Joint Review Committee for Article 9 of the UCC
Meeting Notes for October 3-5, 2008

Prepared by Professor Stephen L. Sepinuck

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Administrative Matters

The Joint Review Committee will deal with issues identified in the June 2008 report of the Article 9 Review Committee. Other issues will be discussed after the main list is resolved, but the Joint Review Committee needs to seek approval to discuss them from its sponsoring groups to address anything else.
Despite the Joint Review Committee’s name, it is a drafting committee. It was not labeled as a drafting committee because this project is not intended to be a major rewrite.

The Committee will not meet again in 2008. Its next meeting will be after the reporter has had a chance to draft changes consistent with the Committee’s tentative conclusions. That will probably be in February or March of 2009.

**Substantive Issues**

The “issue” and “explanation” portions of each of the first 39 numbered items below are reprinted from the June 2008 report of the Article 9 Review Committee. That is followed by a brief note on the deliberations or preliminary decisions of the Joint Review Committee. The remaining numbered items were raised at the meeting but were not included in the June report.

1. **Issue**: Whether § 9-607(b) should permit a buyer of a payment right secured by a real estate mortgage to record an assignment of the mortgage upon the default of the account debtor or other person obligated on the collateral.

   **Explanation**: A secured party may have a security interest in a payment right secured by a real estate mortgage. Section 9-607(b) permits the secured party, in connection with the non-judicial enforcement of the mortgage, to record documents in the real estate records to establish the secured party’s right as assignee to enforce the mortgage. Prior to default, the secured party does not have the right to record. Section 9-607(b)’s reference to “default” appears to refer to the debtor’s (mortgagor’s) default on its obligations to the secured party. However, if the secured party is a buyer of the payment right, § 9-607(b) does not appear to permit the secured party to record the documents upon the default of the account debtor or any other person obligated on the collateral (mortgagor). The result is that the benefit of the subsection may not extend to buyers of payment rights when it likely should.

   The Committee agreed that § 9-607(b) allows a SP with an interest in a mortgage note to file an assignment of the mortgage upon default, but it is ambiguous whether the default is by the debtor (the mortgagee) or by the account debtor (the mortgagor). If it is the debtor (the mortgagee) who is in default, what happens if someone buys the mortgage note, so there is no “default” by the assignor? In other words, should the Code effectively give buyers a power of attorney to file an assignment if they didn’t bother to get one?

   A tentative decision was reached to draft the clarification that § 9-607(a) refers to default by the debtor; § 9-607(b) refers to default by the account debtor. Before a final decision is made, the Committee will seek input from real estate groups.
2. Issue: Whether it should be clarified that, even if the debtor agrees otherwise, a secured party may not acquire collateral at its own private disposition except in accordance with § 9-620.

Explanation: It is commonly understood that a debtor may not waive the application of the prohibition in § 9-610(c)(2), which generally prohibits a secured party from acquiring collateral at its own private disposition. However, a reference to § 9-610(c)(2) is not contained in § 9-602’s list of provisions of Part 6 not capable of being waived by the debtor. The explanation for the omission is that a secured party’s acquisition of collateral at its own private disposition is equivalent to an acceptance by the secured party of collateral in whole or, in a transaction that is not a consumer transaction, partial satisfaction of the secured obligations. See Official Comment 2 to § 9-624. Because the consent or acquiescence (failure to object) of the debtor is required for the acceptance and because the requirement of the debtor’s consent or acquiescence may not under § 9-602(10) be waived by the debtor, the waiver issue under § 9-610(c)(2) appears to be addressed.

However, the question of whether § 9-610(c)(2) may be waived by the debtor continually arises in practice, and the explanation set forth above, which requires a reading of an Official Comment to an entirely different section of Article 9, may not be apparent to many practitioners.

There was general agreement that the only way for a SP to buy at a private disposition (outside the situation described in § 9-610(c)(2)) is in accordance with § 9-620. In other words, any attempted private sale to itself is in fact a strict foreclosure and needs to be treated as such. The comment to 9-624 says this. The reporter was given task of drafting something to clarify this, including making a preliminary decision of whether to do this by comment or Code change.

