



2009 Factoring Conference Speaker Handout



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Joshua W. Brack v. Omni Loan Company Ltd.
2008 Cal App LEXIS 1070
June 17, 2008

Facts

- 1) This was a class action by a class of consumer borrowers against their lenders, Omni,
- 2) Omni was a Nevada corporation engaging in consumer lender lending in California.
- 3) Omni makes loans to non-California residents in the military.
- 4) **Omni had offices in California.**
- 5) The loan agreement provided that Nevada law would apply.
- 6) Plaintiff sought damages arising out of breaches of California's Finance Lenders Law, alleging breaches of the Consumers Legal Remedies Act.
- 7) Omni sought and was denied permission to make loans in California without a license.
- 8) Omni had loan offices in California.

Significant Holdings and Legal Goodies

- 1) In general California, like most states, will enforce a contractual choice of law so long as the state whose law is selected has an interest in the transaction.
- 2) California will recognize another state's choice of law so long as it doesn't violate California's "fundamental public policy."
- 3) The Finance Lenders Law is fundamental public policy in California. Section 22324 of the Finance Lenders Law provides that "any person who contracts for or negotiates in this state a loan to be made outside the state for the purposes of evading or avoiding [this Act] is subject to the provisions of this division."
- 4) Section provides that contracts made in willful violation of the Law, including licensing, are void.
- 5) California's interest in enforcing its laws are greater than Nevada's.

Important Issues and Lessons

- 1) Although this case was decided on bad facts with a bad lender, its holding is important and indicates that out of state lenders making loans in California will do will to get a license.

**BRAUSER REAL ESTATE, LLC, Plaintiff, v. MEECORP CAPITAL MARKETS, LLC,
MICHAEL EDREI and DANIEL EDREI, Defendants**
2008 U.S. Dist. LEXIS 8000

Facts

- 1) This is not a factoring case, but yet is a good case showing the value and operation of choice of law and venue clauses.
- 2) Brauser (“Plaintiff”) received and signed a loan commitment from Meeecorp (“Defendant”).
- 3) When the loan failed to close, Defendants sent a letter requesting Plaintiff close the loan after over two months of postponement.
- 4) The Commitment included a \$25,000 Application Fee and a \$200,000 non-refundable Commitment Fee.
- 5) The Commitment provided that it was governed by New Jersey law. And that venue would be in New Jersey.
- 6) The loan did not close and Plaintiff subsequently requested that the \$ 225,000 it paid in fees, claiming the Loan Commitment was illegal under Florida law.
- 7) After Defendant refused to refund the fees, Plaintiff filed suit in Florida.
- 8) Citing the New Jersey venue clause, the Florida court transferred the case to New Jersey.
- 9) Defendants seek to dismiss the complaint since New Jersey law applies, and the contract’s illegality under Florida law is irrelevant.

Significant Holdings and Legal Goodies

- 1) Defendant won.
- 2) The Court will enforce the terms of a contract that is unambiguous on its face.
- 3) The law on this issue is that a choice-of-law provision will therefore govern unless the state chosen has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice; or application of the law chosen would conflict with a *fundamental public policy* of a state having a *greater interest* in a determination of a particular issue and the law of such state would be applicable in the absence of the choice of law provision.
- 4) New Jersey, the state expressly chosen to govern the Loan Commitment, has a substantial relationship to the parties or the transaction:

- i. Defendant is a New Jersey limited liability company with a principal place of business in New Jersey.
 - ii. The parties' intention that New Jersey law apply to the executed Loan Commitment is clear and unambiguous.
 - iii. The language in the Loan Commitment shows the parties' mutual intent to have New Jersey law apply to the subject claims.
 - iv. Although it is disputed whether Defendants went to Florida to negotiate the terms of the Loan Commitment, the parties' submissions do show that the Loan Commitment was prepared in New Jersey;
 - v. The money to be loaned would come from New Jersey.
- 5) Contract did not violate the fundamental public policy of Florida.

Important Issues and Lessons

- 1) This analysis is relevant in usury cases, among others.

JEOFFREY L. BURTCHE, CHAPTER 7 TRUSTEE, FACTORY 2-U STORES, INC., et al.,
Plaintiff, v. MILBERG FACTORS, INC., CAPITAL FACTORS, INC., THE CIT
GROUP/COMMERCIAL SERVICES, INC., GMAC COMMERCIAL FINANCE LLC, HSBC
BUSINESS CREDIT (USA) INC., ROSENTHAL AND ROSENTHAL, INC., STERLING
FACTORS CORPORATION, WELLS FARGO CENTURY, INC., Defendants.

[Civ. No. 07-556-JJF-LPS](#)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

Facts

- 1) Action brought by Trustee of Factory 2-U Stores, Inc., which is in liquidation.
- 2) Claim is that factors' credit departments meet and agreed to share credit information concerning Factory 2-U and that caused them all to deny credit, which put it out of business.
- 3) Action brought under Sherman Act as anti-competitive practice.

Significant Holdings and Legal Goodies

- 1) The law is clear that the sharing of credit information is not a Sherman Act violation.
- 2) The sharing of future terms and conditions of credit is not a violation.

Important Issues and Lessons

- 1)

Commercial Plumbing and Heating, Inc., Appellant, vs. Fisher Sheetmetal Company, Inc., et al., Defendants, G R Mechanical Plumbing & Heating, Inc., Respondent, Northern Air Corporation, et al., Respondents.

2008 Minn. App. Unpub. LEXIS 549

Facts

- 1) Commercial Plumbing was granted a security interest in JK's accounts which it perfected.
- 2) Commercial notified account debtors.
- 3) JK wrote to the account debtors contesting the security interest, with a copy to Commercial.
- 4) After three years Commercial sued account debtors for payment after notification.

Significant Holdings and Legal Goodies

- 1) Commercial's inaction for 3 years was a waiver of its right to be paid by account debtors.
- 2) Waiver is a matter of common law and outside the UCC.
- 3) Waiver is consensual. It arises from voluntary choice, not mere negligence. Intent and knowledge are essential elements of a finding of waiver." However, waiver can be inferred from conduct or acquiescence.
- 4) An assignee can waive its rights if it fails to protest the account payor's remittance of funds directly to the assignor.
- 5) Where the assignee does not know that payments are being made, or where it has repeatedly demanded payment, there is no waiver

Important Issues and Lessons

- 1) Factors must be alert to catch an account debtor who is ignoring a notice of assignment and advise them to pay the factor, so as to avoid waiver.

**In re: JERSEY TRACTOR TRAILER TRAINING, INC., Debtor.
WAWEL SAVINGS BANK, Plaintiff, v. JERSEY TRACTOR
TRAILER TRAINING, INC. and YALE FACTORS NJ, LLC,
Defendants**

U S District Court, District of NJ – July 15, 2008

Facts

- 1) Wawel Savings Bank made loan to JTTT secured by all assets and properly perfected.
- 2) Under bank's security agreement, JTTT was free to collect and compromise its own receivables and the bank imposed no restrictions on JTTT's use of its receivables or their proceeds; nor did the bank monitor JTTT's business or its collateral.
- 3) Under the Bank's -JTTT security agreement, the bank only had the right to take possession of JTTT's accounts receivable or other collateral, or restrict JTTT's use of such collateral, when a default by JTTT had been declared by the Bank. The default by JTTT was its filing for bankruptcy protection in April 2006, long after all the transactions at issue had taken place.
- 4) Yale conducted periodic UCC searches through its regular search company, Dun and Bradstreet. These reports searched filings against "Jersey Tractor Trailer Training", **omitting "Inc."**, not the correct corporate name. The searches did not disclose the Bank's security interests against JTTT's assets.
- 5) The factoring agreement and all related documentation referred to the entity known as Jersey Tractor Trailer Training, Inc.
- 6) Yale filed a UCC-1 Financing Statement on March 26, 2003, (i.e. after the bank's filing) on all present and after acquired accounts receivable of JTTT.
- 7) On or about December 20, 2005, the bank learned of the approximate amounts purported to be owed by Debtor to Yale, as well as the fees and interest rate being charged by Yale. The bank advised Yale that the bank had a valid first lien in the accounts receivable of Debtor, and expressed his objection to the factoring of JTTT's accounts receivable. As a result of this disclosure, Yale conducted a new lien search and first discovered the existence the bank's lien.
- 8) Yale persisted in its collection actions against Debtor's customers.
- 9) Debtor goes bankrupt and bank sues Yale to recover the amount of its collections.
- 10) Yale asserted that Bank consented to the sale of accounts to Yale.
- 11) Yale also asserted that it was a "holder in due course" of the accounts.

Significant Holdings and Legal Goodies

- 1) No consent to sale of collateral can be implied from these facts.
- 2) The court found that Yale was not a holder in due course since it lacked good faith. The court entirely missed the point. *There is no such thing as a holder in due course of an account.* That concept is limited to negotiable instruments. The court got to the right result but for a very bad reason.
- 3) Other real bad dicta – “Thus, Yale had a duty to search both the Debtor's correct corporate name, as well as the roots of that name, for financing statements covering the Debtor's accounts receivable.”
- 4) More – “The Court also agrees with the Bankruptcy Court's determination that Yale, a participant in the financial lending community, was required to review its lien search results and "red flags" should have been raised when results concerning "Jersey Tractor Trailer" revealed no significant secured debt”
- 5) The bank could recover the account held by Yale as well as retaining the purchase price paid by Yale. It had a claim on its collateral *and the proceeds*. Although it had to sources of recovery, it could not recover more than its debt.
- 6) Importance of getting name right.
- 7) No tortious interference since no malice.

In Re Karokosta Investments Inc.
US Bankruptcy Court – Middle District of Florida
10/7/08

Facts

- 1) Merchant Cash and Capital LLC was a purchaser of credit card receivables from the Debtor
- 2) Debtor become subject to a bankruptcy case and sought to claim that Merchant was not an owner of post-petition credit card sales since they did not exist at the petition date.

Significant Holdings and Legal Goodies

- 1) At first the court found that the transaction was a true sale.
- 2) The court then thought better about it and reversed himself. (“At times, fortunately not often, upon future reflection the Court becomes convinced that its previous Order was based on an incorrect premise, and requires its decision to be corrected.”)

Important Issues and Lessons

- 1) The court was initially persuaded by the following elements of the transaction:
 - Merchant had **absolutely not right to chargeback** any collections; It was totally without recourse.
 - Merchant had the entire slow pay risk
 - The agreement used purchase and sale language
 - No right to collect interest.
 - The Debtor has no servicing rights on the accounts, and no right to collect (in fact, the Debtor was required to use a servicer selected by Merchant).
- 2) This case would have provided a good roadmap for preserving the true sale principle.
- 3) The court reversed himself since there could not be a true sale since all the Debtor owned at the petition date was a “future expectation.” The issue of “true sale” becomes irrelevant since the debtor owned nothing to sell.

Kevin Mooney v. University System of Maryland
2008 Md. App. LEXIS 29

Facts

- 1) Mooney loaned money., secured by accounts owing by the University System of Maryland, a state agency (the “University”).
- 2) University was notified of the assignment but paid the Debtor and not the assignee.
- 3) Mooney sued under 9-406.
- 4) Lower court found for University on the basis that Mooney was suing in tort, but failed to file a claim under the Maryland Tort Claims Act.
- 5) On appeal court reversed, finding that suit was not on a tort, but rather on enforcement of security interest.
- 6) On remand lower court found again for the University on the basis that it never waived sovereign immunity.
- 7) On appeal again court found for Mooney, finally.

Significant Holdings and Legal Goodies

- 1) In contract action, state cannot assert sovereign immunity.
- 2) 9-406 applies to the state, as it applies to commercial account debtors.

Important Issues and Lessons

- 1) It is probably the law throughout the country that a state cannot waive sovereign immunity on contract claims.
- 2) When asserting claims against a state, be sure to pay attention to any short statute of limitations.
- 3) This case will be useful in other states where other state law limits the effectiveness of notices of assignment, but it will not be binding.

