 1073.
filing” when the holder of a security interest in such goods desires priority over real estate interests. If the holder of a purchase money security interest desires priority over real estate interests, there must be “fixture filing” before the goods become fixtures or within ten days thereafter. The holder of a non-purchase money security interest must undertake “fixture filing” before the encumbrancer of the real estate has recorded his interest. Our present Code only requires that the security interest in the goods attach before the goods become fixtures for the achievement of priority over real estate interests.

Also, both Preliminary Drafts require the debtor to have an interest of record in the real estate for a security interest in the personal property which becomes a fixture to take priority over real estate interests. At present, this is not required. Under the present Code, it is possible for a fixture supplier to retain a security interest against a plumbing contractor, for example, to the surprise and dismay of real estate interests. Finally, both drafts extend the scope of the priority of a construction mortgage over subsequent security interests in fixtures. Under the existing Code, construction mortgages have priority only to the extent that funds have been advanced before notice of the fixture security interests. The Preliminary Drafts contain no such limitation. Since both drafts propose basically the same substantive changes in the area of “fixtures”, the reader is referred to a discussion of this topic by Ray D. Henson in the Marquette Law Review.

However, the treatment of “Fixtures” in the second draft does differ from that in Preliminary Draft No. 1 in that its definition of “fixtures” is more concise. But, by a more extensive priorities section, it achieves the same results as the more comprehensive definition contained in Draft No. 1. For example, Draft No. 1 states that “where the debtor is a tenant, goods which he has a right to remove are not fixtures. . . .” Draft No. 2, on the other hand, holds that the security

7 Draft No. 1 § 9-313(1) (b) (v), Proposed § 9-313(4) (b). References to Draft No. 1 will be cited as “Draft No. 1” followed by section number. References to Proposed Draft No. 2 will be cited as “Proposed” followed by section number. References to the present Code will be cited by section number only.
8 Draft No. 1 § 9-313 (5) (b); Proposed 9-313(4) (a).
9 Draft No. 1 § 9-313(5) (c); Proposed § 9-313(4) (b).
10 § 9-313(2).
11 Draft No. 1 § 9-313 (5) (b) and (c); Proposed § 9-313 (4) (a) and (b).
12 § 9-313(4).
13 Draft No. 1 § 9-313 (5) (b); Proposed § 9-313(6).
14 Henson, Fixtures: A Commentary on the Officially Proposed Changes in Article 9, 52 MARQ. L. REV. 179 (1968). Mr. Henson is a member of the Review Committee and Chairman of the American Bar Association’s Section of Corporate, Banking and Business Law. In his article, he presents the effects, examples and reasons for the proposals relating to fixtures. Although Mr. Henson discusses the proposals of Preliminary Draft No. 1, the substantive similarity of the two Drafts in the area of fixtures makes a reading of his article well worthwhile.
15 Compare Draft No. 1 § 9-313(1) (b) (i) with Proposed § 9-313(1) (a).
16 Draft No. 1 § 9-313(1) (b) (i).
interest in the goods which the tenant can remove has priority over the real estate interests.⁷ Hence, under Draft No. 1, the real estate interest has no claim to the goods since they are not “fixtures,” while under No. 2 it does not have priority. The end result, as between real estate interest and personal property financer, is the same.

II. CROPS AND FARM PRODUCTS

A second major area in which changes are suggested is that of “crops and farm products.” Two of the proposals seem aimed at facilitating the former’s use of his crops and equipment as collateral. Preliminary Draft No. 2 would abolish the automatic perfection of a purchase money security interest in farm equipment valued at less than $2500¹⁸ and the rule that no security interest in crops attaches under an after-acquired clause to crops which become such more than one year after the security agreement.¹⁹ Many states have reduced the $2500 amount in enacting the Code.²⁰ The main product of the after-acquired clause rule has been tedious paper-work. Also it has not completely achieved its goal of protecting the unwitting farmer who encumbers his crops years in the future. This is so because the security agreement and not the financing statement were limited, allowing a creditor to gain priority in the farmer’s crops by the signing of a security agreement several years after an initial filing of a financing statement covering this farmer’s crops.

The third farm related proposal would extend to purchasers of farm products the benefit of the usual rule that a buyer in the ordinary course of business takes free of any security interests.²¹ This proposed change would seem to make the use of farm products as collateral more difficult—the opposite result to that achieved by the other two proposals. All three suggestions do show that the Review Committee is in accord with the growing school of thought which would treat farm credit the same as other business credit.²²

The use of hypotheticals should aid in pinpointing the differences between the 1962 Code and Preliminary Draft No. 2.

1. For $2,000, Farmer F purchases farm equipment from Store S. F makes a down payment and S takes a security interest

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¹⁷ Proposed § 9-313(5) (b).
¹⁸ § 9-302(1) (c).
¹⁹ § 9-204(4) (a).
²⁰ The following states have reduced the $2,500 limit on farm equipment: Colorado ($500); Indiana ($500); Iowa ($1,000); Maine ($500); Maryland ($500); Massachusetts ($500); Missouri ($500); New Hampshire ($500); New Jersey ($500); Ohio ($500); Rhode Island ($500); Tennessee ($500); Virginia ($500); and Wisconsin ($250). Two states, Kansas and Oklahoma, eliminate § 9-202(1) (e) entirely.
in this equipment to secure the remaining payments. Farmer F then uses this same equipment as security for a loan from Bank B. A security agreement covering this equipment is executed and a financing statement is properly filed. The results would be as follows:

**1962 Code:** Section 9-302 (1) (c) exempts S from having to file to perfect its purchase money security interest since the collateral is farm equipment valued at less than $2500. S is said to have "automatic perfection" and has priority under Section 9-312 (4). The exception to this result, found in Section 9-307, is not applicable here.

**Preliminary Draft No. 2:** Proposed Section 9-302 does not exempt the holder of a purchase money security interest in farm equipment valued at less than $2500 from having to file to perfect his interest. S cannot use its status as a purchase money security interest holder to gain priority over B because it has not perfected its security interest. Therefore, B has priority.