3. Issue: Whether § 9-610(c)(2), which generally prohibits a secured party from acquiring collateral at its own private disposition, should also prohibit an affiliate of the secured party from doing so.

Explanation: Pursuant to § 9-610(c)(2), the secured party may purchase collateral at a public disposition, but may do so at a private disposition “only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.” It is clear that the rationale is that only in a private disposition of the sort described in the quoted language is the situation such that, like a public disposition, the private disposition will be at a market price or will it be obvious that the private sale was commercially reasonable. Although § 9-615(f) gives special scrutiny to a disposition not only to a secured party but also to “a person related to the secured party, or a secondary obligor,” nothing in § 9-610(c)(2), prohibits an affiliate of the secured party from purchasing the collateral at a private disposition at which the secured party cannot purchase. In light of the presence of the quoted language in § 9-615(f), juxtaposed with its absence in § 9-610(c)(2), it may be less likely that courts would read § 9-610(c)(2) as also
covering “persons related to the secured party” that are not agents of the secured party. Yet, the dangers associated with a disposition to a person related to a secured party are no less in § 9-610(c)(2) than in § 9-615(f).

A drafting committee might consider revising § 9-610(c)(2) to prohibit private dispositions to persons related to the secured party to the same extent as they are prohibited to the secured party itself. In doing so, the drafting committee might consider whether such a revision would reflect a policy change that would need to be justified.

Should you be able to sell to affiliate, such as new subsidiary formed solely to buy the assets? It happens frequently when hedge funds shop around and sell to a related entity. Similarly, the finance arms of auto manufacturers often sell back (at 100 cents/dollar) to the manufacturer. The Committee decided not to make any changes in connection with this issue because § 9-615(f) provides an adequate safeguard.

4. **Issue:** Whether the caption to § 9-625(c) referring to consumer-goods transactions should be changed to refer to consumer goods to conform to the text of § 9-625(c)(2).

   **Explanation:** The text of § 9-625(c)(2) covers consumer goods even if the transaction itself is not a consumer-goods transaction. However, the caption suggests that the text applies only if the security interest arises in a “consumer-goods transaction”. For example, a security interest in the debtor’s personal automobile (a consumer good) that secures a loan to the debtor’s business would not fall within the definition of “consumer-goods transaction” in § 9-102(a)(24) because the transaction is not primarily for the debtor’s personal, family or household purposes. Although the caption indicates that § 9-625(c) does not cover such a security interest, the text does cover it.

   The Committee decided to change caption of § 9-625(c)(2) to refer merely to consumer goods and to leave the text of the provision as it is. This will remove the conflict and keep the law as it was under old Article 9.

5. **Issue:** Whether the reference in § 9-627(a) to “acceptance” should be deleted.

   **Explanation:** Section 9-627 provides that the fact that a higher price might have been obtained from the enforcement of a security interest is not of itself sufficient to preclude the secured party from showing that “the collection, enforcement, disposition, or acceptance [of the collateral] was made in a commercially reasonable manner.” The reference to “acceptance” is inappropriate, because an “acceptance” of collateral under § 9-620 is not subject to a commercial reasonableness test.
The Committee agreed that the stray word “acceptance” makes no sense in § 9-627(a), (c), (d) but nevertheless concluded that this does not create a significant problem and thus decided to make no change.

6. **Issue:** Whether Article 11 should be repealed as no longer relevant.

**Explanation:** When the Uniform Commercial Code was originally promulgated, it included a separate Article - Article 10 - that provided, inter alia, for its effective date and transition rules for transactions entered into before the effective date. When Article 9 was revised in 1972, it was similarly accompanied by an Article - Article 11 - containing provisions for the effective date of the revisions as well as transition rules for transactions entered into before the effective date of the revisions. It is now 36 years since the promulgation of the 1972 amendments and over a quarter-century since their widespread enactment. As such, it is quite unlikely that there are more than a trivial number of outstanding transactions (if any) that were entered into before the effective date of the 1972 amendments and for which transition rules to the 1972 text of Article 9 (now supplanted by revised Article 9) remain relevant.

