

Official Comment

This Article sets out a comprehensive scheme for the regulation of security interests in personal property and fixtures. It supersedes prior legislation dealing with such security devices as chattel mortgages, conditional sales, trust receipts, factor's liens and assignments of accounts receivable (see Note to Section 9-102).

Consumer installment sales and consumer loans present special problems of a nature which makes special regulation of them inappropriate in a general commercial codification. Many states now regulate such loans and sales under small loan acts, retail installment selling acts and the like. The National Conference of Commissioners on Uniform State Laws has proposed a Uniform Consumer Credit Code dealing with this subject. While this Article applies generally to security interests in consumer goods, it is not designed to supersede such regulatory legislation (see Notes to Sections 9-102 and 9-203). Nor is this Article designed as a substitute for small loan acts or retail installment selling acts in any state which does not presently have such legislation.

Pre-Code law recognized a wide variety of security devices, which came into use at various times to make possible different types of secured financing. Differences between one device and another persisted, in formal requisites, in the secured party's rights against the debtor and third parties, in the debtor's rights against the secured party, and in filing requirements, although many of those differences no longer served any useful function. Thus an unfiled chattel mortgage was by the law of many states "void" against creditors generally; a conditional sale, often available as a substitute for the chattel mortgage, was in some states valid against all creditors without filing, and in states where filing is required was, if unfiled, void only against lien creditors. The recognition of so many separate security devices had the result that half a dozen filing systems covering chattel security devices might be maintained within a state, some on a county basis, others on a state-wide basis, each of which had to be separately checked to determine a debtor's status.

Nevertheless, despite the great number of security devices there remained gaps in the structure. In many states, for example, a security interest could not be taken in inventory or a stock in trade although there was a real need for such financing. It was often baffling to try to maintain a technically valid security interest when financing a manufacturing process, where the collateral starts out as raw materials, becomes work in process and ends as finished goods. Furthermore, it was by no means clear, even to specialists, how under pre-Code law a security interest might be taken in many kinds of intangible property—such as television or motion picture rights—which have come to be an important source of commercial collateral.

While the chattel mortgage was adaptable for use in almost any situation where goods are collateral, there were limitations, sometimes highly technical, on the use of other devices, such as the conditional sale and particularly the trust receipt. The cases are many in which a security transaction described by the parties as a conditional sale or a trust receipt was later determined by a court to be something else, usually a chattel mortgage. The consequence of such a determination was typically to void the security interest against creditors because the security agreement was not filed as a *chattel mortgage* (even though it may have been filed as a conditional sale or a trust receipt). The already mentioned difficulty of financing around to some extent by the device known as "field warehousing" as well as by the use of the trust receipt. After 1940 a number of states generally authorized inventory financing by enacting statutes, similar although not uniform, known as "factor's lien" acts. Also after 1940 the increasingly important business of lending against accounts receivable inspired new statutes in that field in more than thirty states.

The growing complexity of financing transactions forced legislatures to keep piling new statutory provisions on top of our inadequate and already sufficiently complicated nineteenth-century structure of security

law. The results of this continuing development were increasing costs to both parties and increasing uncertainty as to their rights and the rights of third parties dealing with them.

The aim of this Article is to provide a simple and unified structure within which the immense variety of present-day secured financing transactions can go forward with less cost and with greater certainty.

Under this Article the traditional distinctions among security devices, based largely on form, are not retained; the Article applies to all transactions intended to create security interests in personal property and fixtures, and the single term "security interest" substitutes for the variety of descriptive terms which had grown up at common law and under a hundred-year accretion of statutes. This does not mean that the old forms may not be used, and Section 9-102(2) makes it clear that they may be.

This Article does not determine whether "title" to collateral is in the secured party or in the debtor and adopts neither a "title theory" nor a "lien theory" of security interests. Rights, obligations and remedies under the Article do not depend on the location of title (Section 9-202). The location of title may become important for other purposes—as, for example, in determining the incidence of taxation—and in such a case the parties are left free to contract as they will. In this connection the use of a form which has traditionally been regarded as determinative of title (e.g., the conditional sale) could reasonably be regarded as evidencing the parties' intention with respect to title to the collateral.

Under the Article distinctions based on form (except as between pledge and non-possessory interests) are no longer controlling. For some purposes there are distinctions

based on the type of property which constitutes the collateral—industrial and commercial equipment, business inventory, farm products, consumer goods, accounts receivable, documents of title and other intangibles—and, where appropriate, the Article states special rules applicable to financing transactions involving a particular type of property. Despite the statutory simplification a greater degree of flexibility in the financing transaction is allowed than is possible under existing law.

The scheme of the Article is to make distinctions, where distinctions are necessary, along functional rather than formal lines.

This has made possible a radical simplification in the formal requisites for creation of a security interest.

A more rational filing system replaces the present system of different files for each security device which is subject to filing requirements. Thus not only is the information contained in the files made more accessible but the cost of procuring credit information, and, incidentally, of maintaining the files, is greatly reduced.

The Article's flexibility and simplified formalities should make it possible for new forms of secured financing, as they develop, to fit comfortably under its provisions, thus avoiding the necessity, so apparent in recent years, of year by year passing new statutes and tinkering with the old ones to allow legitimate business transactions to go forward.

The rules set out in this Article are principally concerned with the limits of the secured party's protection against purchasers from and creditors of the debtor. Except for procedure on default, freedom of contract prevails between the immediate parties to the security transaction.

§ 9-102. Policy and Subject Matter of Article.

(1) Except as otherwise provided in Section 9-104 on excluded transactions, this Article applies

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

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

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

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

Note: The adoption of this Article should be accompanied by the repeal of existing statutes dealing with conditional sales, trust receipts, factor's liens where the factor is given a non-possessory lien, chattel mortgages, crop mortgages, mortgages on railroad equipment, assignment of accounts and generally statutes regulating security interests in personal property.

Where the state has a retail installment selling act or small loan act, that legislation should be carefully examined to determine what changes in those acts are needed to conform them to this Article. This Article primarily sets out rules defining rights of a secured party against persons dealing with the debtor; it does not prescribe regulations and controls which may be necessary to curb abuses arising in the small loan business or in the financing of consumer purchases on credit. Accordingly there is no intention to repeal existing regulatory acts in those fields by enactment or re-enactment of Article 9. See Section 9-203(4) and the Note thereto. As amended in 1972.

Official Comment

Prior Uniform Statutory Provision: None.

Purposes:

The main purpose of this Section is to bring all consensual security interests in personal property and fixtures under this Article, except for certain types of transactions excluded by Section 9-104. In addition certain sales of accounts and chattel paper are brought within this Article to avoid difficult problems of distinguishing between transactions intended for security and those not so intended. As to security interests in fixtures created under the law applicable to real estate, see Section 9-313(1).

1. Except for sales of accounts and chattel paper, the principal test whether a transaction comes under this Article is: is the transaction intended to have effect as security? For example, Section 9-104 excludes certain transactions where the security interest (such as an artisan's lien) arises under

field; but even though it is used, the rules of this Article govern.

2. If an obligation is to repay money lent and is not part of chattel paper, it is either an instrument or a general intangible. A sale of an instrument or general intangible is not within this Article, but a transfer intended to have effect as security for an obligation of the transferor is covered by subsection 1(a). In either case the nature of the transaction is not affected by the fact that collateral is transferred with the instrument or general intangible. Such a transfer is treated as a transfer by operation of law, whether or not it is articulated in the agreement.

An assignment of accounts or chattel paper as security for an obligation is covered by subsection (1)(a). Commercial financing on the basis of accounts and chattel paper is often so conducted that the distinction between a security transfer and a sale is blurred, and a sale of such property is therefore covered by subsection (1)(b) whether intended for security or not, unless excluded by Section 9-104. The buyer then is treated as a secured party, and his interest as a security interest. See Sections 9-105(1)(m), 1-201(37). Certain sales which have nothing to do with commercial financing transactions are excluded by Section 9-104(f); compare *Spurlin v. Sloan*, 368 S.W.2d 314 (Ky. 1963). See also Section 9-302(1)(e), exempting from filing casual or isolated assignments, and Section 9-302(2), preserving the perfected status of a security interest against the original debtor when a secured party assigns his interest.