2. On February 1, 1969, Bank B loans Farmer F $1000, while taking a security interest in F's crops and those which will be grown thereafter. B files a financing statement including an after-acquired clause. On November 1, 1970, all crops which became such between February 1, 1969 and February 1, 1970 having been disposed of, Bank C obtains a security interest in F's crops as collateral for a $1000 loan. C properly files a financing statement covering the crops. The results would be as follows:

**1962 Code:** C has priority in F's present crops, because under Section 9-204 (4) (a) no security interest in crops attaches under an after-acquired clause to crops which become such more than one year from the security agreement execution.

**Preliminary Draft No. 2:** B has priority since the rule of present Section 9-204 (4) (a) is eliminated in Draft No. 2. B therefore has priority under the basic first-to-file rule of Section 9-312 (5) (a).

3. Farmer F sells $50 worth of his farm products to a passerby, Mr. T. Mr. T buys without knowledge that the sale to him is in violation of a security interest in the produce which F has granted Bank K. The results would be as follows:

**1962 Code:** Mr. T takes the $50 worth of produce subject to Bank K's security interest since Section 9-307 (1) excludes purchasers of farm products from the general rule that a buyer in the ordinary course of business takes free of any security interests in the purchased goods.

**Preliminary Draft No. 2:** Mr. T takes free of Bank K's security interest since proposed Section 9-307 (1) does not exclude buyers of farm products from its protection.

### III. INTANGIBLES

In the area of "intangibles" such as documents, instruments and chattel paper, it is proposed that the priorities given purchasers of

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23 See Lonoke Production Credit Ass'n v. Bohannon, 238 Ark. 206, 379 S.W.2d 17 (1964).
negotiable instruments which are proceeds of original collateral be the same as those allowed purchasers of chattel paper which are proceeds of original collateral. At present, if a purchaser of a negotiable instrument has notice of a security interest in the proceeds of collateral, the secured party has priority. However, this same notice does not give the secured party priority over the purchaser of chattel paper.

Under the present Code, “pure intangibles” include accounts, contract rights, and general intangibles. The suggestion is made that the term “contract right” be eliminated and an “account” be defined as “any right to payment for goods sold or leased or services rendered . . . whether or not it has been earned by performance.” The purpose of this proposal is to protect the party who files as to accounts and finds his filing ineffective because performance has not been completed under the contract. It would also avoid the priority problem caused when one party has filed on contract rights and their proceeds and another party has filed on accounts.

Additionally, it was noted that while one section of the Code defines “account debtor” as “the person who is obligated on an account, chattel paper, contract right, or general intangible,” another section only protects “account debtors” who pay the assignor before notice that the account has been assigned. Hence this latter section fails to protect persons obligated on chattel paper, contract rights, and general intangibles. The proposed revision would afford the protection to all “account debtors” without limitation by the term “account.”

Some writers have expressed displeasure with the Code’s definitional treatment of “accounts” and “general intangibles.” One of the comments to the Code states that “contract rights may be regarded as potential accounts.” However, because an “account” is defined as “any right to payment for goods sold or leased or for services rendered

24 Proposed § 9-308.
25 § 9-309.
26 § 9-308.
27 Proposed § 9-106.
28 Review Committee for Article 9 of the Uniform Commercial Code, Preliminary Draft No. 2, supra note 3, at 1086.
29 For an exhaustive discussion of the reasons for, and effect of, eliminating the term “contract right,” see Kripke, Suggestions for Clarifying Article 9: Intangibles, Proceeds and Priorities, 41 N.Y.U. INTRA. L. REV. 694 (1966). Prof. Kripke is one of the Associate Reporters for the Review Committee for Article 9.
30 § 9-105(1) (a).
31 § 9-318(3).
32 Proposed § 9-318(3).
33 For a discussion of the necessity of this change see Coogan, Intangibles as Collateral Under the UCC, 77 HARV. L. REV. 1000 (1964). Mr. Coogan is Consultant to the Review Committee for Article 9.
34 Coogan and Gordon, The Effect of the UCC Upon Receivable Financing—Some Answers and Some Unresolved Problems, 76 HARV. L. REV. 153 (1963); Coogan, supra note 33, at 998; Kripke, supra note 29, at 691.
35 Comment to § 9-106.
certain contract rights will not ripen into "accounts" but into "general intangibles." These writers believe that understandable error leads many parties to file as to accounts, and then find their filing to be ineffective because the collateral is actually a general intangible. This result is often induced by the common practice of lumping both accounts and general intangibles together as "accounts receivable" when assigned for credit. While the Review Committee acknowledged this "error by inadvertence," it did not deem it important enough to warrant a revision of the Code.

IV. PRIORITIES

Preliminary Draft No. 2 also makes proposals concerning the subject of "Priorities." At present, the Code does not state the frequency with which a purchase money financer of inventory must give notice of his interest to earlier non-purchase money financers of record who have a security interest in the collateral which now constitutes inventory. The Review Committee has suggested making notice effective for five years by analogy to the duration of a financing statement. The existing Code also requires that a purchase money financer of inventory give such notice to "any secured party whose security interest is known" to him regardless of whether or not such party has filed a financing statement. The Committee feels that this emphasis on knowledge is inconsistent with the general disregard of it in priority problems. Also, it feels that the provision is ineffective since the purchase money security interest would have priority under the basic first-to-file or perfect rule. A change is therefore recommended to cure these shortcomings in the existing Code.