There was some discussion about whether Article 11 might remain relevant to an old transactions. The Committee decided to delete it from the official text but include a legislative note to States about whether they should repeal it or retain it for old transactions.

7. **Issue:** Whether § 9-210 should be expanded to require the secured party to provide a “pay off” letter as of a date designated in a request by the debtor so long as the secured party receives the request within a period, consistent with the periods in current § 9-210, of not less than 14 days before the date designated.

**Explanation:** Section 9-210 permits the debtor at any time to request from the secured party a statement of account or a list of collateral. The secured party has 14 days to respond. Anecdotal evidence indicates that the section is seldom used in practice. More typical would be for a debtor to request a “pay off” letter as of a specific date so that the debtor may refinance the secured obligations on that date. A drafting committee might consider expanding § 9-210 to impose on a secured party the obligation to provide a “pay off” letter to the debtor as of a date designated by the debtor so long as the debtor’s request allows the secured party an identical period of at least 14 days following the debtor’s request to provide the pay-off letter.

If the drafting committee decides to address § 9-210 in this respect, it might consider whether any change to § 9-210 would require amendments to the “safe harbor” notice forms in §§ 9-613 and 9-614.
The Committee discussed whether existing lenders can effectively prevent the debtor from re-financing by refusing to issue a payoff letter and whether adding a requirement to issue a payoff letter would be sufficient to solve the problem. The Committee decided to defer any decision on this issue until it receives more information from Bob Zadek about what would be necessary to solve the problem.

8. **Issue:** Whether § 9-317(d) should be expanded to cover commercial tort claims and perhaps also other collateral not addressed in § 9-317(b) or (d) and for which a trading market might exist.

   **Explanation:** Section 9-317 provides the rules governing priority between an unperfected security interest and a competing claim to the collateral. As a general matter, buyers of collateral who give value (and, in the case of tangible collateral, receive delivery) without knowledge of an unperfected security interest take free of the unperfected security interest. *See §§ 9-317(b) (tangible collateral) and (d) (intangible collateral).* Section 9-317(d) addresses only accounts, electronic chattel paper, electronic documents, general intangibles, and investment property other than certificated securities. Because an unperfected security interest generally is enforceable against third parties, *see § 9-203(b)*, buyers of other intangible collateral, such as commercial tort claims, take subject to an unperfected security interest. Members of the Review Committee who were active in the drafting of Article 9 think that this outcome is inadvertent.

   The Committee concluded that this was an oversight in the 1998 revisions. It then decided to expand the rule in § 9-317(d) to all types of collateral other than types of collateral covered in subsections (b) and (c).

9. **Issue:** Whether the definition of “authenticate” should be conformed to the definition of “sign” in Article 7 (as well as the unenacted revisions to Articles 2 and 2A) insofar as the latter definition applies to electronic forms of signing.

   **Explanation:** The definition of “authenticate” in § 9-102(a)(7) indicates that the term means not only to sign (as that term is defined in Article 1) but also “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.” The second portion of this definition is not entirely consistent with the parallel provision in the subsequently-drafted definitions of “sign” in Articles 2, 2A, and 7. In those definitions, drawn from the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act (E-SIGN), the relevant language provides that to sign means “with present intention to authenticate or adopt a record, … to attach to or logically associate with the record an electronic sound, symbol, or process.”
There are several differences between the Article 9 definition and these later definitions. Most notably, only Article 9 requires that the authenticating person/signer take its action with the intent “to identify the person.” It does not appear that the drafters of the subsequently-drafted Articles intended to cover different circumstances than did the drafters of Article 9. Rather, it appears that the subsequent Articles reflected an effort to define the term more precisely.