Neither Section 9-102 nor any other provision of Article 9 is intended to prevent the transfer of ownership of accounts or chattel paper. The determination of whether a particular transfer of accounts or chattel paper constitutes a sale or a transfer for security purposes (such as in connection with a loan) is not governed by Article 9. Article 9 applies both to sales of accounts or chattel paper and loans secured by accounts or chattel paper primarily to incorporate Article 9's perfection rules. The use of terminology such as "security interest" to include the

interest of a buyer of accounts or chattel paper, "secured party" to include a buyer of accounts or chattel paper, "debtor" to include a seller of accounts or chattel paper, and "collateral" to include accounts or chattel paper that have been sold is intended solely as a drafting technique to achieve this end and is not relevant to the sale or secured transaction determination. See PEB Commentary No. 14, dated June 10, 1994 [Appendix V, *infra*].

3. In general, problems of choice of law in this Article as to the validity of security agreements are governed by Section 1-105. Problems of choice of law as to perfection of security interests and the effect of perfection or non-perfection thereof, including rules requiring re-perfection, are governed by Section 9-103.

4. An illustration of subsection (3) is as follows:

The owner of Blackacre borrows \$10,000 from his neighbor, and secures his note by a mortgage on Blackacre. This Article is not applicable to the creation of the real estate mortgage. Nor is it applicable to a sale of the note by the mortgagee, even though the mortgage continues to secure the note. However, when the mortgagee pledges the note to secure his own obligation to X, this Article applies to the security interest thus created, which is a security interest in an instrument even though the instrument is secured by a real estate mortgage. This Article leaves to other law the question of the effect on rights under the mortgage of delivery or non-delivery of the mortgage or of recording or non-recording of an assignment of the mortgagee's interest. See Section 9-104(j). But under Section 3-304(5) recording of the assignment does not of itself prevent X from holding the note in due course.

5. While most sections of this Article apply to a security interest without regard to the nature of the collateral or its use, some sections state special rules with reference to particular types of collateral. An index of sections where such special rules are stated follows:

Section
 9-505(1) Secured party's duty to dispose of repossessed consumer goods
 9-507(1) Secured party's liability for improper disposition of consumer goods after default

EQUIPMENT

9-103(2) When Article applies with regard to certain types of equipment normally used in more than one jurisdiction; conflict of laws rules
 9-109(2) Definition
 9-302(1)(c) When filing not required to perfect security interest in certain farm equipment
 9-307(2) When buyers of certain farm equipment from debtor take free of security interest
 9-401(1) Place of filing for equipment used in farming operation
 9-503 Secured party's right after default to remove or to render equipment unusable

FARM PRODUCTS

9-109(3) Definition
 9-203(1)(b) Formal requisites of security agreement covering crops
 9-307 When a buyer of farm products takes free of security interest
 9-312(2) Priority of secured party who gives new value to enable debtor to produce crops
 9-401(1) Place of filing
 9-402(1) Form of financing statement covering crops
 and (3)

INVENTORY

9-103(3) When Article applies with regard to certain types of inventory normally used in more than one jurisdiction; conflict of laws rules
 9-109(4) Definition
 9-114 Consigned goods
 9-306(5) Rule where goods whose sale gave rise to account or chattel paper return to seller's possession
 9-307(1) When buyers from debtor take free of security interest
 9-312(3) When purchase money security interest takes priority over conflicting security interest
 9-304(5) Financing statements covering consigned or leased goods
 9-408

Cross References:

Sections 9-103 and 9-104.
 Point 1: Section 2-326.
 Point 2: Section 1-105.

Definitional Cross References:

"Account": Section 9-106.
 "Security interest": Section 1-201.

§ 9-103. Perfection of Security Interest in Multiple State Transactions.

[1995 Amendments to text indicated by strikeout and underline]

(1) Documents, instruments, letters of credit, and ordinary goods.
 (a) This subsection applies to documents, and instruments, rights to proceeds of written letters of credit, and to goods other than those covered by a

certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods 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 it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Part 3 of this Article to perfect the security interest,

(i) if 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 thereafter deemed to have been unperfected as against a person who became a purchaser after removal;
 (ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) 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 subparagraphs (i) and (ii).

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, 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. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

- (c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1).
- (d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they 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.
- (3) Accounts, general intangibles and mobile goods.
- (a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to 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, shipping containers, 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, and are not covered by a certificate of title described in subsection (2).
- (b) 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 the security interest.
- (c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or non-perfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.
- (d) 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. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it 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.
- (e) 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. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.
- (4) Chattel paper.
- The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a non-possessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.
- (5) Minerals.
- Perfection and the effect of perfection or non-perfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.
- (6) Investment property.
- (a) This subsection applies to investment property.
- (b) Except as otherwise provided in paragraph (f), during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.
- (c) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in Section 8-110(d).
- (d) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in Section 8-110(e).
- (e) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this paragraph:
- (i) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
- (ii) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subpara-

graph (i), but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(iii) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraphs (i) or (ii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

(iv) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraphs (i) or (ii) and an account statement does not identify an office serving the commodity customer's account as provided in subparagraph (iii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located.

As amended in 1972, 1977, 1994, and 1995.

See Appendices XII and XIV for material relating to changes made in text in 1994 and 1995.

Official Comment

Prior Uniform Statutory Provisions: Paragraph 1(d); Section 14, Uniform Conditional Sales Act.

Purposes:

1. The general rules on choice of law between the original parties in Section 1-105 apply to this Article. However, when conflicting claims to collateral arise, the question depends on *perfection* of security interests, and thus on the effect of perfection or non-perfection. These problems are dealt with in this section. The general rule (paragraph (1)(b)) is that these questions are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected. This event will frequently be the filing. If the last event is not filing and perfection is through filing, the filing required is in the jurisdiction where the collateral is when the last event occurs; prior filing in another jurisdiction is not effective and is not saved by the four-month rule

discussed below, which applies only when the security interest was *perfected* in the jurisdiction from which the collateral was removed. If the security interest was perfected in one jurisdiction and then removed to another jurisdiction, maintenance of perfection in the latter jurisdiction or failure to do so is the "last event" to which the basic rule refers.

There are, however, exceptions to this basic rule:

2. If the parties to a transaction creating a purchase money security interest in goods understand when the security interest attaches that the collateral will be kept in another jurisdiction, the law of that jurisdiction governs perfection and the effect of perfection or non-perfection until 30 days after the debtor receives possession of the goods (paragraph (1)(c)). A filing in that jurisdiction perfects the security interest even before the goods are removed. The 30-day period is not a period of grace during which

filing is unnecessary or has retroactive effect, but merely states the period during which the other jurisdiction is the place of filing. The effect of late filing is governed by other provisions, such as Sections 9-301 and 9-312.

3. If the goods reach that jurisdiction within the 30 days, the effectiveness of the filing in that jurisdiction continues without interruption. If the collateral is not kept in that jurisdiction before the end of the 30-day period, paragraph (1)(c) ceases to be applicable and thereafter the law of the jurisdiction where the collateral is controls perfection. A failure of the collateral to reach the intended destination, jurisdiction before the expiration of the 30-day period because of a conflicting claim or otherwise may cause disappointment of expectations that the law of the destination jurisdiction will govern continuously, and caution may dictate filing both in that jurisdiction and in the jurisdiction where the security interest attaches.

This section uses the concepts that goods are "kept" in a state or "brought" into a state, and related terms. These concepts imply a stopping place of a permanent nature in the state, not merely transit or storage intended to be transitory.

4.(a) Where the collateral is an automobile or other goods covered by a certificate of title issued by any state and the security interest is perfected by notation on the certificate of title, perfection is controlled by the certificate of title rather than by the law of the state wherein the security interest attached (subsection (2)).