With respect to priorities and future advance clauses, a proposal is made to prevent a secured party and a debtor from "squeezing-out" an intervening lien creditor by making advances pursuant to a future advance clause after notice of the intervening lien. The proposal states that the secured party's advances after the lien are not secured unless made "pursuant to commitment." The secured party has discretion as to whether or not he will make the future advances, such advances as

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36 § 9-106.
37 For example, copyrights and patents.
38 § 9-106.
39 Review Committee for Article 9 of the Uniform Comercial Code, supra note 3, at 1087.
40 § 9-312(3) (c).
41 Proposed § 9-312(3) (b). In agreement: Kripke, supra note 29, at 720.
42 § 9-312(3) (b).
43 Review Committee for Article 9 of the Uniform Commercial Code, supra note 3 at 1091.
44 § 9-312(5).
45 Proposed § 9-312(3) (b).
46 This was practically the situation in Ball Construction Co. v. U.S., 355 U.S. 587, 78 SCT 442, 2 L.Ed. 2d 10 (1958).
47 Proposed § 9-301(4).
he may make after notice of a lien will not be secured. However, the secured party who makes advances in ignorance of the levy is protected for 45 days after the levy. The Review Committee's view agrees with the modification made by California in its version of the Code.

Again the use of a hypothetical should demonstrate the difference between the 1962 Code and Preliminary Draft No. 2.

A gives B a security interest in A's equipment in return for a loan of $500 and such future advances as B may, in his discretion, agree to make to A. B properly files a financing statement with a future advance clause. Somewhat later, L, a judgment creditor, is awarded a lien on A's equipment. 50 days after this lien B advances A another $200, based on the future advance clause. The results would be as follows:

1962 Code: B's claim based on his advances of $500 and $200 has priority over L's lien. Section 9-301 (1) (b) gives a security interest which is perfected priority over lien creditors, and Section 9-402 (1) allows security interests to extend to future advances.

Preliminary Draft No. 2: Only B's $500 claim has priority over L's lien. Proposed Section 9-301 (4) states that lien creditors take subject to previously perfected security interests to the extent that, (1) it secures advances made before the lien, or (2) it secures advances made within 45 days of the lien, or (3) the advances made after the lien are pursuant to a commitment. B's $200 advance was made more than 45 days after the lien, at his discretion.

Lien creditor priorities were advanced by the recognition that, at present, knowledge of an unperfected security interest does not generally affect the priority of secured parties. It does, however, prevent priority by lien creditors and buyers. The proposed revision would help lien creditors by making the crucial time for the existence of knowledge the point at which the "lien creditor to be" gives credit, rather than when he obtains his lien.

Rules for priority in proceeds are unclear under the present Code. The general rule proposed is that the first to file or perfect on the original collateral would have priority in the proceeds. However, where one of the conflicting interests is for purchase money security, the result would depend on what type of collateral is secured. Where the purchase money security interest is in collateral other than inventory, the holder of that interest would have priority in the collateral and its proceeds if he perfected at the time the debtor received possession of the collateral or within 10 days thereafter. But where there is a conflict

48 Id.
49 CAL. STAT. § 9312(7) (1964).
50 § 9-301. Buyers in the ordinary course of trade are protected by § 9-301(1).
51 Proposed § 9-301(1) (b).
52 Proposed § 9-312(6).
between a purchase money security interest in inventory and proceeds, and a security interest in accounts which are the proceeds of the inventory, priority would be given to the party who was the first to file.\textsuperscript{54} This rule favoring accounts receivable financing is the result of a policy decision that accounts receivable financing is more important than purchase money financing of inventories.\textsuperscript{55}

Some examples will clarify how Preliminary Draft No. 2 would affect some simple situations:

1. Both A and B have a security interest in C's equipment and proceeds. Both A and B properly file thereon. Both A and B have non-purchase money security interests. A files before B.

   \textit{Results under Preliminary Draft No. 2}: A has priority in C's equipment and its proceeds. Proposed Sections 9-312 (5) (a) and (6) would apply the first-to-file rule to the case in which both parties are non-purchase money financers.

2. X gives Y a security interest in his existing equipment, any equipment he should afterward acquire, and its proceeds. Y properly files a financing statement. Somewhat later X gives Z a purchase money security interest in equipment X purchases from Z and its proceeds. Z perfects at the time X receives the new equipment.

   \textit{Results under Preliminary Draft No. 2}: Z has priority in the equipment purchased from Z and its proceeds. Proposed Section 9-312 (4) gives a purchase money security interest holder priority over non-purchase money parties, if he perfects at the time the debtor receives the collateral or within 10 days thereof.

3. A has a security interest in D's accounts. P has a purchase money security interest in D's inventory and proceeds. A perfects his security interest before P perfects his.

   \textit{Result under Preliminary Draft No. 2}: A has priority over P in the accounts which result from the sale of the inventory. Proposed Section 9-312 (3) controls in this case. In contrast to proposed Section 9-312 (4)—which extends purchase money priority in collateral other than inventory to the proceeds of that collateral—subsection (4) does not carry forward the purchase money priority in inventory to the proceeds. The first-to-perfect rule of proposed Sections 9-312 (5) (a) and (6) are therefore controlling.

V. FILING

In connection with "filing," the proposals again deal with proceeds. They suggest that the need to "check the proceeds box" when filing as to the proceeds of collateral be eliminated.\textsuperscript{56} The Review Committee reasons that because of the statement in the Code that "... the word 'proceeds' is sufficient without further description to cover proceeds of

\textsuperscript{53} Proposed § 9-312(4)
\textsuperscript{54} Proposed § 9-312(4) and (5) (a).
\textsuperscript{55} In agreement: Henson, Priorities Under the UCC, 41 N.D. LAW. 429 (1966).
\textsuperscript{56} Proposed § 9-306(3).
any character," it has been implied that a claim to proceeds must be based on a term in a security agreement. However, the Code also states that a secured party has an automatic right to proceeds of the original collateral. Based on this latter Code provision, the Committee feels that the term "proceeds" need not be found in the security agreement for there to be a security interest in proceeds of collateral. Thus, there would be no need to check the proceeds box in a financing statement. The filing on the original collateral would be notice of a security interest in its proceeds.