Merchant Advance LLC v. Tera K, LLC et al

Supreme Court of State of NY; County of Nassau

Facts

- 1) Suit to recover balance of \$115,145.07 due on Merchant Cash Advance Purchase and Sale Agreement.
- 2) On 11/7/07 MA agreed to pay \$100,000 to purchase \$136,000 of future credit card receivables.
- 3) Payment was to be made at 18% of future sales.
- 4) Personally guaranteed by Frank Carabetta.
- 5) Processor was approved by MA.
- 6) Tera switched processors, causing breach.
- 7) Tera seeks leave to assert usury defense.

Significant Holdings and Legal Goodies

- 1) Not borrower/lender relationship since the advance will only assuredly be repaid if defendant defaults.
- 2) Court also cited the wording of the agreement which recites purchase and sale, not loan.

Important Issues and Lessons

- 1) Court looked to form, not substance.
- 2) Good case for credit card factoring.

Nickey Gregory Co., LLC v. AgriCap, LLC
2008 U.S. Dist. LEXIS 103110

Facts

- 1) Typical PACA factoring case. Agricap was factor. Robinson Farms was the client.
- 2) Factoring terms included 1.5% fee for first 30 days; .1%/day thereafter; 80% advance, which was increased to 90%
- 3)

Significant Holdings and Legal Goodies

- 1) The court determined that Agricap's factoring agreement was not a sale of accounts but rather a disguised loan.
- 2) If the transaction was a true sale of accounts, the court would have to determine if the terms were commercially reasonable. If they were, factor would win.
- 3) Since this was found to be a loan, Agricap would lose to the PACA claimants unless it was a bona fide purchaser of the accounts.
- 4) The reason this was found to be a loan was that Agricap took little risk. Although it did take the insolvency risk, *the borrower warranted that the account debtors were solvent*, thereby making the risk somewhat illusory.
- 5) Agricap had to disgorge all of its fees.

Important Issues and Lessons

- 1) The court relied on the well known Boulder Fruit Express case, which held that a factoring transaction was a true sale. The court pointed out that in Boulder the court did not analyze the risk of loss in determining if the transaction was a true sale. In my opinion, this is crucial, and leaves the law quite unsettled.

Orix Financial Services Inc. v. Mike Kovacs et al
2008 Cal. App. LEXIS 1480

Facts

- 1) Orix has a security interest in the accounts of ADA Machine.
- 2) Proceeds of accounts were deposited in ADA's bank account. The account had no funds other than the proceeds of Orix's collateral.
- 3) Kovacs obtained a judgment against ADA and levied on the bank account, and cleaned it out.
- 4) Orix sued Kovacs, claiming that since the balance in the account was proceeds of Orix's collateral, it had a security interest in the account, and the funds received by Kovacs from his levy were subject to Orix security interest.

Significant Holdings and Legal Goodies

- 1) Orix lost.
- 2) Under UCC 9-332(b), "a transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.
- 3) The UCC has a strong interest in protecting the rights of recipients of checks and other payments from a checking account.
- 4) Kovacs' position is analogous to that of a buyer in the ordinary course of inventory which is subject to a security interest.

Important Issues and Lessons

- 1) Not a factoring case, but a good case to show the rights of the factor can be compromised by failure to notify account debtors.
- 2) Once accounts proceeds hit a checking account, the factor is likely to lose control of them.

Private Capital Inc. v. J & K Engine & Rig Repair
2008 LA APP LEXIS 763
Court of Appeal of Louisiana Third Circuit
5/28/08

Facts

- 1) Account Debtor signed estoppel letter in a form from Private Capital Inc. (“Factor”) to Account Debtor. It asked Account Debtor to agree that it “will not assert any claims or defenses which [account debtor] may have against [client] against Private Capital.”
- 2) Account Debtor raised a dispute and refused to pay.
- 3) It asserted many defenses, discussed below. The court found for Factor on all issues.

Significant Holdings and Legal Goodies

- 1) Under Louisiana law, the issue of benefit to the account debtor is not a defense. “The facilitation of the relationship with the seller is sufficient.
- 2) The court found that the Factor has the requisite *good faith* despite the account debtor’s argument that since it took the assignment in violation of its own factoring contract, it lacked it. The factoring contract required that the account be free of dispute.
- 3) Account Debtor tried to attack estoppel based on *illegality and fraud*, but offered no proof of it.
- 4) It sought to void estoppel based on *mistake*. The court found that the account debtor, “familiar with factoring agreements signed and returned the [estoppel]. It did so within the course of an ongoing business relationship.”

Important Issues and Lessons

- 1) This case shows just how hard an account debtor will fight to get out from under estoppel letters.
- 2) The estoppel letter was signed by the controller. The account debtor might have tried to assert that the controller lacked authority, but it did not.
- 3) Good case for factors.

U.S. Claims Inc. v. Michael Flomenhaft

2007 US Dist LEXIS 46655

Facts

- 1) Plaintiff U.S. Claims, Inc. ("USC") is a financial corporation primarily engaged in the business of purchasing from plaintiffs interests in their personal injury claims.
- 2) On occasion, USC also purchases from personal injury attorneys the attorneys' fee interests in the clients' pending tort claims. In this case, USC entered into several of these latter transactions with attorney Michael Flomenhaft and his law firm ("Flomenhaft Defendants").
- 3) Flomenhaft Defendants allegedly subsequently entered into a financing agreement with Defendant the Stillwater Asset-Backed Fund LP ("Stillwater") in which they pledged all their assets to Stillwater.
- 4) Stillwater filed a financing statement for the Flomenhaft interests; USC did not file.
- 5) USC then instituted this action alleging that the Flomenhaft Defendants failed to pay USC proceeds as provided in their purchasing agreements, and asserted a single claim, seeking a declaratory judgment against Stillwater in its pre-dismissal Amended Complaint.
- 6) The key issue in this case turns on the priority of USC's security interest relative to that of Stillwater.
- 7) USC tried to argue (i) automatic perfection as isolated transactions and (ii) not accounts.
- 8) USC also argued that since Stillwater knew of its claimed security interest (a former employee of USC worked at Stillwater) Stillwater was guilty of conversion.

Significant Holdings and Legal Goodies

- 1) "U.C.C. art. 9's carefully crafted statutory scheme is intended to institute a bright-line rule in favor of the most diligent creditor, without turning every priority dispute into a fact-intensive case-by-case subjective inquiry into what one creditor may or may not have known about another's interests. [U.C.C. § 9-322](#), cmt. 3, states that the priority rules may be regarded as adaptations of the idea, deeply rooted at common law, of a race of diligence among creditors. The statutes are clear that a creditor's subjective knowledge is entirely irrelevant to determining the relative priority of the competing interests. [U.C.C. § 9-322](#), cmt. 4, ex. 2. Even if a later creditor makes his advance on the same collateral, with knowledge of another's prior, unperfected competing interest, he will still be awarded priority under U.C.C. art. 9 so long as he is the first to perfect. [U.C.C. § 9-325](#), cmt. 4, ex. 3. U.C.C. art. 9's drafters have explained that such a rule is premised on the belief that an unsecured creditor's failure to file could

mislead a subsequent creditor. However, the drafters have made clear that whether one is actually misled is immaterial.”

- 2) Negative pledge was also asserted and rejected as an attempt to undermine priority rules.

Important Issues and Lessons

- 1)

Quantum Corporate Funding, Ltd. v. Westwood Design/Build Inc.
2008 U S Dist LEXIS 69633

Facts

- 1) Quantum was factoring Westwood. Pollydore was a property owner and National City Mortgage was the construction lender.
- 2) Quantum factoring an invoice to National for \$347,000¹.
- 3) Quantum obtained an estoppel certificate from National and notified them under 9-406 of the UCC.
- 4) Pursuant to instructions, Quantum wired \$112,168 of its advance to PLH, a creditor of Westwood.
- 5) Quantum later discovered that the invoice was fraudulent.
- 6) Quantum brought this action against National, Westwood, and PLH.
- 7) PLH defaulted and Quantum was granted summary judgment against it.
- 8) PLH seeks to open the default. The issue in this case is whether PLH had a “meritorious defense” to the lawsuit.

Significant Holdings and Legal Goodies

- 1) Quantum sought recovery based on unjust enrichment². PLH offered no evidence that it gave value.

Important Issues and Lessons

- 1) Quantum did a great job of identifying a theory of law on which it could recover from a third party.

¹ It isn't clear why the invoice was issued to National and not to Pollydore.

² This theory is “where the owner of property [Quantum] transfer it to another, being induced by fraud . . . the transferee [PLH] holds the property upon a constructive trust for the transferor [Quantum], unless before notice of the fraud . . . the transferee [PLH] has given or promised value.”

Joint Article 9 Review Committee Meeting Notes for March 6-8, 2009

Prepared by Professor Stephen L. Sepinuck

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The Committee's goal is to prepare a draft set of revisions for a first reading at the ULC's annual meeting this summer. That draft will deal with the issues on the Joint Review Committee's issue list. The Joint Review Committee will also at that time seek permission from both of its sponsors to address a few other issues. After further Committee review, the revisions will be presented to the ALI for consideration and approval in the spring of 2010 and to the ULC for consideration and approval in the summer of 2010.

1. Strict foreclosure as the only way to “waive” the prohibition on a private sale to a secured party

§ 9-602 comment 3 * * *

Section 9-610(c) limits the circumstances under which a secured party may purchase at its own private disposition. Transactions of this kind are equivalent to “strict foreclosures” and are governed by Sections 9-620, 9-621, and 9-622. The provisions of these sections can be waived only as provided in Section 9-624(b).

§ 9-610 comment 7 * * *

A secured party’s purchase of collateral at its own private disposition is equivalent to a “strict foreclosure” and is governed by Sections 9-620, 9-621, and 9-622. The provisions of these sections can be waived only as provided in Section 9-624(b).

The Committee agreed to this. It concluded that any sale to the secured party is a disposition and is subject to the rules of either § 9-610 or § 9-620.

2. Conform Heading of § 9-625(c) to Text

(c) [Persons entitled to recover damages; statutory damages in ~~consumer-goods transaction if collateral is consumer goods.~~] Except as otherwise provided in Section 9-628: * * *

Reporter’s Note

The heading for subsection (c) has been conformed to the text. Article 9 includes headings for the subsections as an aid to readers. Unlike section captions, which are part of the UCC, see Section 1-107, subsection headings are not a part of the Official Text itself.

The Committee agrees to this.

3. Disposition via Internet

§ 9-610 comment 2 **Commercially Reasonable Dispositions.** Subsection (a) follows former Section 9-504 by permitting a secured party to dispose of collateral in a commercially reasonable manner following a default. Although subsection (b) permits both public and private dispositions, including public and private dispositions conducted over the Internet, “every aspect of a disposition . . . must be commercially reasonable.” This section encourages private dispositions on the assumption that they frequently will result in higher realization on collateral for the benefit of all concerned. Subsection (a) does not restrict dispositions to sales;

collateral may be sold, leased, licensed, or otherwise disposed. Section 9-627 provides guidance for determining the circumstances under which a disposition is “commercially reasonable.”

§ 9-613 comment 2 * **

This section applies to a notification of a public disposition conducted over the Internet. A [notification of a]n Internet disposition satisfies paragraph (1)(E) if it states the time when the disposition is scheduled to begin and states a Uniform Resource Locator (URL) or other Internet address at or through which a potential transferee may participate in the disposition.

The bracketed language to § 9-613 comment 2 was added by the reporter at the meeting. There was discussion of whether reference to URL might become antiquated. There was also some question of how far deep the address must be (*e.g.*, e-bay, or the specific page of the sale). Ultimately, the Committee agreed to the following substitute language:

This section applies to a notification of a public disposition conducted electronically, such as on the Internet. In such a disposition, the place of disposition is the electronic location. For example, under current technology, a notification containing the URL or other Internet address at which the site of the public disposition can be accessed suffices.