(b) It has long been hoped that "exclusive certificate of title laws" would provide a sure means of controlling property interests in goods like automobiles, which because of their nature cannot readily be controlled by local or statewide filing alone. In theory the certificate of title should control the property interests in the vehicle wherever the vehicle may be. However, two circumstances operate to prevent the perfect operation of the certificate of title device:

First, some states have never adopted certificate of title laws. This results in a problem in the issuance of a certificate of title when the vehicle moves from a non-

certificate to a certificate state, because the certificate-issuing officer is in no position to conduct a complete search to ascertain the condition of the title in a state of origin which requires no filing or in which filing could be in any one or more of several localities. Also, it seems that when a vehicle moves from a certificate to a non-certificate state, the officers issuing a new registration for the vehicle are not always meticulous to notify secured parties shown on the certificate to give them a chance to perfect their security interests in the non-certificate state when a new registration is issued. Moreover, some vehicles like mobile homes are not always registered and title certificates are not always issued even in a state which may have certificate laws applicable thereto, because the certificate laws may apply only if the mobile homes use the highways. Registration plates of a mobile home having a certificate could be removed and there would be nothing visible to show that a certificate had ever been issued for it.

Second, various fraudulent devices based on allegations of loss of the certificate of title enable a dishonest person to obtain both an original and a duplicate of title; to have a security interest shown on only one thereof; and then to effect a transfer into a new state on the basis of the clean certificate, no matter how diligent the officers in the second state may be.

Given these practical problems, the choice of applicable rules of law after interstate removals of vehicles subject to certificate of title laws is most difficult. This Article provides the rules set forth below.

(c) The security interest perfected by notation on a certificate of title will be recognized without limit as to time; but, of course, perfection by this method ceases if the certificate of title is surrendered (paragraph (2)(b)). Since the secured party ordinarily holds the certificate, surrender thereof could not occur without his action in the matter in some respect. If the vehicle is reregistered in another jurisdiction while the secured party still holds the certificate, a danger of deception to third parties arises. The section provides that the certificate

treat the entitlement holder as entitled to the securities in question before the entitlement holder has actually made payment for them. For example, many brokers permit retail customers to pay for securities by check. The broker may not receive final payment of the check until several days after the broker has credited the customer's securities account for the securities. Thus, the customer will have acquired a security entitlement prior to payment. Subsection (1) provides that in such circumstances the securities intermediary has a security interest in the entitlement holder's security entitlement as security for the payment obligation. This is a codification and adaptation to the indirect holding system of the so-called "broker's lien," which has long been recognized in existing law. See Restatement of Security § 12. An intermediary who has a security interest under this section will have control by virtue of Section 8-106(e). The security interest has priority over conflicting security interests granted by the entitlement holder, under Section 9-116(5)(a) and (c).

3. Subsection (2) specifies the rights of persons who deliver certificated securities or other financial assets in physical form, such as money market instruments, if the agreed payment is not received. In the typical arrangement for settlement of physical securities, the seller's securities custodian will deliver the physical certificates to the buyer's securities custodian and receive a time-stamped delivery receipt. The buyer's securities custodian will examine the certificate to ensure that it is in good order, and that the delivery matches a trade in which the buyer has instructed the seller to deliver to that custodian. If all is in order, the receiving custodian will settle with the delivering custodian through whatever funds settlement system has been agreed upon or is used by custom and usage in that market. The understanding of the trade, however, is that the delivery is conditioned upon payment, so that if payment is not made for any reason, the security will be returned to the deliverer. Subsection (2) is intended to clarify the rights of persons making deliveries in such circumstances. It specifies that the person making delivery has a security interest in the securities or other financial assets, securing the right to receive payment. No security agreement is required for attachment, and no filing or other action is required for perfection.

Definitional Cross References:

"Certificated security". Section 8-102(a)(4).
 "Financial asset". Section 8-102(a)(9).
 "Securities account". Section 8-501.
 "Securities intermediary". Section 8-102(a)(14).
 "Security agreement". Section 9-105(1)(f).
 "Security entitlement". Section 8-102(a)(17).
 "Security interest". Section 1-201(37).

PART 2

VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

§ 9-201. General Validity of Security Agreement.

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

Official Comment

Prior Uniform Statutory Provisions: Section 4, Uniform Conditional Sales Act; Section 3, Uniform Trust Receipts Act.
Purposes: This section states the general validity of a security agreement. In general the security agreement is effective between the parties; it is likewise effective against third parties. Exceptions to this general rule arise where there is a specific provision in any Article of this Act, for example, where Article 1 invalidates a disclaimer of the obligations of good faith, etc. (Section 1-102(3)), or this Article subordinates the security interest because it has not been perfected (Section 9-301) or for other reasons (see Section 9-312 on priorities) or defers the security interest where certain types of claimants are involved (for example Section 9-307 on buyers of goods). As pointed out in the Note to Section 9-102,

there is no intention that the enactment of this Article should repeal retail installment selling acts or small loan acts. Nor of course are the usury laws of any state repealed. These are mentioned in the text of Section 9-201 as examples of applicable laws, outside this Code entirely, which might invalidate the terms of a security agreement.

Cross References: Sections 1-102(3), 9-301, 9-307 and 9-312.

Definitional Cross References:

"Collateral". Section 9-105.
 "Creditor". Section 1-201.
 "Party". Section 1-201.
 "Purchaser". Section 1-201.
 "Security agreement". Section 9-105.

§ 9-202. Title to Collateral Immaterial.

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

Official Comment

Prior Uniform Statutory Provision: None.
Purposes: The rights and duties of the parties to a security transaction and of third parties are stated in this Article without reference to the location of "title" to the collateral. Thus the incidents of a security interest which secures the purchase price of goods are the same under this Article whether the secured party appears to have retained title or the debtor appears to have obtained title and then conveyed it or a lien to the secured party. This Article in no way determines which line of interpretation (title theory v. lien theory or retained title v. conveyed title) should be followed in cases where the applicability of some other rule of law depends upon who has title. Thus if a revenue law imposes a tax on the "legal" owner of goods or if a corporation law makes a vote of the stockholders prerequisite to a corporation "giving" a security interest but not if it acquires property "subject" to a security in-

terest, this Article does not attempt to define whether the secured party is a "legal" owner or whether the transaction "gives" a security interest for the purpose of such laws. Other rules of law or the agreement of the parties determine the location of "title" for such purposes.

Petitions for reclamation brought by a secured party in his debtor's insolvency proceedings have often been granted or denied on a title theory: where the secured party has title, reclamation will be granted; where he has "merely a lien," reclamation may be denied. For the treatment of such petitions under this Article, see Point 1 of Comment to Section 9-507.

Cross References: Sections 2-401 and 2-507.
Definitional Cross References: "Collateral", Section 9-105.
 "Debtor", Section 9-105.
 "Remedy", Section 1-201.

"Rights". Section 1-201.
"Secured party". Section 9-105.

§ 9-203. Attachment and Enforceability of Security Interest; Proceeds; Formal Requisites.

(1) Subject to the provisions of Section 4-210 on the security interest of a collecting bank, Sections 9-115 and 9-116 on security interests in investment property, and Section 9-113 on a security interest arising under the Articles on Sales and Leases, 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, the collateral is investment property and the secured party has control 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;
- (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 attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by Section 9-306.

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

Note: At * in subsection (4) insert reference to any local statute regulating small loans, retail installment sales and the like.

The foregoing subsection (4) is designed to make it clear that certain transactions, although subject to this Article, must also comply with other applicable legislation.

This Article is designed to regulate all the "security" aspects of transactions within its scope. There is, however, much regulatory legislation, particularly in the consumer field, which supplements this Article and should not be repealed by its enactment. Examples are small loan acts, retail installment selling acts and the like. Such acts may provide for licensing and rate regulation and may prescribe particular forms of contract. Such provisions should remain in force despite the enactment of this Article. On the other hand if a retail installment selling act contains provisions on filing, rights on default, etc., such provisions should be repealed as inconsistent with this Article except that inconsistent provisions, as to deficiencies, penalties, etc., in the Uniform Consumer Credit Code and other recent related legislation should remain because those statutes were

drafted after the substantial enactment of the Article and with the intention of modifying certain provisions of this Article as to consumer credit. As amended in 1972, 1977 and 1994.