Other proposals of the Committee relate to proceeds. Preliminary Draft No. 2 disagrees with courts which have held that proceeds of insurance on destroyed or damaged collateral comes within the meaning of proceeds. Also, the Committee noted that while the present Code, in some instances, provides for a security interest in proceeds deposited in a bank, it also states that Article 9 does not apply to bank deposits. The proposed draft would end this inconsistency while continuing to allow for a security interest in proceeds which become bank deposits.

The duration of financing statements was also dealt with. The Committee recommends that all financing statements be effective for five years, regardless of any stated maturity date. Presently, a financing statement which states a maturity date terminates sixty days after that date. A financing statement which does not state a maturity date is effective for five years. The Review Committee summarily, and questionably—reasoned that "[t]here seems to be no reason why a stated maturity date should terminate the effectiveness any sooner than a financing statement which does not state a maturity date."

The proper place for filing on accounts and general intangibles was reviewed. Under the present Code provisions, proper filing as to accounts is in the jurisdiction in which the assignor keeps his records concerning the accounts. The proper place for filing as to general intangibles is the jurisdiction where the debtor has his chief place of business. The Committee recommends that the chief place of business be adopted as the appropriate place for filing as to both accounts and

57 § 9-203(1)(b).
58 § 9-306(2).
59 In agreement: Kripke, supra note 29, at 703.
60 Most recently: In re Levine, 6 UCC 238 (D. Comm. 1969).
61 Proposed § 9-306(1).
62 § 9-306(4).
63 § 9-104(k).
64 Proposed § 9-104 and 9-105.
65 Proposed § 9-403(2).
66 § 9-403(2).
67 Review Committee for Article 9 of the Uniform Commercial Code, supra note 3, at 1107.
68 § 9-103(1).
69 § 9-103(2).
general instangibles. Several reasons back this recommendation. First, the typical assignment of "receivables" includes both accounts and general intangibles. Second, the practice of "factoring" eliminates the assignor's need to keep records of his accounts. Finally, the records of the accounts are often no more than a computer's memory bank.

"Using the chief place of business" as a filing site was a topic of extensive discussion by the Review Committee. Much confusion has been caused in attempting to determine the "chief place of business." The Committee proposes that "chief executive office" be substituted. It is hoped that this would emphasize that the executive office is referred to, rather than a statutory office or the largest plant.

The Committee also advises a change in the place of filing for oil, gas, minerals and their resulting receivables. Holders of interests in a well are usually numerous and quite geographically dispersed. This fact, together with the fact that the receivables often contain accounts and general intangibles, has caused record-searching to be a tedious and time-consuming affair. Therefore, the Committee logically proposes that the place for filing as to oil, gas, minerals, and their resulting receivables, be the county in which the well is located.

VI. MISCELLANEOUS

In the area of mobile collateral, the proposal clarifies the fact that no reperfection is needed in the removal state if perfection was originally achieved without filing. The "four month rule" is also clarified, in accord with recent case law, to make explicit the implications of its comment that if rights arise in removed collateral within the four months and the secured party does not perfect in the removal state within that time, he loses his priority.

The "conflict of laws" provisions of the Code are tidied up by the Committee's proposals. Phrases which were placed in various sections

\[ \text{References and Notes} \]

70 Proposed § 9-103(2).
71 For a further discussion of this reasoning see Coogan, supra note 32, at 1001.
72 In agreement: Haydock, Certainty and Conveniences—Criteria for the Place of Filing Under the UCC, B.C. IND. & COM. L. Rev. 181 (1962). Mr. Haydock is a member of the Review Committee for Article 9.
73 Review Committee for Article 9 of the Uniform Commercial Code, supra note 3, at 1099.
74 In agreement: Vagts, Impact on the UCC on the Oil and Gas Mortgage, 43 Texas L. Rev. 828 (1965).
75 Proposed § 9-103(9) and § 9-401(1).
76 Proposed § 9-103(3).
77 § 9-103(3).
78 Proposed § 9-103(3) (b).
80 Comment 7 of § 9-103.
81 Present § 9-103 has been entirely reworded and revised, as have parts of § 9-102 and § 9-105.
are eliminated\(^{82}\) so that one section—9-105—will control as to the creation and validity of security interests, and one section—9-103—will control as to perfection and the effect of perfection or non-perfection. The basic conflict of laws rule proposed is that perfection and the effect of perfection or non-perfection of a security interest is governed by the law, including the conflict of law rule, of the jurisdiction where the collateral is located when a conflicting claim arises.\(^{83}\)

As previously stated, a comprehensive discussion of the entire Preliminary Draft No. 2 of Proposed Revisions to Article 9 of the Code is impracticable within the confines of this article. Proposals of the most interest and impact have hopefully been highlighted. The proposals dealing with the Article's Scope, Timber, Motor Vehicles, and Default are not within this description. They must, however, be read for a full understanding of the effect of the Review Committee's product.

**CONCLUSION**

It appears that the Review Committee has restated the substantive suggestions concerning “Fixtures” contained in Preliminary Draft No. 1. However it has substituted a more extensive priorities section for the detailed definition of “fixture” found in Draft No. 1. Whether or not this enlargement of the priorities section will prove unwieldy remains to be seen. Their attitude toward farm-related equipment and products is in step with the growing size and business-like procedures of farm operations. Elimination of the term “contract right” will lend more simplicity to Article 9. In the area of “Priorities” the Committee has made a clarification in the conflict between security interests in proceeds, on which the present Code is silent. Withdrawal of the necessity of “checking the proceeds box” in a financing statement in order to perfect a security interest in proceeds will be a striking change in procedure but should be adapted to easily. The profession has had several years in which to observe the strengths and weaknesses of Article 9. It appears that the Review Committee for Article 9 has taken heed of experience and suggested the needed and, indeed, helpful changes.

**JOHN J. GERMANOTTA**

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\(^{82}\) A phrase in § 9-102(1), which seemed to make that section deal with conflict of laws by stating “... so far as concerned any personal property and fixtures within this state,” is deleted. All references to “validity” in § 9-103 are also deleted.