Presumably, if the drafting committee were to consider addressing the definition of “authenticate”, it would consult with those at the Uniform Law Conference who were active in the drafting of the Uniform Electronic Transactions Act and those at the Uniform Law Conference and the American Law Institute who were active in the drafting of the Article 2 and 2A amendments and the Article 7 revisions.

The Committee reached general agreement that the concept should be the same throughout the Code. It decided to adopt the Article 7 definition of “signed” to the greatest extent possible.

10. **Issue**: Whether the definition of “certificate of title” should be modified to include a “security-interest statement” as defined in the Uniform Certificate of Title Act (UCOTA) or a similar concept.

   **Explanation**: Under UCOTA, the term “security-interest statement” includes a record created by a secured party that indicates a security interest. The security-interest statement, when filed with the state’s motor vehicle office, may be used to perfect the security interest even if, contrary to another provision of UCOTA, the motor vehicle office issues a certificate of title that does not indicate the security interest. The UCOTA perfection approach creates a possible tension with § 9-311(a)(2), which defers to certificate-of-title statutes that provide for a security interest to be “indicated on the certificate as a condition or result of perfection.”

   The Committee discussed slightly broader potential problem with the definition of “certificate of title” in § 9-102(a)(10). Specifically, the Article 9 definition seems to require that the COT statute contain a priority rule, but many of them do not. There was a consensus that this problem needs to be addressed. Professors Bill Henning, Linda Rusch, and Stephen Sepinuck agreed to advise the reporter on how to address the problem.

11. **Issue**: Whether § 9-105 should be modified to conform to § 7-106 and UETA § 16.

   **Explanation**: Section 9-105 creates a control test applicable to electronic chattel paper. After it was drafted, UETA created a somewhat different formulation which was followed in revised Article 7 at § 7-106. In particular, the UETA and Article 7 approaches provide a general test and a safe-harbor rule; § 9-105 does not provide a general test.
Presumably, if the drafting committee were to consider addressing § 9-105 in this respect, it would consult with those at the Uniform Law Conference who were active in the drafting of the Uniform Electronic Transactions Act and those at the Uniform Law Conference and the American Law Institute who were active in the drafting of the Article 7 revisions.

The Committee agreed to adopt the Article 7 definition.

12. **Issue:** Whether the methods of obtaining control of a deposit account or securities account should be expanded.

**Explanation:** Delaware amended its §§ 9-104, 9-106 and 8-106 effective July 2007 to provide additional methods for a secured party to achieve control of a securities account and a deposit account and to clarify that the additional methods of control do not impose any implied duties not expressly agreed to by the securities intermediary or the depositary bank. New Delaware § 9-104(a)(4) provides an additional method for the secured party to achieve control: the authentication by the debtor, secured party and securities intermediary of a record that (i) is conspicuously denominated a control agreement, (ii) identifies the specific deposit account, and (iii) addresses the disposition of the funds in the deposit account or the right to direct such disposition. Parallel provisions were added to §§ 8-106(c) and 8-106(d) for uncertificated securities and securities entitlements. New Delaware § 9-104(a)(5) provides an additional method for the secured party to achieve control of a deposit account where the name on the deposit account is the name of the secured party or indicates that the secured party has a security interest in the deposit account, thus not requiring that the secured party become a customer of the bank. A parallel provision was added to § 9-106(d) for securities accounts.

To the extent that an expansion of the methods of control, along the lines of the Delaware amendments, would allow a secured party to achieve control, even if the secured party is unable, without further action by the debtor, to direct the disposition of security entitlements from the securities account or funds from the deposit account, the expansion may reflect a policy change that would need to be justified.

The Committee noted that the DACA task force may have given some people comfort with this issue and that the issue does not seem to be preventing lawyers from giving opinions. The Committee therefore tentatively decided not to address this issue, pending hearing from people who believe there is a real problem.