See Appendices XI and XII for material relating to changes made in text in 1994.

Official Comment

Prior Uniform Statutory Provision: Section 2, Uniform Trust Receipts Act.

Purposes:

1. Subsection (1) states three basic prerequisites to the existence of a security interest: agreement, value, and collateral. In addition, the agreement must be in writing unless the collateral is in the possession of the secured party (including an agent on his behalf—see Comment 2 to Section 9-305). When all of these elements exist, the security agreement becomes enforceable between the parties and is said to "attach". Perfection of a security interest (see Section 9-303) will in many cases depend on the additional step of filing a financing statement (see Section 9-302) or possession of the collateral (Sections 9-304(1) and 9-305). Section 9-301 states who will take priority over a security interest which has attached but which has not been perfected. Subsection (2) states a rule of construction under which the security interest, unless postponed by explicit agreement, attaches automatically when the stated events have occurred.

2. As to the type of description of collateral in a written security agreement which will satisfy the requirements of this section, see Section 9-110 and Comment thereto. In the case of crops growing or to be grown or timber to be cut the best identification is by describing the land, and subsection (1)(a) requires such a description.

3. One purpose of the formal requisites stated in subsection (1)(a) is evidentiary. The requirement of written record minimizes the possibility of future dispute as to the terms of a security agreement and as to what property stands as collateral for the obligation secured. Where the collateral is in the possession of the secured party, the evidentiary need for a written record is much less than where the collateral is in the

debtor's possession; customarily, of course, as a matter of business practice the written record will be kept but, in this Article as at common law, the writing is not a formal requisite. Subsection (1)(a), therefore, dispenses with the written agreement—and thus with signature and description—if the collateral is in the secured party's possession.

4. The definition of "security agreement" (Section 9-105) is "an agreement which creates or provides for a security interest". Under that definition the requirement of this section that the debtor sign a security agreement is not intended to reject, and does not reject, the deeply rooted doctrine that a bill of sale although absolute in form may be shown to have been in fact given as security. Under this Article as under prior law a debtor may show by parol evidence that a transfer purporting to be absolute was in fact for security and may then, on payment of the debt, assert his fundamental right to return of the collateral and execution of an acknowledgment of satisfaction.

5. The formal requisite of a writing stated in this section is not only a condition to the enforceability of a security interest against third parties, it is in the nature of a Statute of Frauds. Unless the secured party is in possession of the collateral, his security interest, absent a writing which satisfies paragraph (1)(a), is not enforceable even against the debtor, and cannot be made so on any theory of equitable mortgage or the like. If he has advanced money, he is of course a creditor and, like any creditor, is entitled after judgment to appropriate proceeds to enforce his claim against his debtor's assets; he will not, however, have against his debtor the rights given a secured party by Part 5 of this Article on Default. The theory of equitable mortgage, insofar as it

has operated to allow creditors to enforce informal security agreements against debtors, may well have developed as a necessary escape from the elaborate requirements of execution, acknowledgment and the like which the nineteenth century chattel mortgage acts vainly relied on as a deterrent to fraud. Since this Article reduces formal requisites to a minimum, the doctrine is no longer necessary or useful. More harm than good would result from allowing creditors to establish a secured status by parol evidence after they have neglected the simple formality of obtaining a signed writing.

6. Subsection (4) states that the provisions of regulatory statutes covering the field of consumer finance prevail over the provisions of this Article in case of conflict. The second sentence of the subsection is added to make clear that no doctrine of total

voidness for illegality is intended: failure to comply with the applicable regulatory statute has whatever effect may be specified in that statute, but no more.

§ 9-204. After-Acquired Property; Future Advances.

(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) 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). As amended in 1972.

Official Comment

Prior Uniform Statutory Provision: None.

1. Subsection (1) makes clear that a security interest arising by virtue of an after-acquired property clause has equal status with a security interest in collateral in which the debtor has rights at the time value is given under the security agreement. That is to say: the security interest in after-acquired property is not merely an "equitable" interest; no further action by the secured party—such as the taking of a supplemental agreement covering the new collateral—is required. This does not however mean that

the interest is proof against subordination or defeat: Section 9-108 should be consulted on when a security interest in after-acquired collateral is not security for antecedent debt, and section 9-312(3) and (4) on when such a security interest may be subordinated to a conflicting purchase money security interest in the same collateral.

2. This Article accepts the principle of a "continuing general lien". It rejects the doctrine—of which the judicial attitude toward after-acquired property interests was one expression—that there is reason to invalidate as a matter of law what has been variously called the floating charge, the free-

secured mortgage and the lien on a shifting stock. This Article validates a security interest in the debtor's existing and future assets, even though (see Section 9-205) the debtor has liberty to use or dispose of collateral without being required to account for proceeds or substitute new collateral. (See further, however, Section 9-306 on Proceeds and Comment thereto.)

The widespread nineteenth century prejudice against the floating charge was based on a feeling, often inarticulate in the opinions, that a commercial borrower should not be allowed to encumber all his assets present and future, and that for the protection not only of the borrower but of his other creditors a cushion of free assets should be preserved. That inarticulate premise has much to recommend it. This Article decisively rejects it not on the ground that it was wrong in policy but on the ground that it was not effective. In pre-Code law there was a multiplication of security devices designed to avoid the policy: field warehousing, trust receipts, factor's lien acts and so on. The cushion of free assets was not preserved. In almost every state it was possible before the Code for the borrower to give a lien on everything he held or would have. There have no doubt been sufficient economic reasons for the change. This Article, in expressly validating the floating charge, merely recognizes an existing state of things. The substantive rules of law set forth in the balance of the Article are designed to achieve the protection of the debtor and the equitable resolution of the conflicting claims of creditors which the old rules no longer give.

Notice that the question of assignment of future accounts is treated like any other case of after-acquired property: no periodic list of accounts is required by this Act. Where less than all accounts are assigned such a list may of course be necessary to permit identification of the particular accounts assigned.

3. Subsection (1) has been already referred to in connection with after-acquired property. It also serves to validate the so-called "cross-security" clause under which collateral acquired at any time may secure advances whenever made.

4. Subsection (2) limits the operation of the after-acquired property clause against consumers. No such interest can be claimed as additional security in consumer goods (defined in Section 9-109), except accessions (see Section 9-314), acquired more than ten days after the giving of value.

5. Under subsection (3) collateral may secure future as well as present advances when the security agreement so provides. At common law and under chattel mortgage statutes there seems to have been a vaguely articulated prejudice against future advance agreements comparable to the prejudice against after-acquired property interests. Although only a very few jurisdictions went to the length of invalidating interests claimed by virtue of future advances, judicial limitations severely restricted the usefulness of such arrangements. A common limitation was that an interest claimed in collateral existing at the time the security transaction was entered into for advances made thereafter was good only to the extent that the original security agreement specified the amount of such later advances and even the times at which they should be made. In line with the policy of this Article toward after-acquired property interests this subsection validates the future advance interest, provided only that the obligation be covered by the security agreement.

The effect of after-acquired property and future advance clauses in the security agreement should not be confused with the use of financing statements in notice filing. The references to after-acquired property clauses and future advance clauses in Section 9-204 are limited to security agreements. This section follows Section 9-203, the section requiring a written security agreement, and its purpose is to make clear that confirmatory agreements are not necessary where the basic agreement has the clauses mentioned. This section has no reference to the operation of financing statements. The filing of a financing statement is effective to perfect security interests as to which the other required elements for perfection exist, whether the security agreement involved is one existing at the date of filing with an after-acquired property clause or a future advance clause, or whether the applicable security

See Appendix XI for material relating to changes made in text in 1994.