\(^{83}\) Proposed § 9-103.
The proposed amendments are set forth with brackets around material of the present Code proposed to be deleted, and with proposed new material underlined. Optional material is indicated by double brackets.

Section 1—105. Territorial Application of the Act; Parties' Power to Choose Applicable Law.

(1) (OMITTED—NO CHANGE)
(2) Where one of the following provisions of this Act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:
   Rights of creditors against sold goods. Section 2—402.
   Applicability of the Article on Bank Deposits and Collections. Section 4—102.
   Bulk transfers subject to the Article on Bulk Transfers. Section 6—102.
   Applicability of the Article on Investment Securities. Section 8—106.
   [Policy and scope of the Article on Secured Transactions. Sections 9—102 and 9—103.]
   Perfection provisions of the Article on Secured Transactions. Section 9—103.

Section 1—201.

(9) “Buyer in ordinary course of business” means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights of security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell oil, gas, minerals or the like at minehead or wellhead shall be deemed to be persons in the business of selling goods of that kind. “Buying” may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

Section 2—107. Goods to Be Severed From Realty: Recording.

(1) A contract for the sale of [timber] minerals or the like or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not
effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) (OMITTED—NO CHANGE)

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]

(Clauses (a) and (b) OMITTED—NO CHANGE)

((2) and (3) OMITTED—NO CHANGE)

(NOTE OMITTED—MINOR UPDATING CHANGES ONLY)

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

(ENTIRE OLD SECTION OMITTED)

Section 9—103. Perfection of Security Interests in Multiple State Transactions

(1) Except as otherwise provided in this section, perfection and the effect of perfection or non-perfection of a security interest in collateral other than as specified in subsection (6) is governed by the law (including the conflict of laws rules) of the jurisdiction where the collateral is when a conflicting claim arises.

(2) If the parties to a transaction creating a security interest in collateral in one jurisdiction other than collateral specified in subsection (4) or (6) understand at the time that the security interest attaches that the collateral will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or non-perfection of the security interest from the time that it attaches for thirty days and thereafter if the collateral is taken to the other jurisdiction within the thirty day period.
(3) If collateral other than that specified in subsection (6) is brought into and kept in this state while a security interest therein is perfected under the law of the jurisdiction from which the collateral was removed,

(a) except as provided in this subsection, the security interest continues perfected for the same period as if the collateral had not been removed;
(b) if action is required by Part 3 of this Article to perfect the security interest and the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is deemed to have been unperfected as against a person who became a purchaser after removal;
(c) for the purpose of priority over a buyer of consumer goods (subsection (2) of Section 9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in paragraphs (a) and (b).

(4) Notwithstanding subsections (1), (2), (3), and (6), if goods are covered by a certificate of title issued under a statute of a jurisdiction which requires indication of a security interest on the certificate as a condition of perfection, then perfection and non-perfection and the effect of perfection or non-perfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate.

(5) Notwithstanding subsections (3), (4) and (6), if goods are brought into this state while a security interest therein is perfected under the law of the jurisdiction from which the goods are removed and a certificate of title is issued under a statute of this state which requires indication of a security interest on the certificate as a condition of perfection and the certificate does not show that the goods are subject to the security interest or may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods.
after issuance of the certificate and without knowledge of the security interest.

(6) Except as otherwise provided in this section, the law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or non-perfection of a non-possessory security interest in chattel paper or of a security interest in accounts or general intangibles or in goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, containers used on vehicles, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others. A debtor who is a foreign air carrier under the Federal Aviation Act of 1958 as amended, shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier. In other cases a debtor shall be deemed located at his place of business, if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence.

(7) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor’s location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. It becomes unperfected thereafter unless perfected in the new jurisdiction before the end of that period and is deemed to have been unperfected as against a person who became a purchaser after the change.

(8) Notwithstanding subsection (6) and Section 9-302, if the debtor is not located in a jurisdiction which is a part of the United States, its territories or possessions, and accounts, chattel paper or general intangibles are within the jurisdiction of this state or the transaction which creates a security interest therein otherwise bears an appropriate relation to this state, this article governs the perfection and the effect of perfection or non-perfection of the security interest, and the security interest may be perfected by notification to the account debtor or in the case of chattel paper by taking possession.

(9) Notwithstanding any other provisions of this section perfection and the effect of perfection or non-perfection of any security interest which attaches to oil, gas, minerals or the like at the wellhead or minehead or to an account resulting from the sale thereof is governed by the law (including the conflict of laws rules) of the state wherein the well or mine is located.
Section 9—104. Transactions Excluded From Article.

This Article does not apply

(CLAUSES (a) THROUGH (d)—OMITTED—NO CHANGE)
[(e) to an equipment trust covering railway rolling stock; or]
(e) to a transfer by a government or governmental subdivision or agency; or
(f) to a sale of accounts[, contract 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 payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or
(g) to a transfer of an interest in or claim in or under any policy of insurance, except as provided with respect to proceeds (Section 9—306) and priorities in proceeds (Section 9—312); or

(CLAUSES (h) THROUGH (j)—OMITTED—NO CHANGE)
(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.]
(l) to a transfer of any deposit account (Subsection (1) of Section 9—105), except as provided with respect to proceeds (Section 9—306) and priorities in proceeds (Section 9—312)

Section 9—105. Definitions and Index of 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, but a charter or other contract involving the use or hire of a vessel is not chattel paper. 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) "Deposit account" means a checking, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization;

(f) "Document" means document of title as defined in the general definitions of Article 1 (Section 1—201)[, and a receipt of the kind described in subsection (2) of Section 7—201;

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(h) "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, or oil, gas, minerals or the like before extraction. "Goods" also includes [the unborn young of animals and growing crops;] timber to be cut under a conveyance or contract for sale, the unborn young of animals, and growing crops.

(i) "Instrument"—(DEFINITION OMITTED—NO CHANGE)

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made "pursuant to commitment" if at the time it is made the secured party is bound to make it unless the obligation is conditioned on the happening of an event within his control or discretion.