13. **Issue:** Whether the definitions of “promissory note” and “security” may need to be clarified so that a conventional promissory note issued as part of a class or series is not viewed as a security.
Explanation: In its decision in Highland Capital Management v. Schneider, 866 N.E.2d 1020 (N.Y. 2007), the New York Court of Appeals concluded that promissory notes that were part of a class or series constituted “securities” under § 8-102(a)(15). In order to reach that conclusion, the court found that the promissory notes were represented by certificates “the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer” as required by § 8-102(a)(15)(i). The court came to this conclusion even though the issuer maintained no transfer books, because, as the dissent put it, “it is always theoretically possible there could be books on which transfers of anything could be registered.”

While technically the decision involves an Article 8 rather than an Article 9 issue, the decision influences the characterization of collateral under Article 9. The decision has created confusion in Article 9 practice as to the proper characterization of some types of promissory notes and even “uncertificated” certificates of deposit.

Presumably, if the drafting committee were to consider addressing the Highland Capital decision, it would consult with those at the Uniform Law Conference and the American Law Institute who were active in the drafting of Article 8.

The Committee agreed that this case creates a whole host of problems – on scope, anti-assignment rules, perfection – and that while a comment would normally be sufficient to respond to a single bad decision, such a comment would not be adequate to change NY law and a large portion of promissory notes choose NY law as governing law. Discussion then followed about how to fix the problem. A tentative decision was reached to have the PEB issue a Commentary in the immediate future to address law outside NY and for the Committee to work with groups in New York, such as the Association of the Bar of the City of New York, to develop a statutory proposal for changing NY statutory law.

14. Issue: Whether a financing statement filed against an original debtor in one jurisdiction should be effective for a limited period against the new debtor located in another jurisdiction with respect to collateral acquired by, or from a source other than, the original debtor.

Explanation: The public notice afforded by a financing statement filed against a debtor (the “original debtor”) may become compromised when a “new debtor” succeeds to the original debtor’s assets and liabilities. Consider, for example, the case where ABC Corp, an Illinois corporation, merges into XYZ Corp, a Massachusetts corporation. The financing statement filed against ABC in Illinois is seriously misleading with respect to the new debtor’s name (XYZ) and is not filed in XYZ’s location.

Despite the difference in names, the filed financing statement remains effective to perfect a security interest in property acquired by the new debtor before, and within four months after, the new debtor becomes bound as debtor by the original debtor’s security agreement. See § 9-508(b). A security interest that
is perfected by the filing against the original debtor in the original debtor’s location generally remains effective for one year after the original debtor transfers the collateral to the new debtor. See § 9-316(a)(3). However, if the original debtor and new debtor are located in different jurisdictions, the financing statement filed in the original debtor’s location is not effective to perfect a security interest in collateral that the new debtor acquires from a source other than the original debtor, whether before or after the merger.

Some have expressed concern that a secured party whose debtor (original debtor) merges out of existence enjoys no period of automatic perfection with respect to collateral acquired by the survivor (new debtor) from sources other than the original debtor, if the survivor is located in a different jurisdiction from the original debtor. A drafting committee might consider whether such a “grace period” is desirable and, if so, whether the creation of a grace period would require any corresponding changes to the rules governing priority between a security interest granted by the original debtor to one secured party and a security interest in the same collateral granted by the new debtor to a different secured party.

The new-debtor rules are analogous to those applicable to a single debtor who changes both its name and its location. Despite the difference in names, the filed financing statement remains effective to perfect a security interest in property acquired by the debtor before, and within four month after, the debtor changes its name. See § 9-507(c); cf. § 9-508(b). As regards collateral owned by the debtor before the relocation, a security interest that is perfected by the filing in the debtor’s original location generally remains effective for four months after the debtor relocates to another jurisdiction. See § 9-316(a)(2); cf. § 9-316(a)(3). However, a financing statement filed in the debtor’s original location is not effective to perfect a security interest in collateral that the debtor acquires after it relocates. If a drafting committee thinks that a “grace period” is desirable in the setting of a new debtor, it may wish to consider whether a “grace period” is desirable in the debtor-relocation setting as well.

Providing “grace periods” in these contexts may reflect a policy change that would need to be justified.