Official Comment

Prior Uniform Statutory Provision: Section 2, Uniform Conditional Sales Act.

Purposes:

1. Clauses are frequently inserted in installment purchase contracts under which the conditional vendee agrees not to assert defenses against an assignee of the contract. These clauses have led to litigation and their present status under the case law is in confusion. In some jurisdictions they have been held void as attempts to create negotiable instruments outside the framework of Article 3 or on grounds of public policy; in others they have been allowed to operate to cut off at least defenses based on breach of warranty. Under subsection (1) such clauses in a security agreement are validated outside the consumer field, but only as to defenses which could be cut off if a negotiable instrument were used. This limitation is important since if the clauses were allowed to have full effect as typically drafted, they would operate to cut off real as well as personal defenses. The execution of a negotiable role in connection with a security agreement is given like effect as the execution of an agreement containing a waiver of defense clause. The same rules are made applicable to leases as to security agreements, whether or not the lease is intended as security.

2. This Article takes no position on the controversial question whether a buyer of consumer goods may effectively waive defenses by contractual clause or by execution of a negotiable note. In some states such waivers have been invalidated by statute. In other states the course of judicial decision has rendered them ineffective or unreliable—courts have found that the assignee is not protected against the buyer's defense by a clause in the contract or that the holder of a note, by reason of his too close connection with the underlying transaction, does not

§ 9-207.

Rights and Duties When Collateral Is in Secured Party's Possession.

(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper

reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

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

- (a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;
- (b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;
- (c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless returned to the debtor, shall be applied in reduction of the secured obligation;
- (d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;
- (e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.
- (3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.
- (4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

Official Comment

Prior Uniform Statutory Provision: unreasonable, what shall constitute reasonable care in a particular case.

Purposes:

- 1. Subsection (1) states the duty to preserve collateral imposed on a pledge at common law. See Restatement of Security, §§ 17, 18. In many cases a secured party having collateral in his possession may satisfy this duty by notifying the debtor of any act which must be taken and allowing the debtor to perform such act himself. If the secured party himself takes action, his reasonable expenses may be added to the secured obligation.
- 2. Subsection (2) states rules, which follow common law precedents, and which apply, unless there is agreement otherwise, in typical situations during the period while the secured party is in possession of the collateral.
- 3. The right of a secured party holding instruments or documents to have them indorsed or transferred to him or his order is dealt with in the relevant sections of Articles 3 (Commercial Paper), 7 (Warehouse Receipts), Bills of Lading and Other Documents) and 8 (Investment Securities). (Sections 3-201, 7-506, 8-307 & 8-304(d)). Amendments approved by the Permanent Editorial Board for Uniform Commercial Code November 4, 1995.

Under Section 1-102(3) the duty to exercise reasonable care may not be disclaimed by agreement, although under that section the parties remain free to determine by agreement, in any manner not manifestly

4. This section applies when the secured party has possession of the collateral before default, as a pledgee, and also when he has taken possession of the collateral after default. See Section 9-501(1) and (2). Subsection (4) permits operation of the collateral in the circumstances stated, and subsection (2)(a) authorizes payment of or provision for expenses of such operation. Agreements providing for such operation are common in trust indentures securing corporate bonds and are particularly important when the collateral is a going business. Such an agreement cannot of course disclaim the duty of care established by subsection (1), nor can it waive or modify the rights of the debtor contrary to Section 9-501(3).

- Cross References:**
 Point 1: Section 1-102(3).
 Point 3: Sections 3-201, 7-506 and 8-302 8-304(d). *Amendments approved by the Permanent Editorial Board for Uniform Commercial Code November 4, 1995.*
 Point 4: Section 9-501(2) and Part 5.
- Definitional Cross References:**
 "Chattel paper", Section 9-105
 "Collateral", Section 9-105
 "Debtor", Section 9-105
 "Instrument", Section 9-105
 "Money", Section 1-201
 "Party", Section 1-201
 "Secured party", Section 9-105
 "Security interest", Section 1-201

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

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

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

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

Official Comment

Prior Uniform Statutory Provision: Section 9-207 and in some cases a statement of the collateral.

Purposes:
 1. To provide a procedure whereby a debtor may obtain from the secured party a statement of the amount due on the obligation.
 2. The financing statement required to be filed under this Article (see Section 9-402) may disclose only that a secured party may have a security interest in specified

types of collateral owned by the debtor. Under the provisions that he need furnish a less a copy of the security agreement itself is filed as the financing statement third parties are told neither the amount of the obligation secured nor which particular assets are covered. Since subsequent creditors and purchasers may legitimately need more detailed information, it is necessary to provide a procedure under which the secured party will be required to make disclosure. On the other hand, the secured party should not be under a duty to disclose details of business operations to any casual inquirer or competitor who asks for them. This section gives the right to demand disclosure only to the debtor, or who will typically request a statement in connection with negotiations with subsequent creditors and purchasers, or for the purpose of establishing his credit standing and proving which of his assets are free of the security interest. The secured party is further protected against onerous requests

- Cross Reference:**
 Point 2: Section 9-402.
- Definitional Cross References:**
 "Collateral", Section 9-105
 "Debtor", Section 9-105
 "Good faith", Section 1-201
 "Know", Section 1-201
 "Person", Section 1-201
 "Receive", Section 1-201
 "Secured party", Section 9-105
 "Security agreement", Section 9-105
 "Security interest", Section 1-201
 "Send", Section 1-201
 "Written", Section 1-201

PART 3

RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

§ 9-301. Persons Who Take Priority Over Unperfected Security Interests; Rights of "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; *specific rules*

(b) a person who becomes a lien creditor before the security interest is perfected;

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

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

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien

creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(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 without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

As amended in 1972 and 1994.
See Appendix XII for material relating to changes made in text in 1994.

Official Comment

Prior Uniform Statutory Provisions: Sections 8(2) and 9(2)(b), Uniform Trust Receipts Act; Section 5, Uniform Conditional Sales Act.

Purposes:

1. This section lists the classes of persons who take priority over an unperfected security interest. As in Section 60 of the Federal Bankruptcy Act, the term "perfected" is used to describe a security interest in personal property which cannot be defeated in insolvency proceedings or in general by creditors. A security interest is "perfected" when the secured party has taken whatever steps are necessary to give him such an interest. These steps are explained in the five following sections (9-302 through 9-306).

2. Section 9-312 states general rules for the determination of priorities among conflicting security interests and in addition refers to other sections which state special rules of priority in a variety of situations. The interests given priority under Section 9-312 and the other sections therein cited take such priority in general even over a perfected security interest. A *fortiori*, they take priority over an unperfected security interest, and paragraph (1)(a) of this section so states.

3. Paragraph (1)(b) provides that an unperfected security interest is subordinate to the rights of lien creditors. The section

and general intangibles), paragraph (1)(d) gives priority to any transferee who has given value without knowledge and before perfection of the security interest.

The term "buyer in ordinary course of business" referred to in paragraph (1)(c) is defined in Section 1-201(9).

Other secured parties are excluded from paragraphs (1)(c) and (1)(d) because their priorities are covered in Section 9-312 (see point 2 of this Comment).

5. Except to the extent provided in subsection (2), this Article does not permit a secured party to file or take possession after another interest has received priority under subsection (1) and thereby protect himself against the intervening interest.

A few chattel mortgage statutes did have grace periods, i.e., a filing within x days after the mortgage was given related back to the day the mortgage was given. The Uniform Conditional Sales Act had a ten-day period which cut off all intervening interests. The Uniform Trust Receipts Act had a thirty-day period but did not cut off the interest of a purchaser who took delivery before the filing.

Subsection (2) gives a grace period for perfection by filing as to purchase money security interests only (that term is defined in Section 9-107). The grace period runs for ten days after the debtor receives possession of the collateral but operates to cut off only the interests of intervening lien creditors or bulk purchasers.