4. Payoff Letter

[Alternative A – Prepared by an Advisor]

§ 9-102(a)(4) “Accounting”, except as used in “accounting for”, means a record:

- (A) authenticated by a secured party;
- (B) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and
- (C) identifying the components of the obligations in reasonable detail; and
- (D) if requested, in the case of an obligation that can be satisfied by the payment of money, the accounting shall include a payoff statement as of a date specified in the request. The specified date must be no later than 30 days from the date of the request. The payoff statement must indicate the date on which it was prepared and the payoff amount as of that date; information reasonably necessary to calculate the payoff amount as of the requested payoff date, including the per diem interest amount; the payoff cutoff time, if any; the address or place where payment must be made; and any limitation as to the authorized method of payment. The payoff statement may include a statement that: “This payoff figure is based on the assumption that you and any other debtor or obligor fulfill all of your obligations with respect to this debt and the collateral between (the date as of which the payoff amount is calculated) and the payoff date, and that no other conditions change.” As used in this paragraph, “payoff amount” means an amount which, if received by a secured party, would entitle a debtor to the release of the security interest in the collateral[, unless other non-monetary obligations remain].

[Alternative B – Prepared by an Advisor]

§ 9-102(a)(4) “Accounting”, except as used in “accounting for”, means a record:

(A) in a consumer transaction, a record:

~~(A)(i)~~ authenticated by a secured party;

~~(B)(ii)~~ indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

~~(C)(iii)~~ identifying the components of the obligations in reasonable detail;

and

(B) in a transaction other than consumer transactions, a record:

(i) authenticated by a secured party;

(ii) indicating as of a specified date not more than 5 days after such record is requested, the payoff amount; and

(iii) identifying the components of the obligation in reasonable detail, including:

(1) the date on which the record was prepared;

(2) the payoff amount as of the specified date;

(3) the payoff cutoff time, if any;

(4) the address or place where payment must be made; and

(5) any limitation as to the authorized method of payment. As used in this paragraph, “payoff amount” means an amount which, if received by a secured party, would entitle a debtor to the filing of a termination statement under Section 9-513(c). Such amount may include an amount reasonably necessary to ensure compliance with any non-monetary or contingent obligations of a debtor, which are part of a secured obligation.

§ 9-210 * * *

(b) [Duty to respond to requests.]

(1) Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within ~~14~~ three days after receipt:

(~~1~~A) in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(~~2~~B) in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(2) If the payoff amount changes, for any reason, after a secured party has complied with the request for an accounting, the secured party may amend the accounting at any time up to the moment the secured party has received the payoff amount as set forth in the accounting.

* * *

(g) [Failure to respond to requests.] If a secured party to which a request has been given pursuant to subsection (a) does not send a timely response that substantially complies with subsection (b), (c), (d), or (e), the secured party is liable to the debtor for any actual damages caused by the failure plus \$500, but not punitive damages. [A

secured party that does not pay the damages provided in this subsection within 30 days after receipt of a written notice of the amount of actual damages sustained by a debtor, may also be liable for reasonable attorney's fees and costs.]

The Committee concluded that although there may be a problem in this area, it would be incredibly difficult to craft a solution that is appropriate to both complex and simple transactions. The Committee therefore decided not to recommend either alternative and not to work further on the issue.

5. Expansion of § 9-317(d)

§ 9-317 * * *

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

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

The Committee agreed to this.

6. Definition of “Authenticate”

§ 9-102(a)(7) “Authenticate” means:

(A) to sign; or

~~(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record~~ with present intent to [adopt or accept] [authenticate or adopt] a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

The Committee decided to go with “adopt or accept.” It will deal endeavor to convince the ULC’s Style Committee that this is the appropriate approach.

7. Definition of “Control”

§ 9-105(a) **[General rule: control of electronic chattel paper.]** A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) **[Specific facts giving control.]** A system satisfies subsection (a), and a secured party has control of electronic chattel paper, if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the secured party as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) copies or ~~revisions~~ amendments that add or change an identified assignee of the authoritative copy can be made only with the ~~participation~~ consent of the secured party;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any ~~revision~~ amendment of the authoritative copy is readily identifiable as an ~~authorized~~ or ~~unauthorized~~ ~~revision~~.

Comment 2. **“Control” of Electronic Chattel Paper.** This Article covers security interests in “electronic chattel paper,” a new term defined in Section 9-102. This section governs how “control” of electronic chattel paper may be obtained. Subsection (a), which derives from Section 16 of the Uniform Electronic Transactions Act, sets forth the general test for control. Subsection (b) sets forth a safe harbor test that if satisfied, results in control under the general test in subsection (a).

* * *

Comment 4. **Development of Control Systems.** This Article leaves to the marketplace the development of systems and procedures, through a combination of suitable technologies and business practices, for dealing with control of electronic chattel paper in a commercial context. However, achieving control under this section requires more than the agreement of interested persons that the elements of control are satisfied. For example, paragraph (4) contemplates that control requires that it be a physical impossibility (or sufficiently unlikely or implausible so as to approach practical impossibility) to add or change an identified assignee without the participation consent of the secured party (or its authorized representative).

The Committee agreed to this despite some concerns expressed about fraud and duplication. The conclusion was that the current standards are too rigid and are to some extent an historical anachronism (because much looser standards exist under other analogous, more modern statutes.

8. Effectiveness of a filed financing statement with respect to property acquired after the debtor's relocation to another jurisdiction

§ 9-316 * * *

(h) [Effect on filed financing statement of change in governing law.] The following rules apply to a security interest that attaches within four months after the debtor changes its location to another jurisdiction:

(1) Subject to paragraph (4), a financing statement filed pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(2) Subject to paragraph (4), if a security interest that is perfected by a financing statement that is effective under subsection (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) or the expiration of the four-month period, it remains perfected thereafter.

(3) If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(4) A security interest that is perfected solely by a financing statement that is effective solely under paragraph (1) is deemed to be unperfected as against a buyer, lessee, or licensee of the collateral until it is perfected under the law of the other jurisdiction.

§ 9-322 * * *

(b) [Time of perfection: proceeds and supporting obligations.] For the purposes of subsection (a)(1):

(1) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; ~~and~~

(2) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation; and

(3) subject to subsection (h), the time of filing or perfection as to a security interest in collateral which remains perfected under Section 9-316(h)(2) is the time the security interest becomes perfected under the law of the other jurisdiction.

* * *

(h) [Limitation on subsection (b)(3).] Subsection (b)(3) does not affect the priority of competing security interests, each of which remains perfected under Section 9-316(h)(2).

The revised draft of this approach protects buyers, lessors, and licensees (§ 9-316(h)(4)), and secured parties who first perfect in the new jurisdiction (§ 9-322(b)). The Committee agreed to this.

9. Effectiveness of a filed financing statement with respect to property acquired by new debtor located in a different jurisdiction

§ 9-316 * * *

(i) [Effect of change in governing law on financing statement filed against original debtor.] If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) Subject to paragraph (4), the financing statement is effective to perfect a security interest in collateral in which the new debtor has or acquires rights before or within four months after the new debtor becomes bound under Section 9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had it been acquired by the original debtor.

(2) Subject to paragraph (4), a security interest that is perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the expiration of the four-month period or the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) remains perfected thereafter.

(3) A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(4) A security interest that is perfected solely by a financing statement that is effective solely under paragraph (1) is deemed to be unperfected as against a buyer, lessee, or licensee of the collateral until it is perfected under the law of the other jurisdiction.

Concern was expressed about the added complexity and whether the problem justifies the added the complexity. Concern was also expressed with transition, given that states are not likely to enact this with a uniform enactment date. Nevertheless, the Committee agreed to this.

10. Differences between control requirements under § 8-106 and §§ 9-104, 9-106

§ 9-104(a) **[Requirements for control.]** A secured party has control of a deposit account if:

(1) the secured party is the bank with which the deposit account is maintained;

(2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; ~~or~~

(3) the secured party becomes the bank's customer with respect to the deposit account; or

(4) another person has control of the deposit account on behalf of the secured party, or, having previously acquired control of the deposit account, acknowledges that it has control on behalf of the secured party.

Comment 3 * * *

Under subsection (a)(4), a secured party may obtain control if another person has control and the person acknowledges that it has control on the secured party's behalf.

The Committee agreed to this and to a similar change to § 9-106. There was extensive discussion of whether the priority rule in § 9-328(2)(B)(iii) should be added to § 9-327. In other words, whether the priority rules for deposit accounts and investment property should be harmonized given that the perfection rules will be harmonized. The Committee agreed to this.

11. Effect of anti-assignment clauses

§ 9-406(e) [Inapplicability of subsection (d) to certain sales.] Subsection (d) does not apply to the sale, other than a sale pursuant to a disposition under Section 9-610, of a payment intangible or promissory note.

§ 9-408(b) [Applicability of subsection (a) to sales of certain rights to payment.] Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale, other than a sale pursuant to a disposition under Section 9-610, of the payment intangible or promissory note.

It was noted, that this change would allow a secured party to collect on a note with an anti-assignment clause but if the secured party had conducted a strict foreclosure first, it could not. Therefore, the Committee decided to change the additional language to "a disposition under Part 6," to allow the secured party who strictly forecloses to still collect. With that change, the Committee agreed to this.

12. Definition of “Certificate of Title”

[Alternative A – Prepared by an Advisor]

§ 9-102(a)(10) “Certificate of title means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate or on the documentation provided to the issuer of the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

[Alternative B – Prepared by an Advisor]

§ 9-102(a)(10) “Certificate of title means a certificate of title with respect to which a statute ~~provides~~ requires the security interest in question to be indicated on the certificate or on the documentation provided to the issuer of the certificate ~~as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.~~

The Committee tentatively decided to add a sentence to the current definition that expressly includes a record maintained pursuant to state statute that provides a system maintained by a governmental unit for recording both ownership of and security interests in specific goods and that provides for priority over lien creditors. The reporter will draft appropriate language..

13. Property going from uncertificated state to certificated state

§ 9-316 comment 5 * * *

Example 9A. Debtor, who lives in Mississippi, owns a recreational boat that is subject to Lender’s security interest. Mississippi’s certificate-of-title laws do not cover watercraft, and so Lender perfects by filing a financing statement in Mississippi. Debtor wishes to use the boat exclusively on a lake in Alabama, but Alabama law prohibits Debtor from doing so without first applying for an Alabama certificate of title. When Debtor delivers an application for an Alabama certificate to the appropriate authority and pays the applicable fee, the boat becomes covered by an Alabama certificate of title and Alabama law governs perfection, the effect of perfection or nonperfection, and priority of the security interest. See Section 9-303. Under Alabama’s Section 9-316(d), Lender’s security interest remains perfected until it would have become unperfected under Mississippi law had the boat not become covered by the Alabama certificate of title (e.g., because the effectiveness of the filed financing statement lapses). However, as against a purchaser of the boat for value, Lender’s security interest would become unperfected and would be deemed never to have been perfected if Lender fails to reperfect under Alabama’s Section 9-311(b) or 9-313 in a timely manner. See subsection (e).

Reporter's Note

New Example 9A clarifies the operation of Section 9-316(d). Consider the following variation:

Debtor, who lives in Mississippi, owns a recreational boat that is subject to Lender's security interest. Mississippi's certificate-of-title laws do not cover watercraft, and so Lender perfects by filing a financing statement in Mississippi. After the filing, Debtor moves to Alabama and applies for an Alabama certificate of title for the boat.

The Committee agreed to the draft of comment 9A, which applies when the debtor does not move, and agreed that a new comment should be written along the lines of that in the Reporter's Note, to indicate that if the debtor moves from a state in which the boat is not certificated to a state that does certificate boats, then § 9-316(a) governs, not § 9-316(d). As a result, if the debtor does not obtain a certificate, perfection continues for only four months, not for as long as perfection would last under the original state.

14. Classification of "stripped" rentals

§ 9-102 comment 5d * * *

In classifying intangible collateral, a court should begin by identifying the particular rights that have been assigned. The account debtor (promisor) under a particular contract may owe several types of monetary obligations as well as other, nonmonetary obligations. If the promisee's right to payment of money is assigned separately, the right is an account or payment intangible, depending on how the account debtor's obligation arose. When all the promisee's rights are assigned together, an account, a payment intangible, and a general intangible all may be involved, depending on the nature of the rights.