The Committee agreed that, under current law, there is no temporary perfection period for collateral acquired after the transaction – whether the debtor moves (e.g., converts) or we have a new debtor. It noted that there can be a similar problem following intra-state moves, but that problem deals only with priority, not perfection.

With regard to solutions, the Committee agreed that providing a temporary perfection period could cause a priority problem: a new secured party interested solely in after-acquired property filing during the grace period against the survivor of the merger could be primed by the earlier filer. The Committee agreed that if there were a temporary perfection period in after-acquired collateral following a move, conversion or merger, nothing should impair the priority of a lender who lends to the survivor during the temporary period before the original SP refiles. However, the Committee did not reach consensus on whether the problem is sufficient to merit a change, with the added complexity it would bring. The reporter will draft a proposal and the Committee will evaluate it.
15. **Issue:** Whether § 9-406(e) should be clarified as to whether, on an enforcement disposition by the secured party of a payment intangible or promissory note subject to a contractual anti-assignment term, the term is treated under § 9-406(d) (ineffective) or § 9-408(a) (effective if effective under other law).

**Explanation:** Sections 9-406(d) and 9-408(a) create a bifurcated approach for promissory notes and payment intangibles with respect to contractual anti-assignment terms. If a security interest in a promissory note or payment intangible secures an obligation, § 9-406(d) applies and fully overrides a contractual anti-assignment term. If the promissory note or payment intangible is sold, § 9-408(a) applies and only partially overrides a contractual anti-assignment term; the buyer’s security interest may attach and be perfected but may not be enforced without the consent of the account debtor or the maker if the term is enforceable under other law.

However, § 9-406(e) states that § 9-406(d) does not apply to a sale of a payment intangible or promissory note. It is unclear whether § 9-406(e), when referring to a sale, refers only to a sale of payment intangible or promissory note that is itself a security interest and is therefore addressed in § 9-408(a) or whether the subsection is broader and includes a disposition by sale under § 9-610. Under the former interpretation, a contractual anti-assignment term would be overridden by § 9-406(d) on a disposition by sale; under the latter interpretation, it would not. The issue for a drafting committee is whether § 9-406(e) should be clarified and, if so, with what result.

The solution may implicate the need to clarify more generally a policy choice involving security interests in payment intangibles and promissory notes that contain contractual anti-assignment terms. If a security interest in a payment intangible or promissory note secures an obligation, § 9-406(d) permits a secured party to exercise its right of collection under § 9-607 against the account debtor or the maker notwithstanding an otherwise effective contractual anti-assignment term. However, if the security interest was the interest of a buyer of the payment intangible or promissory note, § 9-408(a) would not permit the secured party to exercise its right of collection in the face of an otherwise effective contractual anti-assignment term without the consent of the account debtor or the maker. The difference in treatment of the contractual anti-assignment term with respect to the account debtor or the maker depending upon whether the security interest secures an obligation or is a sale would seem to suggest inconsistent policy choices between §§ 9-406(d) and 9-408(a) that may need to be addressed in connection with addressing any clarification of § 9-406(e).

There was extended discussion around the following initial transaction: SP has a security interest in a payment intangible securing an obligation (not a sale). The payment intangible is subject to a transfer restriction. One option is to say that the anti-assignment terms are overridden across the board (upon a disposition by the SP, the buyer would be free of the anti-assignment terms). Option two is that the SP is free to dispose of the receivable, but the buyer is in § 9-408 (and thus subject to restrictions on transfer). Option three is to say that the SP cannot even collect. The Committee was unable to reach consensus on the best approach and will consider this issue again.
16. **Issue:** Whether an Official Comment should clarify how the priority rules apply to a security interest that, under § 9-309(3) or (4), is perfected upon attachment and without filing, but as to which a financing statement nevertheless has been filed.