6. Subsection (3) defines "lien creditor", following in substance the provisions of the Uniform Trust Receipts Act.

7. Subsection (4) deals with the question whether advances under an existing security interest in collateral, made after rights of lien creditors have attached to that collateral, will take precedence over rights of lien creditors. See related problems in Sections 9-307(3) and 9-312(7). In this section, because of the impact of the rule chosen on the future advances is "protected" under Section 6323(c)(2) and (d) of the Internal Revenue Code as amended by the Federal Tax Lien Act of 1966, the priority of the security

interest for future advances over a judgment lien is made absolute for 45 days regardless of knowledge of the secured party concerning the judgment lien. If, however, the advance is made after the 45 days, the advance will not have priority unless it was made or committed without knowledge of the lien obtained by legal proceedings. The importance of the rule chosen for actual conflicts between secured parties making subsequent advances and judgment lien creditors may not be great; but the rule chosen for the first 45 days is important in effectuating the intent of the Federal Tax Lien Act of 1966.

8. The word "only" in subsection (4) is limited in its effect to the lien creditor's subjection to the specified advances. It does not limit the lien creditor's subjection to whatever other rights the secured party may have by contract or law, e.g., the right to interest before or after the attachment of the judgment lien to the collateral or the right to foreclosure expenses or other collection expenses. See PEB Commentary No. 2, dated March 10, 1990 [Appendix V, infra].

9. There is no conflict between the principle of § 9-301(1) and the "shelter principle," which is applied at several points in § 2-403(1): "A purchaser of goods acquires all title which his transferor had. . . ."

Although § 9-301(1) fails to state the shelter principle expressly, that principle is applicable where a person who had met the conditions for prevailing over an unperfected security interest transfers his right to another person after the security interest is perfected. See PEB Commentary No. 6, dated March 10, 1990 [Appendix V, infra].

The rules for subordination of unperfected security interests have a purpose—in common with similar rules in all filing and recording systems—to impose sanctions for not adhering to filing or recording requirements. Such rules are necessary to make the system effective and enforce the policy against secret liens. The shelter principle recognizes that when a person in a protected class transfers his right after the security interest has been perfected, the right will be diminished in value unless the sanction is continued. The sanction imposed by § 9-

301(1) is that members of protected classes take free of an unperfected security interest. That sanction should be continued to protect transferees from those members in order to fulfill the purpose of the section.

Cross References:

Section 9-312.
Point 1: Sections 9-302 through 9-306.
Point 7: Sections 9-204, 9-307(3) and 9-312(7).

Definitional Cross References:

"Account": Section 9-106.
"Buyer in ordinary course of business": Section 1-201.
"Chattel paper": Section 9-105.
"Collateral": Section 9-105.
"Pursuant to commitment": Section 9-105.
"Representative": Section 1-201.
"Rights": Section 1-201.
"Secured party": Section 9-105.
"Security interest": Section 1-201.
"Value": Section 1-201.

§ 9-302.

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

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

- (a) a security interest in collateral in possession of the secured party under Section 9-305;
 - (b) a security interest temporarily perfected in instruments, certificated securities, or documents without delivery under Section 9-304 or in proceeds for a 10 day period under Section 9-306;
 - (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 motor vehicle required to be registered, and fixture filing is provided in Section 9-313;
 - (e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;
 - (f) a security interest of a collecting bank (Section 4-210) or arising under the Articles on Sales and Leases (see Section 9-113) or covered in subsection (3) of this section;
 - (g) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;
 - (h) a security interest in investment property which is perfected without filing under Section 9-115 or Section 9-116.
- (2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement 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 a national or international certificate of title 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 statutes covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, and any central filing statute *]; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Article (Part 4) apply to a security interest in that collateral created by him as debtor; or
- (c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of Section 9-103).

(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 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.

* Note: It is recommended that the provisions of certificate of title acts for perfection of security interests by notation on the certificates should be amended to exclude coverage of inventory held for sale.

As amended in 1972, 1977 and 1994.
See Appendices XI and XII for material relating to changes made in text in 1994.

Official Comment

Prior Uniform Statutory Provisions: Subsection (4) states the consequences of Section 5, Uniform Conditional Sales Act; Section 8, Uniform Trust Receipts Act.

Purposes:

1. Subsection (1) states the general rule that to perfect a security interest under this Article a financing statement must be filed. Paragraphs (1)(a) through (1)(g) exempt from the filing requirement the transactions described. Subsection (3) further sets out certain transactions to which the filing provisions of this Article do not apply, but it does not defer to another state statute on the filing of inventory security interests. The cases recognized are those where suitable alternative systems for giving public notice of a security interest are available.
2. As at common law, there is no requirement of filing when the secured party has possession of the collateral in a pledge transaction (paragraph (1)(e)), Section 9-305 should be consulted on what collateral may be pledged and on the requirements of possession.
3. Under this Article, as under the Uniform Trust Receipts Act, filing is not effective to perfect a security interest in property

tive to perfect a security interest in instruments. See Section 9-304(1).

4. Where goods subject to a security interest are left in the debtor's possession, the only permanent exception from the general filing requirement is that stated in paragraph (1)(d): purchase money security interests in consumer goods. For temporary exceptions, see Sections 9-304(5)(a) and 9-306.

In many jurisdictions under prior law security interests in consumer goods under conditional sale or bailment leases were not subject to filing requirements. Paragraph (1)(d) follows the policy of those jurisdictions. The paragraph changes prior law in jurisdictions where all conditional sales and bailment leases were subject to a filing requirement, except that filing is required for purchase money security interests in consumer fixtures to attain priority under Section 9-313 against real estate interests.

Although the security interests described in paragraph (1)(d) are perfected without filing, Section 9-307(2) provides that unless a financing statement is filed certain buyers may take free of the security interest even though perfected. See that section and the Comment thereto.

On filing for security interests in motor vehicles under certificate of title laws see subsection (3) of this section.

5. A financing statement must be filed to perfect a security interest in accounts except for the transactions described in paragraphs (1)(e) and (g). It should be noted that this Article applies to sales of accounts and chattel paper as well as to transfers thereof for security (Section 9-102(1)(b)); the filing requirement of this section applies both to sales and to transfers thereof for security. In this respect this Article follows many of the pre-Code statutes regulating assignments of accounts receivable.

Over forty jurisdictions had enacted accounts receivable statutes. About half of these statutes required filing to protect or perfect assignments; of the remainder, one was a so-called "book-marking" statute and the others validated assignments without filing. This Article adopts the filing requirement, on the theory that there is no valid reason why public notice is less appropriate

for assignments of accounts than for any other type of nonpossessory interest. Section 9-305, furthermore, excludes accounts from the types of collateral which may be the subject of a possessory security interest; filing is thus the only means of perfection contemplated by this Article. See Section 9-306 on accounts as proceeds.

The purpose of the subsection (1)(e) exemption is to save from *ex post facto* invalidation casual or isolated assignments; some accounts receivable statutes were so broadly drafted that all assignments, whatever their character or purpose, fell within their provisions. Under such statutes many assignments which no one would think of filing might have been subject to invalidation. The paragraph (1)(e) exemption goes to that type of assignment. Any person who regularly takes assignments of any debtor's accounts should file. In this connection Section 9-104(f) which excludes certain transfers of accounts from the Article should be consulted.

Assignments of interests in trusts and estates are not required to be filed because they are often not thought of as collateral comparable to the types dealt with by this Article. Assignments for the benefit of creditors are not required to be filed because they are not financing transactions and the debtor will not ordinarily be engaging in further credit transactions.

6. With respect to the paragraph (1)(f) exemptions, see the sections cited therein and Comments thereto.

7. The following example will explain the operation of subsection (2): Buyer buys goods from seller who retains a security interest in them which he perfects. Seller assigns the perfected security interest to X. The security interest, in X's hands and without further steps on his part, continues perfected against Buyer's transferees and creditors. If, however, the assignment from Seller to X was itself intended for security (or was a sale of accounts or chattel paper), X must take whatever steps may be required for perfection in order to be protected against Seller's transferees and creditors.