A right to the payment of money is frequently buttressed by ancillary covenants, such as covenants in a purchase agreement, note, or mortgage requiring insurance on the collateral or forbidding removal of the collateral, or covenants to preserve the creditworthiness of the promisor, such as covenants restricting dividends and the like. This Article does not treat these ancillary rights separately from the rights to payment to which they relate. For example, attachment and perfection of an assignment of a right to payment of a monetary obligation, whether it be an account or payment intangible, also carries these ancillary rights. Among these ancillary rights are the lessor's rights with respect to leased goods that arise upon the lessee's default. See Section 2A-523. Accordingly, and contrary to the opinion in *In re Commercial Money Center, Inc.*, 350 B.R. 465 (B.A.P. 9th Cir. 2006), if the lessor's rights under a lease constitute chattel paper, an assignment of the lessor's right to payment under the lease also would be chattel paper, even if the assignment excludes those ancillary rights.

The comment indicates that something that is ancillary can be stripped without changing classification but something that is not ancillary cannot be, and the Committee discussed whether the distinction between those two situations could be clearly applied. The Committee also discussed whether the added language conflicts with language in the previous paragraph.

The Committee decided to adopt this comment, but changed the first use of the word “covenant” in the last paragraph to “rights,” added the word “However” to the beginning of the paragraph, and replaced “those ancillary” in the last line with “other.”

15. Ratification of unauthorized filing on priority

§ 9-322 comment 4 * * *

Under a notice-filing system, a filed financing statement indicates to third parties that a person may have a security interest in the collateral indicated. With further inquiry, they may discover the complete state of affairs. When a financing statement that is ineffective when filed becomes effective thereafter, the policy underlying the notice-filing system determines the “time of filing” for purposes of subsection (a)(1). For example, upon the debtor’s ratification of the unauthorized filing of an otherwise sufficient initial financing statement, the filing becomes authorized and the financing statement becomes effective. See Section 9-509, Comment 3. Because the authorization does not increase the notice value of the financing statement, the time of the unauthorized filing is the “time of filing” for purposes of this subsection (a)(1). A different result would obtain where an initial financing statement is ineffective because the name of the debtor is incorrect and seriously misleading and the filing office changes its standard search logic so that the name on the financing statement no longer is seriously misleading. See Section 9-506(c). Because the financing statement did not afford notice to third parties until the search logic changed and the financing statement became effective, the time of the change is the “time of filing” for purposes of subsection (a)(1).

The Committee agreed to this addition to the comment but to delete everything from “[a] different result” to the end of the paragraph and to make the example more expressly cover the debtor’s authentication of a security agreement post-filing. It also added language to make it clear that the point is not limited to § 9-322(a)(1). The final language will be something like the following:

Under a notice-filing system, a filed financing statement indicates to third parties that a person may have a security interest in the collateral indicated. With further inquiry, they may discover the complete state of affairs. When a financing statement that is ineffective when filed becomes effective thereafter, the policy underlying the notice-filing system determines the “time of filing” for purposes of subsection (a)(1) and the other priority rules of this part. For example, the debtor’s authentication of a

security agreement or ratification of an unauthorized filing of an otherwise sufficient initial financing statement, the filing becomes authorized and the financing statement becomes effective. See Section 9-509, Comment 3. Because the authorization does not increase the notice value of the financing statement, the time of the unauthorized filing is the “time of filing” for purposes of this subsection (a)(1).

16. Amendment to Overrule *Highland Capital*

§ 8-103 * * *

(h) An obligation, share, participation or interest does not satisfy section 8-102(a)(13)(ii) or section 8-102(a)(15)(i) merely because the issuer or a person acting on its behalf:

(i) records [transfer thereof] [the holders of interests therein] for a purpose other than registration of transfer, or

(ii) [could record transfers thereof] [could, but does not, maintain books] for the purpose of registration of transfer.

Comment 9. Subsection (h) rejects the holding of *Highland Capital Management LP v. Schneider*, 8 N.Y.3d 406 (2007). The registrability requirement in the definition of “registered form,” and its parallel in the definition of “security,” are satisfied only if the business arrangement is such that books are maintained for the purpose of registration of transfer, including the determination of rights under Section 8-207(a) (or if, in the case of a certificated security, the security certificate so states). It is not sufficient that the issuer records ownership, or records transfers thereof, for other purposes. Nor it is sufficient that the issuer, while not in fact maintaining books for the purpose of registration of transfer, could do so, for such is always the case. Subsection (h) is declaratory of the proper interpretation of the foregoing definitions, not a change in the law.

The Committee agreed to this and to the concept that it should be an amendment to the uniform text.

17. Irrelevance of parties’ intent to characterization of the transaction

§ 9-109 comment 2. **Basic Scope Provision.** Subsection (a)(1) derives from former Section 9-102(1) and (2). These subsections have been combined and shortened. No change in meaning is intended. Under subsection (a)(1), all consensual security interests in personal property and fixtures are covered by this Article, except for transactions excluded by subsections (c) and (d). As to which transactions give rise to a “security interest,” the definition of that term in Section 1-201 must be consulted.

When a security interest is created, this Article applies regardless of the form of the transaction or the name that parties have given to it. Likewise, the subjective intention of the parties with respect to the legal characterization of their transaction is irrelevant to the application of this Article, as it was to the application of former Article 9 under the proper interpretation of former Section 9-102.

The Committee agreed to this.

18. Papering Out Electronic Chattel Paper

§ 9-105 comment 5b * * *

The definition of electronic chattel paper does not dictate that it be created in any particular fashion. For example, a record consisting of a tangible writing may be converted to electronic form (e.g., by creating electronic images of a signed writing). Or, records may be initially created and executed in electronic form (e.g., a lessee might authenticate an electronic record of a lease that is then stored in electronic form). In either case the resulting records are electronic chattel paper. Likewise, tangible chattel paper results when chattel paper in electronic form is converted to tangible form.

§ 9-330 comment 3 * * *

For a security interest qualify for priority under subsection (a) or (b), the secured party must “take[] possession of the chattel paper or obtain[] control of the chattel paper under Section 9-105.” When chattel paper comprises one or more tangible records and one or more electronic records, a secured party satisfies this requirement if it has possession of all the tangible records and control of all the electronic records.

The Committee agreed to this but modified the last clause to read “a secured party satisfies this requirement if it has possession of the tangible records and control of the electronic records.”

19. Hybrid chattel paper

§ 9-330 comment 3 * * *

For a security interest qualify for priority under subsection (a) or (b), the secured party must “take[] possession of the chattel paper or obtain[] control of the chattel paper under Section 9-105.” When chattel paper comprises one or more tangible records and one or more electronic records, a secured party satisfies this requirement if it has possession of all the tangible records and control of all the electronic records.

The Committee agreed to this.

20. Notification of Strict Foreclosure

Unlike Section 9-611, this section contains no “safe harbor,” which excuses an enforcing secured party from notifying certain secured parties and other lienholders. This is because, unlike Section 9-610, which requires that a disposition of collateral be commercially reasonable, Section 9-620 permits the debtor and secured party to set the amount of credit the debtor will receive for the collateral subject only to the requirement of good faith. An effective acceptance discharges subordinate security interests and other subordinate liens. See Section 9-622. If collateral is subject to several liens securing debts much larger than the value of the collateral, the debtor may be disinclined to refrain from consenting to an acceptance by the holder of the senior security interest, even though, had the debtor objected and the senior disposed of the collateral under Section 9-610, the collateral may have yielded more than enough to satisfy the senior security interest (but not enough to satisfy all the liens). Accordingly, this section imposes upon the enforcing secured party the risk of the filing office’s errors and delay. The holder of a security interest who is entitled to notification under this section but ~~does not receive it~~ to whom the enforcing secured party does not send notification has the right to recover under Section 9-625(b) any loss resulting from the ~~enforcing~~ secured party’s noncompliance with this section.

The Committee agreed to this.

21. Transmitting utilities – lapse period

(f) **[Transmitting utility financing statement.]** If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

The Committee agreed to this without discussion.

22. Transmitting utilities – choice of governing law

§ 9-301 comment 5b * * *

The filing of a financing statement to perfect a security interest in collateral of a transmitting utility constitutes a fixture filing with respect to goods that are or become fixtures. See Section 9-501(b). Accordingly, to perfect a security interest in goods of this kind by a fixture filing, a financing statement must be filed in the office specified by Section 9-501(b) as enacted in the jurisdiction in which the goods are located. If the fixtures collateral is located in more than one State, filing in all of those States will be necessary to perfect a security interest in all the fixtures collateral by a fixture filing. Of

course, a security interest in nearly all types of collateral (including fixtures) of a transmitting utility may be perfected by filing in the office specified by Section 9-501(a) as enacted in the jurisdiction in which the transmitting utility is located. However, such a filing will not be effective as a fixture filing except with respect to goods that are located in that jurisdiction.

§ 9-501 comment 5 * * *

A given State’s subsection (b) applies only if the local law of that State governs perfection. As to most collateral, perfection by filing is governed by the law of the jurisdiction in which the debtor is located. See Section 9-301(1). However, the law of the jurisdiction in which goods that are or become fixtures are located governs perfection by fixture filing. See Section 9-301(3)(A). As a consequence, filing in the filing office of more than one State may be necessary to perfect by fixture filing a security interest in fixtures collateral of a transmitting utility. See Section 9-301, Comment 5.b.

The Committee agreed to this without discussion.

23. Name of registered organization; definition of registered organization

§ 9-503(a) **[Sufficiency of debtor’s name.]** A financing statement sufficiently provides the name of the debtor:

(1) subject to subsection (f), if the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public organic record of filed with or issued by the debtor’s jurisdiction of organization which shows the debtor to have been organized;

* * *

(f) **[Name of registered organization.]** If the public organic record indicates more than one name of the debtor, then, for purposes of subsection (a)(1), “the name of the debtor indicated on the public organic record” means:

(1) if the public organic record is composed of a single record, the name that is stated as the name of the debtor;

(2) if the public organic record is composed of more than one record, the name of the debtor which is indicated on the most recently filed or issued record that is intended to amend or restate the debtor’s name; and

(3) if the record specified in paragraph (2) indicates more than one name of the debtor, the name of the debtor which that record states to be the debtor’s name.

§ 9-102(a) * * *

(50) “Jurisdiction of organization”, with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

* * *

[Alternative A]

(67A) “Public organic record” means:

(A) a record or records composed of the record initially filed with a State or the United States to form or organize an organization and any record filed with the State or the United States which effects an amendment or restatement of the initial record, if the record or records are available to the public for inspection;

(B) [a] [an organic] record or records of a business trust that is initially filed with a State and any record filed with the State which effects an amendment or restatement of the initial record, if a statute of the State governing business trusts requires that the record or records be filed with the State and the record or records are available to the public for inspection; and

(C) a charter issued by a State or the United States which authorizes the organization to [commence business] [commence the business of banking or another regulated business].

[Alternative B]

(67A) “Public organic record” means:

(A) a record or records composed of the record initially filed with a State or the United States to form or organize an organization, or to constitute an organization as a statutory business trust, and any record filed with the State or the United States which effects an amendment or restatement of the initial record, if the record or records are available to the public for inspection; and

(B) a charter issued by a State or the United States which authorizes the organization to [commence business] [commence the business of banking or another regulated business].

* * *

(70) “Registered organization” means an organization formed or organized solely under the law of a single State or the United States ~~and as to which the State or the United States must maintain a public record showing the organization to have been organized by the filing of a public organic record with the State or United States~~ or with respect to which the State or United States has issued a charter that authorizes the organization to [commence business] [commence the business of banking or another regulated business]. [The term includes a business trust that is formed or organized under the law of a single State if a statute of the State governing business trusts requires that the business trust’s organic record be filed with the State.]

The text of § 9-102(a)(70) was revised to cover banks that are created by a charter. The Committee went with “commence business” rather than with “commence the business of banking or another regulated business.” The Committee also decided to keep the last sentence in brackets

With respect to § 9-102(a)(67A), the Committee went with Alternative A (including the bracketed word), but to expand (C) to cover amendments and public inspection. There was also concern about whether the word “charter” in § 102(a)(67A) was sufficient. The Committee will consider this further.