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

(m) "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;

(n) "Transmitting utility" means any person primarily engaged in the railroad or street railway business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

((2), (3), AND (4)—OMITTED—MINOR EDITORIAL CHANGES ONLY)

Section 9—106. Definitions: "Account"; ["Contract Right"]; "General Intangibles."

"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[, whether or not it has been earned by performance. ["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, documents, [and] instruments, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are [contract rights and neither] accounts [nor general intangibles].

Section 9—114—Consignments.

(1) A person who makes delivery of goods to another under a consignment which is not a security interest has priority over a secured party who would have a perfected security interest in the goods if they were the property of the consignee who is also a debtor to the secured party, and in identifiable cash proceeds received on or before delivery of the goods to a buyer, if

(a) the consignor complies with the filing provision of the Article on Sales with respect to consignments (paragraph (3) (c) of Section 2—326) before the debtor receives possession of the goods;

(b) the consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor; and
UCC-PROPOSED REVISIONS

(c) the holder of the security interest receives the notification within five years before the debtor receives possession of the goods; and

(d) the notification states that the consignor expects to deliver goods on consignment to the debtor, describing such goods by item or type.

(2) In cases not within the preceding subsection, a person who makes delivery of goods to another on consignment is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor.

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

[(1) —(OLD SUBSECTION (1) OMITTED—DELETED)]

(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 with respect to the collateral and does not attach unless

(a) the collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned; and

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of enforceability.

(3) A reference to proceeds is not necessary in the security agreement to give the secured party the rights to proceeds provided by Section 9—306.

(OLD SUBSECTION (2), RENUMBERED (4), AND NOTE—OMITTED—MINOR EDITORIAL CHANGES ONLY)

Section 9—204. [When Security Interest Attaches;] After-Acquired Property; Future Advances.

(OLD SUBSECTIONS (1) THROUGH (4) OMITTED—DELETED)

(1) Except as provided in subsection (2), a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.
(2) No security interest attaches under an after-acquired property clause 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.

(3) [(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 (Subsection (1) of Section 9-105).

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;]

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

(CLAUSES (c) AND (d) OMITTED—NO CHANGE)  
(2) OMITTED—NO CHANGE)

(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] each of the creditors represented had knowledge of the security interest at the time he gave value, such a representative of creditors [is] has the rights of a lien creditor who gave value without knowledge even though he personally [has] had knowledge of the security interest.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made pursuant to a commitment entered into without knowledge of the lien before the expiration of the 45 day period.

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:

(CLUSES (a) AND (b) OMITTED—NO CHANGE)

[(c) a purchase money security interest in farm equipment having a purchase price not in excess of $2500; but filing is re-
required for a fixture under Section 9—313 or for a motor
vehicle required to be licensed;]
(c) a security interest created by an assignment of a beneficial
interest in a trust or a decedent's estate;
(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;] for a motor vehicle
required to be registered; and fixture filing is required for
priority over conflicting interests in fixtures to the extent
provided in Section 9—313;
(e) an assignment of accounts [or contract 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 assignor;
(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.]
(g) an assignment for the benefit of all the creditors of the trans-
feror, and subsequent transfers by the assignee thereunder.
((2) OMITTED—NO CHANGE)
(OLD SUBSECTIONS (3) AND (4) OMITTED—DELETED)
(3) Notwithstanding subsection (1), the filing of a financing state-
ment otherwise required by this Article is not necessary or effective to
perfect a security interest in property subject to
(a) a statute or treaty of the United States which provides for a
national or international registration or which specifies a
place of filing different from that specified in this Article for
filing of the security interest; or
(b) the following statutes of this state; [[list any certificate of
title statute covering automobiles, trailers, mobile homes,
boats, farm tractors, or the like, and any central filing stat-
te.]]
(4) Compliance with a statute or treaty described in subsection (3)
is equivalent to the filing of a financing statement under this Article,
and a security interest in property subject to the statute or treaty can
be perfected only by compliance therewith except as provided in sub-
section (4) of Section 9—103 on multiple state transactions. Duration
and renewal of perfection of a security interest perfected by compliance
with the statute or treaty are governed by the provisions of the statute
or treaty; in other respects the security interest is subject to this Article.
(5) Notwithstanding subsection (3) (b) the filing provisions of this
Article (Part 4) also apply to a security interest in property subject to
a statute described in subsection (3)(b) during any period in which it is inventory held for sale and to a security interest in proceeds other than property subject to the statute.

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 when it attaches.] Such steps may be taken before or after the security interest attaches.

(2) OMITTED—NO CHANGE

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 money or 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) of this section and subsections (2) and (3) of Section 9—306 on proceeds.

(2), (3) AND (4) OMITTED—NO CHANGE

(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] but priority between conflicting security interests in the goods is subject to subsection (3) of Section 9—312; or

(CLause (b) OMITTED—NO CHANGE)

(6) OMITTED—NO CHANGE


A security interest in letters of credit and advices of credit (sub-
section (2)(a) of Section 5—116), goods, instruments, money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. (Remainder of section omitted—no change.)


(1) "Proceeds" includes whatever is received when collateral is or proceeds [is] are 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.] Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, 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] the disposition 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]

(a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

(b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(c) [(b)] the security interest in the proceeds is perfected before the expiration of the ten day period. Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this Article for original collateral of the same type.
(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 only in the following proceeds:

(a) in identifiable non-cash proceeds; and in separate deposit accounts containing only proceeds;

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

(d) in all cash and [bank] deposit accounts of the debtor [if other cash] in which proceeds have been commingled with other funds, [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.] less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

(5) OMITTED—NO CHANGE)


(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 duly filed a financing statement covering such goods.

(3) A buyer whether or not in ordinary course of business takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than 45 days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the 45 day period.