8. Subsection (3) exempts from the filing provisions of this Article transactions as to which an adequate system of filing, state or federal, has been set up outside this Article and subsection (4) makes clear that when such a system exists perfection of a relevant security interest can be had only through compliance with that system (i.e., filing under this Article is not a permissible alternative).

Examples of the type of federal statute referred to in paragraph (3)(a) are the provisions of 17 U.S.C. §§ 28, 30 (copyrights), 49 U.S.C. § 1403 (aircraft), 49 U.S.C. § 20(c) (railroads). The Assignment of Claims Act of 1940, as amended, provides for notice to contracting and disbursing officers and to sureties on bonds but does not establish a national filing system and therefore is not within the scope of paragraph (3)(a). An assignee of a claim against the United States, who must of course comply with the Assignment of Claims Act, must also file under this Article in order to perfect his security interest against creditors and transferees of his assignor.

Some states have enacted central filing statutes with respect to security transactions in kinds of property which are of special importance in the local economy. Subsection (3) adopts such statutes as the appropriate filing system for such property.

In addition to such central filing statutes many states have enacted certificate of title laws covering motor vehicles and the like. Subsection (3) exempts transactions covered by such laws from the filing requirements of this Article.

For a discussion of the operation of state motor vehicle certificate of title laws in interstate contexts, see Comment 4 to Section 9-103.

9. Perfection of a security interest under a state or federal statute of the type referred to in subsection (3) has all the consequences

of perfection under the provisions of this Article, Subsection (4).

10. If a security interest has been perfected under the applicable certificate of title statute and is thereafter assigned, and that statute does not expressly require the assignee to take some further action with respect to the certificate of title to reflect that it has become the secured party in order to continue such perfection, § 9-302(2) is applicable and the assignee is not required to note its name on the certificate of title "in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor." See PEB Commentary No. 12, dated February 10, 1994 [Appendix V, *infra*].

Cross References:

- Point 1: Section 9-303 and Part 4.
- Point 2: Section 9-305.
- Point 3: Section 9-304(1).
- Point 4: Section 9-307(2).
- Point 5: Sections 9-102(1)(b), 9-104(f) and 9-305.
- Point 6: Sections 4-208 and 9-113.

Definitional Cross References:

- "Account", Section 9-106.
- "Collateral", Section 9-105.
- "Consumer goods", Section 9-109.
- "Creditor", Section 1-201.
- "Debtor", Section 9-105.
- "Delivery", Section 1-201.
- "Document", Section 9-105.
- "Equipment", Section 9-109.
- "Fixture", Section 9-313.
- "Fixture filing", Section 9-313.
- "Instrument", Section 9-105.
- "Inventory", Section 9-109.
- "Proceeds", Section 9-306.
- "Purchase", Section 1-201.
- "Purchase money security interest", Section 9-107.
- "Sale", Sections 2-106 and 9-105.
- "Secured party", Section 9-105.
- "Security interest", Section 1-201.

§ 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 9-115, 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.

(2) If a security interest is originally perfected in any way permitted under this Article and is subsequently perfected in some other way under this Article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Article. As amended in 1994.

See Appendix XII for material relating to changes made in text in 1994.

Official Comment

Prior Uniform Statutory Provision: None.
Purposes:

1. The term "attach" is used in this Article to describe the point at which property becomes subject to a security interest. The requisites for attachment are stated in Section 9-203. When it attaches a security interest may be either perfected or unperfected. "Perfected" means that the secured party has taken all the steps required by this Article as specified in the several sections listed in subsection (1). A perfected security interest may still be or become subordinate to other interests (see Section 9-312) but in general after perfection the secured party is protected against creditors and transferees of the debtor and in particular against any representative of creditors in insolvency proceedings instituted by or against the debtor. Subsection (1) states the truism that the time of perfection is when the security interest has attached and any necessary steps for perfection (such as taking possession or filing) have been taken. If the steps for perfection have been taken in advance (as when the secured party files a financing statement before giving value or before the debtor acquires rights in the collateral), then the interest is perfected automatically when it attaches.

them. Under Section 9-304(5) the bank continues to have a perfected security interest in the document and goods for 21 days. The bank files before the expiration of the 21 day period. Its security interest now continues perfected for as long as the filing is good. The goods are sold by the debtor. The bank continues to have a security interest in the proceeds of the sale to the extent stated in Section 9-306.

2. The following example will illustrate the operation of subsection (2): A bank which has issued a letter of credit honors drafts drawn under the credit and receives possession of the negotiable bill of lading covering the goods shipped. Under Sections 9-304(2) and 9-305 the bank now has a perfected security interest in the document and the goods. The bank releases the bill of lading to the debtor for the purpose of procuring the goods from the carrier and selling

them. Under Section 9-304(5) the bank continues to have a perfected security interest in the document and goods for 21 days. The bank files before the expiration of the 21 day period. Its security interest now continues perfected for as long as the filing is good. The goods are sold by the debtor. The bank continues to have a security interest in the proceeds of the sale to the extent stated in Section 9-306.

If the successive stages of the bank's security interest succeed each other without an intervening gap, the security interest is "continuously perfected" and the date of perfection is when the interest first became perfected (i.e., in the example given, when the bank received possession of the bill of lading against honor of the drafts). If, however, there is a gap between stages—for example, if the bank does not file until after the expiration of the 21 day period specified in Section 9-304(5), the collateral still being in the debtor's possession—then, the chain being broken, the perfection is no longer continuous. The date of perfection would now be the date of filing (after expiration of the 21 day period); the bank's interest might now become subject to attack under Section 60 of the Federal Bankruptcy Act and would be subject to any interests arising during the gap period which under Section 9-301 take priority over an unperfected security interest.

The rule of subsection (2) would also apply to the case of collateral brought into this state subject to a security interest which became perfected in another state or jurisdiction. See Section 9-103(1)(d).

Cross References:
 Sections 9-302, 9-304, 9-305 and 9-306.
 Point 1: Sections 9-204 and 9-312.

Point 2: Sections 9-103(1)(d) and 9-301.
Definitional Cross References:
 "Attach": Section 9-203.
 "Security interest": Section 1-201.

§ 9-304. Perfection of Security Interest in Instruments, Documents, Proceeds of a Written Letter of Credit, and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.
[1995 Amendments to text indicated by strikeout and underline]

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in the rights to proceeds of a written letter of credit can be perfected only by the secured party's taking possession of the letter of credit. 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) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

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

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

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a certificated security, 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, but priority between conflicting security interests in the goods is subject to subsection (3) of Section 9-312; or
- (b) delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21 day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this Article.

Special Legislative Note: As Sections 9-304 and 9-305 appear in the *Official Text of the Conforming Amendments to Revised Article 5 (1995)*, they incorporate the amendments made to these sections in

purpose for which the debtor is in possession but the secured party must have given new value under a written security agreement.

Under subsection (5) the 21 day perfection runs from the date a secured party who already has a perfected security interest turns over the collateral to the debtor (an example is a bank which has acquired a bill of lading by honoring drafts drawn under a letter of credit and subsequently turns over the bill of lading to its customer); there is no new value requirement but the turn-over must be for one or more of the purposes stated in subsections (5)(a) and (5)(b). Note that while subsection (4) is restricted to instruments and negotiable documents, subsection (5) extends to goods covered by negotiable documents as well. Thus the letter of credit bank referred to in the example could make a subsection (5) turn-over without regard to the form of the bill of lading, provided that in the case of a non-negotiable document, it had previously perfected its interest under one of the methods stated in subsection (3). But note that the discussion of subsection (5) in this Comment deals only with perfection. Priority of a security interest in inventory after surrender of the document depends on compliance with the re-

quirements of Section 9-312(3) on notice to prior inventory financier.

Finally, it should be noted that the 21 days applies only to the documents and to the goods obtained by surrender thereof. If the goods are sold, the security interest will continue in proceeds for only 10 days under Section 9-306, unless a further perfection occurs as to the security interest in proceeds.