Both provisions will be expanded to make it clear that entities formed by a state or federal statute are registered organizations, regardless of whether a charter is actually every issued.

The addition of § 9-503(f) was agreed to in principle, but the rule in § 9-503(f)(1) will be moved and become the main rule in § 9-503(a)(1).

24. Name of individual debtors

[Alternative A – Only-if Rule]

§ 9-503(a) **[Sufficiency of debtor’s name.]** A financing statement sufficiently provides the name of the debtor:

* * *

(4) if the debtor is an individual to whom this State has issued a [driver’s license] or [identification card] that, at the time the financing statement is filed, has not expired or [been cancelled], only if it provides the name of the individual which is indicated on the [driver’s license] or [identification card]; and

* * *

(g) [Multiple licenses or cards.] If this State has issued to an individual more than one [driver’s license] or [identification card] of a kind described in subsection (a)(4), the one that was issued most recently is the one to which the subsection refers.

[Alternative B – Safe-harbor Rule]

§ 9-503(a) **[Sufficiency of debtor’s name.]** A financing statement sufficiently provides the name of the debtor:

* * *

(4) in other cases:

(A) except as provided in subsection (g), if the debtor has a name, only if it provides the individual or organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

* * *

(g) [Exception for individual debtor’s name.] Subject to subsection (h), a financing statement that does not provide the individual name of the debtor nevertheless sufficiently provides the name of a debtor who is an individual if:

(1) it provides the name of the individual which is indicated on a [driver’s license] or [identification card] that, at the time the financing statement is filed,

has been issued to the individual by this State and has not yet expired or [been cancelled]; and

(2) the filing office indexes the financing statement in such a manner that a search of the records of the filing office under the name indicated, using the filing office's standard search logic, if any, would disclose the financing statement.

(h) [Multiple licenses or cards.] If this State has issued to an individual more than one [driver's license] or [identification card] of a kind described in subsection (g)(1), the one that was issued most recently is the one to which the subsection refers.

SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.

(a) **[Minor errors and omissions.]** A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) **[Financing statement seriously misleading.]** Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a) or (g) is seriously misleading.

(c) **[Financing statement not seriously misleading.]** If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a) or (g), the name provided does not make the financing statement seriously misleading.

(d) **[“Debtor's correct name.”]** For purposes of Section 9-508(b), the “debtor's correct name” in subsection (c) means the correct name of the new debtor.

(e) **[Individual “debtor's correct name.”]** If a debtor who is an individual changes his or her name by virtue of Section 9-507(d), the “debtor's correct name” in subsection (c) means the name of the debtor indicated on the [driver's license] or [identification card] that indicates a name different from the name provided on the financing statement.

[end of alternatives]

§ 9-507(d) [Name sufficient only under Section 9-503(g).] If, after the filing of a financing statement that provides a name that is sufficient [Alternative A: under Section 9-503(a)(4).] [Alternative B: only under Section 9-503(g).] this State issues to the debtor a [driver's license] or [identification card] that indicates a name different from the name provided, the debtor changes his or her name for purposes of subsection (c).

The Committee began by discussing the scope of the problem and seemed to reach a consensus (not unanimous) that a change was warranted. It then moved to which of the approaches would be best. It was noted that neither the priority approach nor the only-if approach protects the secured party from an earlier filing one an old version of the debtor's ID name (for existing collateral) or a filing under a different version of the name filed when the debtor didn't have an ID.

It then became clear that if the Committee recommends the “priority approach” (not among the drafted alternatives but advocated by some advisors) and not all states enact it (or not all at the same time) then we end up with different priority rules in different states. That is compounded by the fact that perfection is governed by the location of the debtor but priority is governed by the location of the collateral. The priority approach would also require amendments to §§ 9-317, 9-320, 9-321, 9-322, and 9-324 to avoid possible circular priority problems.

The Committee then decided to hold a conference call in the coming weeks to select among the approaches. In the interim, it worked on refining the only-if and safe harbor approaches.

With respect to the only-if rule, the Committee concluded that the license/ID should be used only if it does not appear on its face to have expired. It then concluded that there should be a “waterfall” of acceptable ID’s: (i) if there is a driver’s license, then the name on that is the name to use; (ii) if there is no driver’s license and if there is a state-issued ID, then use then name on that; and (iii) if the debtor has neither of these IDs, then either go to the name on the passport or simply fall back to the debtor’s correct name. There was also general agreement that if a license expires or a new license or ID is issued, and the waterfall rule then points to a different name, then it should be viewed as a name change for the purposes of § 9-507(c).

The Committee also agreed that the Alternative B version of § 9-503(g), which deals with the problem of when the ID issuer uses characters (such as accent marks) that the UCC filing office cannot index, is needed regardless of whether it recommends the safe-harbor, only-if, or some other approach. Moreover, that rule should be applied to any type of debtor.

With respect to the safe-harbor approach, after extended discussion the Committee decided to go with any driver’s license or state-issued ID that has not expired on its face. The Committee decided it did not need the rules of § 9-503(h) or § 9-507(d) of Alternative B.

The Committee tentatively decided that rule for a decedent’s estate should be unaffected by the only-if or safe-harbor rule. The Committee tentatively decided that the rule for settlors should be unaffected by the only-if rule.

25. Transmitting Utilities

§ 9-301 comment 5b * * *

The filing of a financing statement to perfect a security interest in collateral of a transmitting utility constitutes a fixture filing with respect to goods that are or become fixtures. See Section 9-501(b). Accordingly, to perfect a security interest in goods of this kind by a fixture filing, a financing statement must be filed in the office specified by Section 9-501(b) as enacted in the jurisdiction in which the goods are located. If the fixtures collateral is located in more than one State, filing in all of those States will be necessary to perfect a security interest in all the fixtures collateral by a fixture filing. Of

course, a security interest in nearly all types of collateral (including fixtures) of a transmitting utility may be perfected by filing in the office specified by Section 9-501(a) as enacted in the jurisdiction in which the transmitting utility is located. However, such a filing will not be effective as a fixture filing except with respect to goods that are located in that jurisdiction.

§ 9-501 comment 5 * * *

A given State's subsection (b) applies only if the local law of that State governs perfection. As to most collateral, perfection by filing is governed by the law of the jurisdiction in which the debtor is located. See Section 9-301(1). However, the law of the jurisdiction in which goods that are or become fixtures are located governs perfection by fixture filing. See Section 9-301(3)(A). As a consequence, filing in the filing office of more than one State may be necessary to perfect by fixture filing a security interest in fixtures collateral of a transmitting utility. See Section 9-301, Comment 5.b.

The Committee agreed to this.

26. Application of § 9-307(c) to registered organization

§ 9-307(f) [**Location of registered organization organized under federal law; bank branches and agencies.**] Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a State are located:

(1) in the State that the law of the United States designates, if the law designates a State of location;

(2) in the State that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its State of location; ~~or~~

(3) in the State in which the designated office of the registered organization, branch, or agency is located, if the law of the United States authorizes the registered organization, branch, or agency to designate its main office, home office, or other comparable office; or

~~(3)(4)~~ in the District of Columbia, if ~~neither paragraph (1) nor paragraph (2) applies~~ none of the preceding paragraphs applies.

§ 9-307 comment 3. **Non-U.S. Debtors.** Under the general rules of this section, a non-U.S. debtor often would be located in a foreign jurisdiction and, as a consequence, foreign law would govern perfection. When foreign law affords no public notice of security interests, the general rule yields unacceptable results.

Accordingly, subsection (c) provides that the normal rules for determining the location of a debtor (i.e., the rules in subsection (b)) apply only if they yield a location that is “a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.” The phrase “generally requires” is meant to include legal regimes that generally require notice in a filing or recording system as a condition of perfecting nonpossessory security interests, but which permit perfection by another method (e.g., control, automatic perfection, temporary perfection) in limited circumstances. A jurisdiction that has adopted this Article or an earlier version of this Article is such a jurisdiction. If the rules in subsection (b) yield a jurisdiction whose law does not generally require notice in a filing or registration system and none of the special rules in subsections (e), (f), (i), and (j) applies, the debtor is located in the District of Columbia.

§ 9-307 comment 5. **Registered Organizations Organized Under Law of United States; Branches and Agencies of Banks Not Organized Under Law of United States.** Subsection (f) specifies the location of a debtor that is a registered organization organized under the law of the United States. It defers to the law of the United States, to the extent that that law determines, or authorizes the debtor to determine, the debtor’s location. Thus, if the law of the United States designates a particular State as the debtor’s location, that State is the debtor’s location for purposes of this Article’s choice-of-law rules. Similarly, if the law of the United States authorizes the registered organization to designate its State of location, the State that the registered organization designates is the State in which it is located for purposes of this Article’s choice-of-law rules. The law of the United States authorizes certain registered organizations to designate a main office, home office, or other comparable office. See, e.g., 12 U.S.C. Sections 22 and 1464(a); 12 C.F.R. Section 552.3. Where the registered organization designates an office pursuant to such an authorization, the State in which the designated office is located is the location of the debtor for purposes of Section 9-307(f). In other cases, the debtor is located in the District of Columbia.

~~In some cases, the law of the United States authorizes the registered organization to designate a main office, home office, or other comparable office. See, e.g., 12 U.S.C. Sections 22 and 1464(a); 12 C.F.R. Section 552.3. Designation of such an office constitutes the designation of the State of location for purposes of Section 9-307 (f)(2).~~

Subsection (f) also specifies the location of a branch or agency in the United States of a foreign bank that has one or more branches or agencies in the United States. The law of the United States ~~authorized~~ authorizes a foreign bank (or, on behalf of the bank, a federal agency) to designate a single home state for all of the foreign bank’s branches and agencies in the United States. See 12 U.S.C. Section 3103(c) and 12 C.F.R. Section 211.22. As authorized, the designation constitutes the State of location for the branch or agency for purposes of Section 9-307(f), unless all of a foreign bank’s branches or

agencies that are in the United States are licensed in only one State, in which case the branches and agencies are located in that State. See subsection (i).

The Committee agreed to this.

27. Application of § 9-503(a) to debtor that is both a trust and a registered organization

(a) **[Sufficiency of debtor's name.]** A financing statement sufficiently provides the name of the debtor:

(1) if the debtor is a registered organization and is not a trustee acting with respect to property held in trust, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;

(2) if the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

(3) if the debtor is a trust that is not a registered organization or a trustee acting with respect to property held in trust, only if the financing statement:

(A) provides the name specified for the trust in its organic ~~documents~~ record or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

(B) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; * * *

The Committee agreed to this.

28. Correction statements

SECTION 9-518. CLAIM CONCERNING INACCURATE OR WRONGFULLY FILED RECORD.

(a) ~~[Who may file]~~ **Statement with respect to record indexed under person's name.]** A person may file in the filing office a ~~correction~~ statement of a claim with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

[Alternative A]

(b) **[Sufficiency of ~~correction~~ statement under subsection (a).]** A ~~correction~~ statement of a claim under subsection (a) must:

(1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) indicate that it is a ~~correction~~ statement of a claim; and

(3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

[Alternative B]

(b) **[Sufficiency of ~~correction~~ statement under subsection (a).]** A ~~correction statement of a claim under subsection (a)~~ must:

(1) identify the record to which it relates by:

(A) the file number assigned to the initial financing statement to which the record relates; and

(B) if the ~~correction~~ statement relates to a record filed [or recorded] in a filing office described in Section 9-501(a)(1), the date [and time] that the initial financing statement was filed [or recorded] and the information specified in Section 9-502(b);

(2) indicate that it is a ~~correction~~ statement of a claim; and

(3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

[End of Alternatives]

(c) **[Statement by secured party of record.]** A person may file in the filing office a statement of a claim with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person who filed the record was not entitled to do so under Section 9-509(d).