A purchaser of chattel paper or [a non-negotiable] an instrument who gives 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 (permissive filing and temporary perfection)[.] or under Section 9—306 (perfection as to proceeds). A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest therein [in chattel paper] which is claimed merely as proceeds of prior collateral [inventory subject to a security interest] (Section 9—306), even though he knows that the specific chattel paper or instrument is subject to the security interest.

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

(OLD SUBSECTION (1) OMITTED—DELETED)

(1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: Section 4—208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; Section 9—103 on security interests related to other jurisdictions; Section 9—114 on consignments.

(2) OMITTED—NO CHANGE

(OLD SUBSECTION (3) OMITTED—DELETED)

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

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

(b) the purchase money secured party gives notification in writ-
ing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21 day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of Section 9-304); and
(c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
(d) the 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 or its proceeds 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 purchase 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:]

(OLD CLAUSES (a) THROUGH (c) OMITTED—DELETED) according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(OLD SUBSECTION (6) OMITTED—DELETED)

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing or the taking of possession, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made while the security interest is so perfected, the security
interest has the same priority with respect to advances made thereafter pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

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

(OLD SUBSECTIONS (1) THROUGH (4) OMITTED—DELETED)

(1) In this section and in the provisions of Part 4 of this Article referring to fixture filing, unless the context otherwise requires

(a) Goods are “fixtures” when they become so related to particular real estate that an interest in them arises under real estate law.

(b) A “fixture filing” is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and which conforms to the requirements of subsection (5) of Section 9—402.

(c) A mortgage is a “construction mortgage” to the extent that it secures an obligation incurred for the construction of an improvement on land and the recorded writing so indicates.

(2) A security interest under this Article may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this Article in ordinary building materials incorporated into an improvement on land.

(3) This Article does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the debtor has an interest of record in the real estate; or

(b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate; or

(c) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances in a building of one, two, three or four family dwelling units,
and before the goods become fixtures the security interest is perfected by any method permitted by this Article; or

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

(6) Notwithstanding paragraph (a) of subsection (4) but otherwise subject to subsections (4) and (5), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. A mortgage given to refinance a construction mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(8) [(5)] When [under subsections (2) or (3) or (4) a] the secured party has priority over [the claims of all persons who have interests in] all owners and encumbrancers of 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 of 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—318. Defenses Against Assignee; Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment.

(1) OMITTED—NO CHANGE)

(2) So far as the right to payment under an assigned contract or
a part thereof has not been fully earned by performance, [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] amount due or to become due 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] is ineffective if it prohibits assignment of an account [or contract right to which they are parties is ineffective] or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest.

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

First Alternative Subsection (1)

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

(a) if the financing statement covers timber to be cut, or oil, gas, minerals or the like at the wellhead or minehead, or accounts resulting from the sale thereof, or timber to be cut, or when the financing statement is filed as a fixture filing (Section 9—313) and 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;

(b) in all other cases, in the office of the [Secretary of State].

Second Alternative Subsection (1)

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

(a) when the collateral is equipment used in farming operations,
or farm products, or accounts, [contract rights] or general intangibles arising from or relating 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 growing and to be grown 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] oil, gas, minerals or the like at the minehead or wellhead, or accounts resulting from the sale thereof, or timber to be cut, or when the financing statement is filed as a fixture filing (Section 9—313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate [concerned] would be filed or recorded; (c) in all other cases, in the office of the [[Secretary of State]].

Third Alternative Subsection (1)

(1) The proper place to file in order to perfect a security interest is as follows:
(a) [Same as in Second Alternative]
(b) [Same as in Second Alternative]
(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: One of the three alternatives should be selected as subsection (1).

((2), (3), ALTERNATIVE (3), AND (4) OMITTED—UNCHANGED)

(5) Notwithstanding the preceding subsections, and subject to subsection (3) of Section 9—302, the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is in the office of the [[Secretary of State]]. This filing constitutes a fixture filing (Section 9—313) as to the collateral described therein which is or is to become fixtures.

(6) For the purposes of this section, the residence of an organiza-
tion is its place of business if it has one, or its chief executive office if it 
has more than one place of business.

[[Note: Subsection (6) should be used only if the state chooses the 
Second or Third Alternative Subsection (1)]].

Section 9—402. Formal Requisites of Financing Statement; Amend-
ments; Mortgage as Financing Statement.

(1) A financing statement is sufficient if it gives the names of the 
debtor and the secured party, 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 ad-
dress of the debtor and contains a statement indicating the types, or 
listing 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. When the 
financing statement covers oil, gas, minerals or the like at the minehead 
or wellhead, or accounts resulting from the sale thereof, or timber to 
be cut, or when the financing statement is filed as a fixture filing (Sec-
tion 9—313) and the collateral is goods which are or are to become 
fixtures, the statement must also comply with subsection (5). A copy 
of the security agreement is sufficient as a financing statement if it con-
tains the above information and is signed by [both parties.] the debtor.

(2) A financing statement which otherwise complies with subsec-
tion (1) is sufficient [although] when it is signed [only] by the secured 
party instead of the debtor if 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, or when the 
developer's location is changed to this state. Such a financing 
statement must state that the collateral was brought into this 
state or that the debtor's location was changed to this state 
under such circumstances.

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

(c) collateral as to which the filing has lapsed.

(d) collateral acquired after a change of name, identity or cor-
porate structure of the debtor (subsection (7)).
(3) A form substantially as follows is sufficient to comply with sub-
section (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. The above goods are to become fixtures on*
(Describe Real Estate) .....................................................
and this financing statement is to be filed for record in the real
estate records.

4. (If products of collateral are claimed) Products of the collateral
are also covered.

(use whichever is applicable)
Signature of Debtor (or Assignor) ....................................
Signature of Secured Party (or Assignee) ....................