Cross References:

Article 7 and Sections 9-303, 9-305 and 9-312(3).

Definitional Cross References:

"Chattel paper". Section 9-105.
 "Debtor". Section 9-105.
 "Document". Section 9-105.
 "Goods". Section 9-105.
 "Instrument". Section 9-105.
 "Receiver's notification". Section 1-201.
 "Sale". Sections 2-106 and 9-105.
 "Secured party". Section 9-105.
 "Security agreement". Section 9-105.
 "Security interest". Section 1-201.
 "Value". Section 1-201.
 "Written". Section 1-201.

§ 9-305. When Possession by Secured Party Perfects Security Interest Without Filing.

[1995 Amendments to text indicated by *strikeout and underline*]

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

Special Legislative Note: See *Special Legislative Note, Section 9-304*.

As amended in 1972, 1977, 1994, and 1995.

See *Appendices XI and XIV for material relating to changes made in text in 1994 and 1995, respectively.*

Official Comment

Prior Uniform Statutory Provision:

None.

Purposes:

1. As under the common law of pledge, no filing is required by this Article to perfect a security interest where the secured party has possession of the collateral. Compare Section 9-302(1)(a). This section permits a security interest to be perfected by transfer of possession only when the collateral is goods; rights to proceeds of letters of credit (if written), instruments ~~held by the secured party~~ ~~secured securities which are governed by Section 9-321~~, documents or chattel paper; that is to say, accounts and general intangibles are excluded. As to perfection of security interests in certificated securities by possession, see the general rules on perfection of security interests in investment property in Section 9-115(d) and the special rule in Section 9-115(6) dealing with cases where a secured party takes possession of a security certificate in registered form without obtaining an indorsement. See Section 5-116 for the special case of assignments of letters and advices of credit. A security interest in accounts and general intangibles—property not ordinarily represented by any writing whose delivery operates to transfer the claim—may under this Article be perfected only by filing, and this rule would not be affected by the fact that a security agreement or other writing described the assignment of such collateral as a "pledge". Section 9-302(1)(e) exempts from filing certain assignments of accounts which are out of the ordinary course of financing; such exempted assignments are perfected when they attach under Section 9-303(1); they do not fall within this section. *Amendments in *italics approved by the Permanent Editorial Board for Uniform Commercial Code November 4, 1995.*

2. Possession may be by the secured party himself or by an agent on his behalf; it is of course clear, however, that the debtor or a person controlled by him cannot qualify as such an agent for the secured party. See

Official Comment

also the last sentence of Section 9-205. Where the collateral (except for goods covered by a negotiable document) is held by a bailee, the time of perfection of the security interest, under the second sentence of this section, is when the bailee receives notification of the secured party's interest; this rule rejects the common law doctrine that it is necessary for the bailee to attorn to the secured party or acknowledge that he now holds on his behalf.

3. The third sentence of the section rejects the "equitable pledge" theory of relation back, under which the taking possession was deemed to relate back to the date of the original security agreement. The relation back theory has had little vitality since the 1938 revision of the Federal Bankruptcy Act, which introduced in Section 60a provisions designed to make such interests voidable as preferences in bankruptcy proceedings. This section now brings state law into conformity with the overriding federal policy: where a pledge transaction is contemplated, perfection dates only from the time possession is taken, although a security interest may attach, unperfected, before that under the rules stated in Section 9-204. The only exception to this rule is the short twenty-one day period of perfection provided in Section 9-304(4) and (5) during which a debtor may have possession of specified collateral in which there is a perfected security interest.

Cross References:

Sections 5-116, 9-204, 9-302, 9-303 and 9-304.

Definitional Cross References:

"Chattel paper". Section 9-105.
 "Collateral". Section 9-105.
 "Documents". Section 9-105.
 "Goods". Section 9-105.
 "Instruments". Section 9-105.
 "Receiver's notification". Section 1-201.
 "Secured party". Section 9-105.
 "Security interest". Section 1-201.

§ 9-306. "Proceeds"; Secured Party's Rights on Disposition of Collateral.

(1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. 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. Any payments or distributions made with respect to investment property collateral are proceeds. 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 unless 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 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;
- (c) the original collateral was investment property and the proceeds are identifiable cash proceeds; or
- (d) 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 neither commingled with other money nor deposited in a 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 deposit account prior to the insolvency proceedings; and

(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

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

- (a) If the goods were collateral at the time of sale, for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.
- (b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under Section 9-308.
- (c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).
- (d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

As amended in 1972 and 1994.

See Appendix XII for material relating to changes made in text in 1994.

Official Comment

Prior Uniform Statutory Provision: It makes clear that insurance proceeds from casualty loss of collateral are proceeds within the meaning of this section.

- 1. This section states a secured party's right to the proceeds received by a debtor on disposition of collateral and states when his interest in such proceeds is perfected.
- 2. (a) Whether a debtor's sale of collateral was authorized or unauthorized, prior law

§ 9-306

UNIFORM COMMERCIAL CODE

Art. 9

Cross References:

- Sections 9-307, 9-308 and 9-309.
- Point 3: Sections 1-205 and 9-301.
- Point 4: Sections 2-403(2), 9-205 and 9-312.

Definitional Cross References:

- "Account". Section 9-106.
- "Bank". Section 1-201.
- "Chattel paper". Section 9-105.
- "Check". Sections 3-104 and 9-105.

- "Collateral". Section 9-105.
- "Creditors". Section 1-201.
- "Debtor". Section 9-105.
- "Deposit account". Section 9-105.
- "Goods". Section 9-105.
- "Insolvency proceedings". Section 1-201.
- "Money". Section 1-201.
- "Purchaser". Section 1-201.
- "Sale". Sections 2-106 and 9-105.
- "Secured party". Section 9-105.
- "Security agreement". Section 9-105.
- "Security interest". Section 1-201.

§ 9-307. Protection of Buyers of Goods.

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

(2) In the case of consumer goods, 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 unless prior to the purchase the secured party has filed a financing statement covering such goods.

(3) A buyer other than a buyer in ordinary course of business (subsection (1) of this section) 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.

As amended in 1972.

Official Comment

Prior Uniform Statutory Provision: Section 9, Uniform Conditional Sales Act; Section 9(2), Uniform Trust Receipts Act.

Purposes:

1. This section states when buyers of goods take free of a security interest even though perfected. A buyer who takes free of a perfected security interest of course takes free of an unperfected one. Section 9-301 should be consulted to determine what purchasers, in addition to the buyers covered in this section, take free of an unperfected security interest.

Article 2 (Sales) states general rules on purchase of goods from a seller with defective or voidable title (Section 2-403).

2. The definition of "buyer in ordinary course of business" in Section 1-201(9) re-

stricts the application of subsection (1) to buyers (except pawnbrokers) "from a person in the business of selling goods of that kind": thus the subsection applies, in the terminology of this Article, primarily to inventory. Subsection (1) further excludes from its operation buyers of "farm products", defined in Section 9-109(3), from a person engaged in farming operations. The buyer in ordinary course of business is defined as one who buys "in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party." This section provides that such a buyer takes free of a security interest, even though perfected, and although he knows the security interest exists. Reading the two provisions together, it results that the buyer takes free if he merely knows that there is a security interest which

Art. 9

covers the g knows, in ad tion of some t not waived by secured party.

The limitati on the person: rity interest ap rized sales by party has auth agreement or o without regard tion. Section secured party t thorized or una

3. Subsectio "consumer goo 109). Under Se required to per est in consumer tion except mot registered; filing rity interests in chase money int cles, even in th interests. (The added complicatio point of this discu

Under subsectio goods takes free though perfected knowledge of the value, c) for his household purpos statement is fil

As to purchase which are perfected tion 9-302(1)(d): A financing statemen required for perfect buyers take subject If he does not file, qualifications stated graph takes free o

As to security inte fected only by filing This category incl money interests, and or not purchase mon well as interests whic though filing was not under Section 9-302.