[Subsection (d)—Alternative A]

(d) **[Sufficiency of statement under subsection (c).]** A statement of a claim under subsection (c) must:

(1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) indicate that it is a statement of a claim; and

(3) provide the basis for the person's belief that the person who filed the record was not entitled to do so under Section 9-509(d).

[Subsection (d)—Alternative B]

(d) **[Sufficiency of statement under subsection (c).]** A statement of a claim under subsection (c) must:

(1) identify the record to which it relates by:

(A) the file number assigned to the initial financing statement to which the record relates; and

(B) if the statement relates to a record filed [or recorded] in a filing office described in Section 9-501(a)(1), the date [and time] that the initial financing statement was filed [or recorded] and the information specified in Section 9-502(b);

(2) indicate that it is a statement of a claim; and

(3) provide the basis for the person’s belief that the person who filed the record was not entitled to do so under Section 9-509(d).

[End of Alternatives]

~~(e)~~(e) **[Record not affected by correction statement of claim.]** The filing of a ~~correction~~ statement of a claim under this Section does not affect the effectiveness of an initial financing statement or other filed record.

The Committee agreed to this. This change would allow the debtor to file a statement if it thinks there is something wrong in the filed records as to it; and the secured party to file a statement if it thinks there is something wrong in the files as to it.

29. Official Forms

[see IACA memorandum at end of this report]

IACA set up a forms committee to review the issues raised by the Review Committee at its last meeting. It came up with a new form that eliminates the need for social security numbers, state organizational numbers. Those are no longer necessary (they were added out of a concern that not all states would enact revised Article 9 and we might have multiple filings in a single jurisdiction against different registered organizations with the same name). Correlative changes to § 9-516(b) will be made. The also moves some things (*e.g.*, box for transmitting utility) from the addendum to the main page.

The Committee decided to divide the check boxes in line 5 into a 5a and 5b, with the former including transmitting utility, manufactured home, and public finance transaction (for which filers may check no more than one box) and the latter including non-UCC filing and ag lien (either or both of which the filer check if applicable).

On the amendment form, the Committee suggested moving the termination box down so that it is not right next to the continuation box.

The Committee agreed to the redrafted forms.

The Committee also discussed changing the form’s reference to “last name” to “surname” and decided to seek input on how to deal with debtors who have both a maternal and paternal surname.

30. § 9-318 is not a priority rule

§ 9-318 comment 5. Not a Priority Rule. If a debtor sells an account, chattel paper, payment intangible or promissory note to a buyer, and the debtor later transfers an interest in the same receivable to another purchaser, a priority contest arises. If the

interests are such that the priority contest is governed by Article 9, it is resolved by application of the priority rules of Article 9. Subsection (a) does not import the common-law principle of *nemo dat quod non habet* to displace those rules. In many circumstances the priority rules of Article 9 will give the interest of the second purchaser priority over the buyer's previously-acquired ownership interest. To the extent that the priority rules entail such priority, the debtor necessarily has "power to transfer rights in the collateral" within the meaning of Section 9-203(b)(3). See Section 9-203(b)(3), Comment 6. Subsection (b) is essentially a codification of the foregoing principles as applied to a particular contest of the foregoing type, and various comments note that these principles apply to other particular contests. See Section 9-318, Comment 4; Section 9-317, Comment 6. These principles apply generally to all priority contests of the foregoing type. However, when a buyer's ownership interest is awarded priority under the applicable Article 9 priority rule, the identification of the applicable rule as one of "priority" does not imply that the seller has retained any interest.

Example 2: SP-1, having authority to do so, files a financing statement against Debtor covering accounts. Debtor then sells to SP-2 a particular account, with requisites for attachment satisfied, and SP-2 files a financing statement against Debtor covering the account. Debtor later grants to SP-1 a security interest (either by sale or by security transfer) in the account, authenticating an appropriate security agreement and with value being given. SP-2 cannot invoke *nemo dat* to claim priority over SP-1 in the account. Rather, the priority dispute is resolved under the relevant priority rule of Article 9. In this case, SP-1 has priority over SP-2 as first to file, under Section 9-322(a)(1). SP-1's security interest in the account attached because Debtor had "power to transfer rights in the collateral" within the meaning of 9-203(b)(3). If the grant to SP-1 was a sale, SP-2 has no interest in the account; if the grant to SP 1 was a security transfer, SP-2 owns the account subject to SP-1's security interest.

The Committee tentatively agreed to this.

31. Priority in Proceeds

§ 9-322 comment 8 * * *

If two security interests in the same original collateral are entitled to priority in an item of proceeds under subsection (c)(2), the security interest having priority in the original collateral has priority in the proceeds.

The Committee agreed to this.

32. Secured Party's Authorization to file amendments

§ 9-509 comment 6. **Amendments; Termination Statements Authorized by Debtor.** Most amendments may not be filed unless the secured party of record, as determined under Section 9-511, authorizes the filing. See subsection (d)(1). However, under subsection (d)(2), the authorization of the secured party of record is not required for the filing of a termination statement if the secured party of record failed to send or file a termination statement as required by Section 9-513, the debtor authorizes it to be filed, and the termination statement so indicates. Although a person filing a record would be prudent to obtain and retain an authenticated record authorizing the filing, an authorization under subsection (d) is effective even if it is not in an authenticated record. Compare subsection (a)(1).

The Committee agreed to this.

33. Application of § 9-506 to § 9-706(c) information

§ 9-706 comment 2 **Requirements of Initial Financing Statement Filed in Lieu of Continuation Statement.** Subsection (c) sets forth the requirements for the initial financing statement under subsection (a). These requirements are needed to inform searchers that the initial financing statement operates to continue a financing statement filed elsewhere and to enable searchers to locate and discover the attributes of the other financing statement. The notice-filing policy of this Article applies to the initial financing statements described in this section. Accordingly, an initial financing statement that substantially satisfies the requirements of subsection (c) is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading. See Section 9-506.

The Committee agreed to this.

34. Wrongful filings

SECTION 9-513A. TERMINATION OF WRONGFULLY FILED RECORD; REINSTATEMENT.

- (a) [**“Government employee.”**] In this section, “government employee” means:
- (1) an employee or elected or appointed official of this State, the United States, or a governmental unit of this State or the United States; and
 - (2) a member of an authority, board, or commission established by this State, the United States, or a governmental unit of this State or the United States.

(b) [Application of this section.] This section applies only with respect to a filed financing statement that indicates all secured parties of record to be individuals, identifies as a debtor an individual who was a government employee at or before the time the financing statement was filed, and was filed by an individual not entitled to do so under Section 9-509(a). If the financing statement indicates more than one debtor, the provisions of this section apply only with respect to those debtors who are individuals and were government employees at or before the time the financing statement was filed.

(c) [Affidavit of wrongful filing.] A government employee identified as a debtor in a filed financing statement [to which this section applies] may file in the filing office a notarized affidavit, made under oath or penalty of perjury, in the form prescribed by the [Secretary of State], stating that the financing statement was filed by an individual not entitled to do so under Section 9-509(a). The [Secretary of State] shall adopt and, upon request, make available to a government employee a form of affidavit to be used under this subsection.

(d) [Termination statement by filing office.] If an affidavit is filed under subsection (c), the filing office shall promptly file a termination statement with respect to the financing statement. The termination statement must indicate that it was filed pursuant to this section.

(e) [No fee charged or refunded.] The filing office shall not charge a fee for the filing of an affidavit under subsection (c) or a termination statement under subsection (d). The filing office shall not return any fee paid for filing the financing statement to which the affidavit relates, whether or not the financing statement is reinstated under subsection (h).

(f) [Notice of termination statement.] On the same day that a filing office files a termination statement under subsection (d), it shall send to the secured party of record for the financing statement a notice advising the secured party of record that the termination statement has been filed. The notice shall be sent by certified mail, return receipt requested, to the address provided for the secured party in the financing statement.

(g) [Action for reinstatement.] An individual who believes in good faith that the individual was entitled to file the financing statement as to which a termination statement was filed under subsection (d) may file an action to reinstate the financing statement. The exclusive venue for an action shall be in the [circuit] court for the county where the filing office in which the financing statement was filed is located or, if the government employee resides in this State, the county where the government employee resides. The action shall have priority on the court's calendar and shall proceed by expedited hearing.

(h) [Action for reinstatement successful.] If, in an action under subsection (g), the court determines that the financing statement should be reinstated, the secured party of record may provide a copy of the court's judgment or order to the filing office. If the filing office receives a copy within 30 days after the entry of the judgment or order, the filing office shall promptly file a record that identifies by its file number the initial

financing statement to which the record relates and indicates that the financing statement has been reinstated.

(i) [Effect of reinstatement.] Except as otherwise provided in subsection (j), upon the filing of a record reinstating a financing statement under subsection (h), the effectiveness of the financing statement is retroactively reinstated and the financing statement shall be considered never to have been ineffective as against all persons and for all purposes. If the effectiveness of a financing statement that is reinstated would have lapsed between the time of the filing of the termination statement and the time of the filing of the record reinstating the financing statement, the secured party of record may file a continuation statement not later than 30 days after the time of the filing of the record reinstating the financing statement. Upon the timely filing of a continuation statement, the effectiveness of the financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective had no termination statement been filed by the filing office.

(j) [Exception to subsection (i).] A financing statement whose effectiveness is reinstated shall not be effective as against a person that purchased the collateral in good faith and for value between the time of the filing of the termination of the financing statement and the time of the filing of the record reinstating the financing statement.

(k) [Liability for wrongful filing.] If, in an action under subsection (g), the court determines that the individual who filed the financing statement was not entitled to do so under Section 9-509(a), the government employee may recover from the individual the costs and expenses, including reasonable attorneys' fees, that the government employee incurred in the action. [This recovery is in addition to any recovery to which the government employee is entitled under Section 9-625.]

The proposal protects current public employees but not former government employees. In that sense, it draws a line between protecting public officials and protecting lenders from destruction of their real filings by their debtors. Concern was expressed by limiting the protections here to financing statements filed by an individual, and the bogus filer could easily circumvent that limitation by purporting to be a partnership, other entity, or even a sovereign state. On the other hand, such a limitation means that the rule would not apply to financing statements files by banks or other financial institutions, and therefore the risk of the debtor filing a fraudulent termination statement would be less.

The Committee decided not to incorporate this rule into Article 9 but to assist in drafting a hipocket amendment, that would not be part of Article 9.

35. Section 9-520 comment 2

[proposed by an advisor]

§ 9-520 comment 2 **Refusal to Accept Record for Filing.** In some States, filing offices considered themselves obligated by former Article 9 to review the form and

content of a financing statement and refuse to accept those that they determine are legally insufficient. Some filing offices imposed requirements for or conditions to filing that do not appear in the statute. Under this section, the filing office is not expected to make legal judgments and is not permitted to impose additional conditions or requirements.

This section also prohibits the filing office from imposing different or additional content requirements based on the method or medium of communication. For example, a filing office that accepts electronic records could not refuse to accept a record communicated electronically based upon contents of the name or collateral fields if it would accept the same information in a written record. Nor may the filing office refuse to accept a record for failure to provide information in the record in addition to the information otherwise required by this Part. * * *

The Committee considered this and the reporter will work on revising the comment to clarify what filing offices may do in rejecting electronic filings.

36. Foreign characters in debtor's name.

The Committee discussed this problem at some length. It asked the Joint Task Force on Filing Office Operations and Search Logic to prepare a proposal on the subject.

Possible Additional Issues

The Committee will be seeking permission to address the following issues:

1. Providing guidance on how to determine whether the debtor is a trust or its trustee.
2. How to deal with the fact that in many states, upon conversion from entity type to another it is unclear whether the debtor is the same debtor or a new debtor. The uncertainty is important because if it is the same entity, the filer needs to file an amendment and if it is not the same entity, the filer should not file an amendment.
3. Preparation of a hip-pocket amendment on bogus filings.
4. Amending §§ 3-302(e) and 3-303(2) to change the references to “security interest” to a “security interest that secures an obligation” to exclude a security interest arising from the sale of a promissory note.