((4) OMITTED—NO CHANGE)

(5) A financing statement covering oil, gas, minerals or the like
at the minehead or wellhead, or accounts resulting from the sale
thereof, or timber to be cut, or a financing statement filed as a fixture
filing (Section 9—313) must show that it covers this type of collateral,
must recite that it is to be filed [[for record]] in the real estate records,
and where the debtor is not a transmitting utility the financing state-
ment must contain a description of the real estate [[sufficient if it were
contained in a mortgage of the real estate to give constructive notice
of the mortgage under the law of this state]].

Note: Language in double brackets is optional.

Note: Where the state has any special recording system for
real estate other than the usual grantor-grantee index (as, for

* Where appropriate, substitute either
"The above timber is standing on" or
"The above [[refer to oil, gas, minerals or the like or accounts resulting from
the sale thereof]] will be financed at [[minehead or wellhead]] of [[mine,
well]] located on"
instance, a tract system or a title registration or Torrens sys-
tem) local adaptations of subsection (5) and Section 9—
403(7) may be necessary. See Mass. Gen. Laws Chapter 106,
Section 9—409.

(6) If (a) goods are or are to become fixtures related to the real
estate described in a mortgage of the real estate, (b) the goods are
described in the mortgage by item or type, (c) the mortgage complies
with the requirements for a financing statement in this section, and (d)
the mortgage is duly recorded, the mortgage is effective from the date
of recording as a financing statement filed as a fixture filing. No fee with
reference to the financing statement is required other than the regular
recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the
debtor if it gives his individual or partnership or corporate name,
whether or not it adds other trade names or the names of partners.
Where the debtor so changes his name or in the case of an organiza-
tion its name, identity or corporate structure that a filed financing state-
ment becomes seriously misleading, the filing if not effective to perfect
a security interest in collateral acquired by the debtor more than four
months after the change, unless a new appropriate financing statement
is filed before the expiration of that time.

(8) [(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; Ef-
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 consti-
tutes filing under this Article.

(2) Except as provided in subsection (6) a [(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]
the five year period[, as the case may be] unless a continuation state-
ment is filed prior to the lapse. If a security interest perfected by filing
exists at the time insolvency proceedings are commenced by or against
the debtor, the security interest remains perfected until termination of
the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five year period, whichever occurs later. Upon such lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is subordinate to conflicting claims as if it had never been perfected. [A filed financing statement which states that the obligation secured is payable on demand is effective for five years from the date of filing.]

(3) A continuation statement must 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 immediately if he has retained a microfilm or other photographic record, or in other cases after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement shall be retained.

(4) Except as provided in subsection (7) 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 or a microfilm or other photographic copy thereof 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 $...........]

(5) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall
be $........ if the form complies in size and content with the forms
prescribed by the [[Secretary of State]] and otherwise shall be $........
The uniform fee for every name more than one required to be indexed
shall be $........ The secured party may at his option show a trade
name for any person and an extra uniform indexing fee of $........
shall be paid with respect thereto.

(6) If the debtor is a transmitting utility (subsection (5) of Sec-
tion 9—401) and a filed financing statement so states, it is effective
until a termination statement is filed. A real estate mortgage which is
effective as a fixture filing under subsection (6) of Section 9—402
remains effective as a fixture filing until the mortgage is released or
satisfied of record or its effectiveness otherwise terminates as to the
real estate.

(7) When a financing statement covers oil, gas, minerals or the
like at the wellhead or minehead or accounts resulting from the sale
thereof, or timber to be cut, or is filed as a fixture filing, [[it shall be
filed for record and]] the filing officer shall index it under the name of
the debtor in the same fashion as if he were the mortgagor in a mortgage
of the real estate described, and, to the extent that the law of this state
provides for indexing of mortgages under the name of the mortgagee,
under the name of the secured party as if he were the mortgagee there-
der, or where indexing is by description in the same fashion as if
the financing statement were a mortgage of the real estate described.
[[Note: In states in which instruments will not appear in the real estate
records and indices unless actually recorded, the bracketed
language in subsection (7) should be used.]]

(8) A financing statement does not lapse because of transfer of the
collateral even with the secured party's knowledge or consent.

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 termination statement to the effect that he no longer claims
a security interest under the financing statement, which shall be identi-
fied 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 state-
ment. 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 dol-

(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.] If he has re-
ceived the termination statement in duplicate, he shall return one copy 
of the termination statement to the secured party stamped to show the 
time of receipt thereof. If the filing officer has a microfilm or other 
photographic record of the financing statement, and of any related con-
tinuation statement, statement of assignment and statement of release, 
he may remove the originals from the files at any time after receipt of 
the termination statement, or if he has no such record, he may remove 
them from the files at any time after twelve months after receipt of 
the termination statement.

(3) If the termination statement is in a standard form, the uniform 
fee for filing and indexing a termination statement shall be $.........., 
otherwise $.........., plus in each case an additional fee of $.......... 
for each name more than one against which the termination statement 
is to be indexed.

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 financing statement by indi-
cation in the financing statement of the name and address of the as-
signee 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 financing 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 $............

(2) A secured party may assign of record all or part of his right 
under a financing statement by the filing in the place where the original 
financing statement was filed of a separate written statement of assign-
ment 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 com-
plies 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, or in the case of a fixture filing, or a filing covering oil, gas, minerals or the like at the wellhead or minehead or accounts resulting from the sale thereof, or timber to be cut, he shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be $...........

Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of Section 9—402) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this Act.

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

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

((1) AND (2) OMITTED—NO CHANGE)

(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 (3) of Section 9—504 and [(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:

(CLAUSES (a) THROUGH (e) OMITTED—NO CHANGE)

((4) AND (5) OMITTED—NO CHANGE)

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 following 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

(CLAUSES (a) AND (b) OMITTED—NO CHANGE)
(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written 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) OMITTED—NO CHANGE

(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, if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other secured party from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral [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) AND (5) OMITTED—NO CHANGE

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

(1) OMITTED—NO CHANGE

(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. If he has not signed after default a statement renouncing or modifying his rights under this subsection. In the case of consumer goods no other notice need be given. In other cases notice shall be sent to any other secured party from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one days after the notice was sent, 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.