TO: Joint Review Committee on UCC Article 9

FROM: Kelly Kopyt, International Association of Commercial Administrators

RE: UCC Article 9 Revised Forms

DATE: March 2, 2009

In response to the Joint Review Committee's request at the February 6-8, 2009, meeting, the International Association of Commercial Administrators' (IACA) would like to propose the attached revisions to the National Forms, UCC1 and UCC3, as specified in 9-521. The IACA Secured Transaction Section's UCC Forms Committee initially planned to focus its recommendations on the concerns relayed to the Joint Review Committee on February 2, 2009. However, as our efforts progressed, the Committee took additional suggestions under advisement. IACA's new proposal, submitted herein to the Joint Review Committee for comment, intends to streamline the filing process, provide improved instructions that are more comprehensible for submitters and enhance the reliability of search results. These revisions aim to simplify the form, encourage ease of use and promote greater longevity of the revised forms. IACA's revised forms UCC1, UCC1Ad and UCC3 are attached for the Joint Review Committee's reference and comment. Additional form UCC1Ad is relevant to the revisions made to form UCC1.

IACA has also included a revised Form UCC5, the statement of claim concerning an inaccurate or wrongfully filed record for the Joint Review Committee's comment in conjunction with the 9-518 revisions.

A. Form UCC1, UCC Financing Statement:

- i.** Box 1d, requesting a tax identification, social security or employer identification number, is eliminated. This will accommodate the majority of filing offices enduring significant pressure to remove SSNs from the public record. Only North and South Dakota still require this number be set forth on a form promulgated by the Secretary of State. Their state form acts as a UCC1 financing statement and a Food Security Act notice, therefore a change to the national form will not have an additional affect the filing requirements in those states.
- ii.** The organizational identification number in box 1g is removed because it is inapplicable in many states. Additionally, IACA trusts that the information requested of an organizational debtor in boxes 1e and 1f is redundant. The filing office implicitly identifies the type of entity in other manners. Elimination of these fields would require corresponding amendments to Article 9; therefore if the Joint Review Committee decides to undertake the statutory revision, IACA would subsequently recommend the removal of boxes 1e, 1f, and 1g from the UCC1.
- iii.** IACA proposed a new box 1d to allow the debtor to be identified as a trust, trustee or decedent's estate. These check boxes were relocated from the addendum form based

- upon their relevance to the debtor information on the face of the UCC1. In turn, this reduces the need for the addendum form, Form UCC1Ad.
- iv. In turn, one of the most common uses of the addendum form, Form UCC1Ad, is to identify a debtor as a transmitting utility or its connection with a manufactured home transaction or a public finance transaction. IACA recommends the relocation of the addendum form box 18 to the UCC1 to encourage more one page filings.
 - v. IACA recommends that box 6, regarding real estate records, be moved to the addendum because it is more relevantly related to the additional information required on the addendum form.
 - vi. Box 7, the search report request check box, was eliminated because in many cases, it is not correctly accommodated by the filing office. Searchers were impartial to the search request on the UCC1; as a matter of fact, many searchers prefer to submit a separate Form UCC11 information request because it serves to double-check the filing office's data entry of the debtor name submitted on the UCC1.
 - vii. Finally, IACA recommends that the alternative designations for an agricultural lien or a non-UCC filing, as previously set forth in the alternative designation field, be relocated to the new box 5. These check boxes indicate whether the filing is a transmitting utility or filed in connection with a manufactured home transaction, public finance transaction, an agricultural lien or a non-UCC filing. IACA is of the opinion all the "filed in connection with" designations are more appropriately identified in the new box 5. Subsequently, the new box 6 identifies a lease, consignment, bailment or sale.

B. Form UCC3, UCC Financing Statement Amendment:

- i. A great deal of confusion surrounds the instructions on the face of Form UCC3 in boxes 5, 6 and 7. In box 5, IACA proposed to amend the check boxes as follows:
 - a) IACA recommends that "change" be replaced with "amend" in boxes 5 and 7. Changes imply that the filing office will replace old information with the new information. Some database information may be updated, however, the filing offices acts as an "open-drawer" with regard to filed records in which it adds new information and retains all of the old information.
 - b) An additional check box was added to identify a name amendment separate from an address amendment. Subsequently, the directions on the face of the form have been revised to indicate the required fields for each amendment.

C. Form UCC5, UCC Statement of Claim Concerning Inaccurate or Wrongfully Filed Record:

- i. In order to clarify effectiveness of the filing, IACA recommends adding the comment at the top providing that the filing of the statement does not affect the effectiveness of an initial financing statement or other filed record, as stated in 9-518(c).
- ii. The name of the form has been changed to "Statement of Claim Concerning Inaccurate or Wrongfully Filed Record." Subsequently, each occurrence of the former "correction statement" throughout the form has been replaced with "statement of claim."
- iii. Finally, IACA recommends that the initial financing statement file number be moved to box 1a in order to maintain consistency with the other UCC forms.

- iv.** In turn, box 1b shall request the record information to which this statement of claim relates so that submitters may indicate the record number as well as type of record or filing date of the record. If the submitter is able to provide the record number, it will serve to be more valuable than an indication of the type of record.

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME							
OR	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX		
1c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY	
1d. Check <u>only</u> if applicable and check <u>only</u> one					<input type="checkbox"/> Debtor is a Trust	<input type="checkbox"/> Debtor is a Trustee acting with respect to property held in trust	<input type="checkbox"/> Debtor is a Decedent's Estate

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME							
OR	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX		
2c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY	
2d. Check <u>only</u> if applicable and check <u>only</u> one					<input type="checkbox"/> Debtor is a Trust	<input type="checkbox"/> Debtor is a Trustee acting with respect to property held in trust	<input type="checkbox"/> Debtor is a Decedent's Estate

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME						
OR	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. Check only if applicable and check only one box.

<input type="checkbox"/> A Debtor is a TRANSMITTING UTILITY	<input type="checkbox"/> Filed in connection with a Public-Finance Transaction	<input type="checkbox"/> Filed in connection with a Non-UCC Filing
<input type="checkbox"/> Filed in connection with a Manufactured-Home Transaction	<input type="checkbox"/> Filed in connection with an Agricultural Lien	

6. ALTERNATIVE DESIGNATION [if applicable]: LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER

7. OPTIONAL FILER REFERENCE DATA

Instructions for UCC Financing Statement (Form UCC1)

Please type or laser-print this form. Be sure it is completely legible. Read all Instructions, especially Instruction 1; correct Debtor name is crucial. Follow Instructions completely.

Fill in form very carefully; mistakes may have important legal consequences. If you have questions, consult your attorney. Filing office cannot give legal advice.

Do not insert anything in the open space in the upper portion of this form; it is reserved for filing office use.

When properly completed, send Filing Office Copy, with required fee, to filing office. If you want an acknowledgment, complete item B and, if filing in a filing office that returns an acknowledgment copy furnished by filer, you may also send Acknowledgment Copy; otherwise detach. Always detach Debtor and Secured Party Copies.

If you need to use attachments, you are encouraged to use either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP).

A. To assist filing offices that might wish to communicate with filer, filer may provide information in item A. This item is optional.

B. Complete item B if you want an acknowledgment sent to you. If filing in a filing office that returns an acknowledgment copy furnished by filer, present simultaneously with this form a carbon or other copy of this form for use as an acknowledgment copy.

1. **Debtor name:** Enter only one Debtor name in item 1, an organization's name (1a) or an individual's name (1b). Enter Debtor's exact full legal name. Don't abbreviate.
 - 1a. **Organization Debtor.** "Organization" means an entity having a legal identity separate from its owner. A partnership is an organization; a sole proprietorship is not an organization, even if it does business under a trade name. If Debtor is a partnership, enter exact full legal name of partnership; you need not enter names of partners as additional Debtors. If Debtor is a registered organization (e.g., corporation, limited partnership, limited liability company), it is advisable to examine Debtor's current filed charter documents to determine Debtor's correct name.
 - 1b. **Individual Debtor.** "Individual" means a natural person; this includes a sole proprietorship, whether or not operating under a trade name. Don't use prefixes (Mr., Mrs., Ms.). Use suffix box only for titles of lineage (Jr., Sr., III) and not for other suffixes or titles (e.g., M.D.). Use married woman's personal name (Mary Smith, not Mrs. John Smith). Enter individual Debtor's family name (surname) in Last Name box, first given name in First Name box, and all additional given names in Middle Name box.
For both organization and individual Debtors: Don't use Debtor's trade name, DBA, AKA, FKA, Division name, etc. in place of or combined with Debtor's legal name; you may add such other names as additional Debtors if you wish (but this is neither required nor recommended).
 - 1c. An address is always required for the Debtor named in 1a or 1b.
 - 1d. If Debtor is a Trust or a Trustee acting with respect to property held in trust or is a Decedent's Estate, check the appropriate box.
2. If an additional Debtor is included, complete item 2, determined and formatted per Instruction 1. To include further additional Debtors, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP) and follow Instruction 1 for determining and formatting additional names.
 3. Enter information for Secured Party or Total Assignee, determined and formatted per Instruction 1. To include further additional Secured Parties, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP) and follow Instruction 1 for determining and formatting additional names. If there has been a total assignment of the Secured Party's interest prior to filing this form, you may either (1) enter Assignor S/P's name and address in item 3 and file an Amendment (Form UCC3) [see item 5 of that form]; or (2) enter Total Assignee's name and address in item 3 and, if you wish, also attaching Addendum (Form UCC1Ad) giving Assignor S/P's name and address in item 11.
 4. Use item 4 to indicate the collateral covered by this Financing Statement. If space in item 4 is insufficient, put the entire collateral description or continuation of the collateral description on either Addendum (Form UCC1Ad) or other attached additional page(s).

Note: If this Financing Statement is filed as a fixture filing or if the collateral consists of timber to be cut or as-extracted collateral, attach Addendum (Form UCC1Ad) and complete the required information in items 12, 13, 14 and 15.

5. If Debtor is a Transmitting Utility or if the Financing Statement relates to a Manufactured-Home Transaction, Public-Finance Transaction, or Agricultural Lien (as defined in the applicable Commercial Code), check the appropriate box; also if this is not a UCC security interest filing (e.g., a tax lien, judgment lien, etc.), check the appropriate box and attach any other items required under other law.
6. If filer desires (at filer's option) to use titles of lessee and lessor, or consignee and consignor, or seller and buyer (in the case of accounts or chattel paper), or bailee and bailor instead of Debtor and Secured Party, check the appropriate box.
7. This item is optional and is for filer's use only. For filer's convenience of reference, filer may enter in item 7 any identifying information (e.g., Secured Party's loan number, law firm file number, Debtor's name or other identification, state in which form is being filed, etc.) that filer may find useful.

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

8. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME		
OR		
8b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

9. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (10a or 10b) - do not abbreviate or combine names

10a. ORGANIZATION'S NAME				
OR				
10b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
10c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

10d. Check only if applicable and check only one Debtor is a Trust Debtor is a Trustee acting with respect to property held in trust Debtor is a Decedent's Estate

11. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (11a or 11b)

11a. ORGANIZATION'S NAME				
OR				
11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

12. This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. [if applicable]

13. This FINANCING STATEMENT covers timber to be cut or as-extracted collateral, or is filed as a fixture filing.

14. Description of real estate:

16. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

Instructions for UCC Financing Statement Addendum (Form UCC1Ad)

8. Insert name of first Debtor shown on Financing Statement to which this Addendum relates, exactly as shown in item 1 of Financing Statement.
9. Miscellaneous: Under certain circumstances, additional information not provided on Financing Statement may be required. Also, some states have non-uniform requirements. Use this space to provide such additional information or to comply with such requirements; otherwise, leave blank.
10. If this Addendum adds an additional Debtor, complete item 10 in accordance with Instruction 1 of Financing Statement. To include further additional Debtors, attach either an additional Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP) and follow Instruction 1 of Financing Statement for determining and formatting additional names.
11. If this Addendum adds an additional Secured Party, complete item 11 in accordance with Instruction 3 of Financing Statement. To include further additional Secured Parties, attach either an additional Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP) and follow Instruction 1 of Financing Statement for determining and formatting additional names. In the case of a total assignment of the Secured Party's interest before the filing of this Financing Statement, if filer has given the name and address of the Total Assignee in item 3 of Financing Statement, filer may give the Assignor S/P's name and address in item 11.
- 12-15. If this Financing Statement is filed as a fixture filing or if the collateral consists of timber to be cut or as-extracted collateral, complete items 1-4 of the Financing Statement (Form UCC1), check the box in item 12, and complete the required information (items 13, 14 and/or 15). If collateral is timber to be cut or as-extracted collateral, or if this Financing Statement is filed as a fixture filing, check appropriate box in item 13; provide description of real estate in item 15; and, if Debtor is not a record owner of the described real estate, also provide, in item 15, the name and address of a record owner. Description of real estate must be sufficient under the applicable law of the jurisdiction where the real estate is located.
16. Use this space to provide continued description of collateral, if you cannot complete description in item 4 of Financing Statement.

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE # _____

1b. This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS.

2. **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. **ASSIGNMENT (full or partial):** Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. **AMENDMENT (PARTY INFORMATION):** This Amendment affects Debtor **or** Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes:

AMEND name: Complete item 7a or 7b, and also item 7c. **AMEND address:** Complete item 6a or 6b, and also item 7c. **DELETE name:** Give record name to be deleted in item 6a or 6b. **ADD name:** Complete item 7a or 7b, and also item 7c.

6. **CURRENT RECORD INFORMATION:**

6a. ORGANIZATION'S NAME _____

OR

6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7. **AMENDED OR ADDED INFORMATION:**

7a. ORGANIZATION'S NAME _____

OR

7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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8. **AMENDMENT (COLLATERAL CHANGE):** check only one box.

Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned.

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT** (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of **DEBTOR** authorizing this Amendment.

9a. ORGANIZATION'S NAME _____

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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10. OPTIONAL FILER REFERENCE DATA _____

Instructions for UCC Financing Statement Amendment (Form UCC3)

Please type or laser-print this form. Be sure it is completely legible. Read all Instructions, especially Instruction 1a; correct file number of initial financing statement is crucial. Follow Instructions completely.

Fill in form very carefully; mistakes may have important legal consequences. If you have questions, consult your attorney. Filing office cannot give legal advice.

Do not insert anything in the open space in the upper portion of this form; it is reserved for filing office use.

An Amendment may relate to only one financing statement. Do not enter more than one file number in item 1a.

When properly completed, send Filing Office Copy, with required fee, to filing office. If you want an acknowledgment, complete item B and, if filing in a filing office that returns an acknowledgment copy furnished by filer, you may also send Acknowledgment Copy, otherwise detach. Always detach Debtor and Secured Party Copies.

If you need to use attachments, you are encouraged to use either Amendment Addendum (Form UCC3Ad) or Amendment Additional Party (Form UCC3AP). Always complete items 1a and 9.

A. To assist filing offices that might wish to communicate with filer, filer may provide information in item A. This item is optional.

B. Complete item B if you want an acknowledgment sent to you. If filing in a filing office that returns an acknowledgment copy furnished by filer, present simultaneously with this form a carbon or other copy of this form for use as an acknowledgment copy.

1a. **File number:** Enter file number of initial financing statement to which this Amendment relates. Enter only one file number. In some states, the file number is not unique; in those states, also enter in item 1a, after the file number, the date that the initial financing statement was filed.

1b. Only if this Amendment is to be filed or recorded in the real estate records, check box 1b and also, in item 13 of Amendment Addendum, enter Debtor's name, in proper format exactly identical to the format of item 1 of financing statement, and name of record owner if Debtor does not have a record interest.

Note: Show purpose of this Amendment by checking box 2, 3, 4, 5, or 8 (in item 5 you must check two boxes); also complete items 6, 7 and/or 8 as appropriate. Filer may use this Amendment form to simultaneously accomplish both data changes (items 4 or 5, and/or 8) and a Continuation (item 3), although in some states filer may have to pay a separate fee for each purpose.

2. To terminate the effectiveness of the identified financing statement with respect to security interest(s) of authorizing Secured Party, check box 2. See Instruction 9 below.

3. To continue the effectiveness of the identified financing statement with respect to security interest(s) of authorizing Secured Party, check box 3. See Instruction 9 below.

4. To assign (i) all of assignor's interest under the identified financing statement, or (ii) a partial interest in the security interest covered by the identified financing statement, or (iii) assignor's full interest in some (but not all) of the collateral covered by the identified financing statement: Check box in item 4 and enter name of assignee in item 7a if assignee is an organization, or in item 7b, formatted as indicated, if assignee is an individual. Complete 7a or 7b, but not both. Also enter assignee's address in item 7c. Also enter name of assignor in item 9. If partial Assignment affects only some (but not all) of the collateral covered by the identified financing statement, filer may check appropriate box in item 8 and indicate affected collateral in item 8.

5,6,7. To amend the name of a party: Check box in item 5 to indicate whether this Amendment amends information relating to a Debtor or a Secured Party; also check box in item 5 to indicate that this is a name change; also enter name of affected party (current record name) in items 6a or 6b as appropriate; and repeat or provide the new name in item 7a or 7b along with the address in item 7c.

5,6,7. To amend the address of a party: Check box in item 5 to indicate whether this Amendment amends information relating to a Debtor or a Secured Party; also check box in item 5 to indicate that this is an address change; also enter name of affected party (current record name) in items 6a or 6b as appropriate; and provide the new address in item 7c.

5,6. To delete a party: Check box in item 5 to indicate whether deleting a Debtor or a Secured Party; also check box in item 5 to indicate that this is a deletion of a party; and also enter name of deleted party in item 6a or 6b.

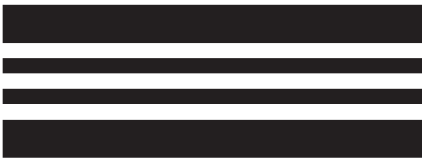
5,7. To add a party: Check box in item 5 to indicate whether adding a Debtor or Secured Party; also check box in item 5 to indicate that this is an addition of a party and enter the new name in item 7a or 7b along with the address in item 7c. To include further additional Debtors or Secured Parties, attach Amendment Additional Party (Form UCC3AP), using correct name format.

Note: The preferred method for filing against a new Debtor (an individual or organization not previously of record as a Debtor under this file number) is to file a new Financing Statement (UCC1) and not an Amendment (UCC3).

8. Collateral change. To change the collateral covered by the identified financing statement, describe the change in item 8. This may be accomplished either by describing the collateral to be added or deleted, or by setting forth in full the collateral description as it is to be effective after the filing of this Amendment, indicating clearly the method chosen (check the appropriate box). If the space in item 8 is insufficient, use item 13 of Amendment Addendum (Form UCC3Ad). A partial release of collateral is a deletion. If, due to a full release of all collateral, filer no longer claims a security interest under the identified financing statement, check box 2 (Termination) and not box 8 (Collateral Change). If a partial assignment consists of the assignment of some (but not all) of the collateral covered by the identified financing statement, filer may indicate the assigned collateral in item 8, check the appropriate box in item 8, and also comply with instruction 4 above.

9. Always enter name of party of record authorizing this Amendment; in most cases, this will be a Secured Party of record. If more than one authorizing Secured Party, give additional name(s), properly formatted, in item 13 of Amendment Addendum (Form UCC3Ad). If the indicated financing statement refers to the parties as lessee and lessor, or consignee and consignor, or seller and buyer, instead of Debtor and Secured Party, references in this Amendment shall be deemed likewise so to refer to the parties. If this is an assignment, enter assignor's name. If this is an Amendment authorized by a Debtor that adds collateral or adds a Debtor, or if this is a Termination authorized by a Debtor, check the box in item 9 and enter the name, properly formatted, of the Debtor authorizing this Amendment, and, if this Amendment or Termination is to be filed or recorded in the real estate records, also enter, in item 13 of Amendment Addendum, name of Secured Party of record.

10. This item is optional and is for filer's use only. For filer's convenience of reference, filer may enter in item 10 any identifying information (e.g., Secured Party's loan number, law firm file number, Debtor's name or other identification, state in which form is being filed, etc.) that filer may find useful.



The filing of this statement does not affect the effectiveness of an initial financing statement or other filed record. This statement of claim shall not amend any UCC record.

STATEMENT OF CLAIM CONCERNING INACCURATE OR WRONGFULLY FILED RECORD
 FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF PERSON FILING THIS STATEMENT [optional]
B. SEND ACKNOWLEDGMENT TO: (Name and Address)
<div style="border: 1px solid black; width: 100%; height: 100%; position: relative;"> </div>

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. Identification of the RECORD to which this STATEMENT OF CLAIM relates.	
1a. INITIAL FINANCING STATEMENT FILE NUMBER	1b. RECORD INFORMATION TO WHICH THIS STATEMENT OF CLAIM RELATES

2a. RECORD is inaccurate.
 Provide the basis for the belief of the person identified in item 4 that the RECORD identified in item 1 is inaccurate and indicate the manner in which the person believes the RECORD should be amended to cure the inaccuracy.

2b. RECORD was wrongfully filed.
 Provide the basis for the belief of the person identified in item 4 that the RECORD identified in item 1 was wrongfully filed.

3. If this STATEMENT OF CLAIM relates to a RECORD filed [or recorded] in a filing office described in Section 9-501(a)(1) and this STATEMENT OF CLAIM is filed in such a filing office, provide the date [and time] on which the INITIAL FINANCING STATEMENT identified in item 1a above was filed [or recorded].

3a. DATE	3b. TIME
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4. NAME OF PERSON AUTHORIZING THE FILING OF THIS STATEMENT OF CLAIM — The RECORD identified in item 1 must be indexed under this name.

4a. ORGANIZATION'S NAME			
OR 4b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

Instructions for Statement of Claim Concerning Inaccurate or Wrongfully Filed Record (Form UCC5)

Please type or laser-print this form. Be sure it is completely legible. Read all Instructions, especially Instructions 1a and 1b; correct identification of the initial Record to which this Statement of Claim Concerning Inaccurate or Wrongfully Filed Record relates is crucial. Follow Instructions completely.

Fill in form very carefully. If you have questions, consult your attorney. Filing office cannot give legal advice.

Do not insert anything in the open space in the upper portion of this form; it is reserved for filing office use.

When properly completed, send Filing Office Copy to filing office. If you want an acknowledgment, complete item B and, if filing in a filing office that returns an acknowledgment copy furnished by filer, you may also send Acknowledgment Copy; otherwise detach. Always detach Debtor and Secured Party Copies.

A. To assist filing offices that might wish to communicate with filer, filer may provide information in item A. This item is optional.

B. Complete item B if you want an acknowledgment sent to you. If filing in a filing office that returns an acknowledgment copy furnished by filer, present simultaneously with this form a carbon or other copy of this form for use as an acknowledgment copy.

General — You must always complete items 1 and 4 and either 2a or 2b. You may also be required to complete item 3.

- 1a. **File number:** Enter file number of initial financing statement to which the Record that is the object of this Statement of Claim relates. Enter only one file number.
- 1b. Enter Record information to which this Statement of Claim relates. Indicate the type of Record to which this Statement of Claim relates (e.g., Financing Statement or Amendment) or you may insert additional information that you believe will assist in identifying the Record (e.g., the Record file number or the filing date of the Record).
2. If this Statement of Claim is filed based on the filer's belief that the Record identified in item 1 is inaccurate, check box 2a, provide the basis for that belief, and indicate the manner in which the Record should be amended to cure the inaccuracy.

If this Statement of Claim is filed based on the filer's belief that the Record identified in item 1 was wrongfully filed, check box 2b and provide the basis for that belief.
3. If this Statement of Claim relates to a Record filed [or recorded] in a filing office described in Section 9-501(a)(1) and this Statement of Claim is filed in such a filing office, provide the date [and time] on which the Initial Financing Statement identified in item 1b above was filed [or recorded].
4. Always enter name of the person who authorized the filing of this Statement of Claim. This name must be the same as the name under which the Record is indexed.