**Explanation:** The “first-to-file-or-perfect” rule of § 9-322(a) governs the priority of conflicting security interests arising from successive sales of a payment intangible or promissory note. A security interest that arises upon the sale of payment intangibles or promissory notes is “automatically” perfected under § 9-309(3) or (4). There is a question whether, by filing a financing statement covering a payment intangible or promissory note that may be sold in the future, a buyer may establish priority based on the time of filing rather than on the later time when the security interest becomes automatically perfected (i.e., when the security interest attaches, which normally is the time of the sale).

The Committee framed the issue as thus: can someone who plans to buy payment intangibles preserve its place in line by filing? There is disagreement about whether filing now has any effect in preserving the filer’s place in line. For example, if SP1 files as to payment intangibles, SP2 then buys them and perfects automatically, and then SP1 buys them. Who wins? Is priority governed by 9-322(a), under which SP1 would win, or does § 9-318 allow SP2 to win (because the debtor had no rights to transfer to SP1)?

There was no consensus on what the law should be or whether a change is advisable. The committee members will continue to discuss with broader groups and get input from the market.

17. **Issue:** Whether purchase-money status should extend to consumer-goods related intangibles other than software and, if so, whether a purchase-money security interest in intangible collateral related to consumer goods should be automatically perfected.

**Explanation:** Frequently purchase-money transactions in consumer goods involve the extension of credit for the cost of extended warranties, maintenance services, insurance and other intangibles in addition to the consumer goods that are the focus of the underlying transaction. When the collateral is repossessed, the secured party may also have a claim for rebates due for early termination of the intangible property. In motor vehicle financing, the security interest in the primary collateral is perfected under state certificate-of-title statutes. The purchase-money security interest in other consumer goods is perfected automatically under § 9-309(1). However, any intangibles for which purchase-money credit was extended are not “consumer goods”. They do not enjoy purchase-money status and are not covered by the automatic perfection provisions of § 9-309(1).

To the extent that purchase-money status or the scope of automatic perfection is expanded to encompass intangible collateral related to consumer goods, the expansion may reflect a policy change that would need to be justified.
The Committee did not want any action on this issue to affect the question of whether a consumer transaction loses PMSI status if the secured obligation includes amounts advanced to cover negative equity, service contracts, gap insurance, or the like. Still, there was some agreement that a secured party should not have to file to perfect a security interest in these ancillary rights if it need not file to perfect a security interest in the goods. In that sense, the issue is similar to the rules that provide that a security interest attaches automatically and is perfected automatically in a supporting obligation. The Committee deferred resolution of this issue until its next meeting.

18. **Issue**: Whether a filing designating a debtor as a transmitting utility must be made in the initial financing statement.

**Explanation**: Section 9-515(f) permits a financing statement to designate a debtor as a transmitting utility. If the debtor is so designated, the financing statement does not have a specific lapse date. Instead, the financing statement is effective until a termination statement is filed.

Because the definition of “financing statement” in § 9-109(a)(39) includes all amendments relating to the financing statement, filing offices have had to address the filing of an amendment designating the debtor as a transmitting utility when the initial financing statement did not designate the debtor as a transmitting utility. In such a case, a filing office, which has already given the initial financing statement a specific lapse date, is often not operationally capable, without undue cost or expense, of eliminating the lapse date in order to give effect to the amendment.

IACA has proposed that the states amend § 9-515(f) so that the debtor may be designated as a transmitting utility only in the initial financing statement. The change would make § 9-515(f) consistent with § 9-515(b), which provides a thirty-year lapse date for an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction.

The Committee agreed that a secured party should not be able to designate the debtor as a transmitting utility on an amendment. It then discussed whether this was a change in the law but decided to take no position on that point. The Committee agreed to expressly provide that transmitting utility status must be indicated on the initial financing statement, and that this will be prospective from the date of the change. Thus no transition rule is needed. If a debtor becomes a transmitting utility after the financing statement is filed, then a new filing will be required if the secured party wants something beyond a five-year life for its filing.

19. **Issue**: Whether Article 9 should further define the public record indicating the name of a debtor that is a registered organization.

**Explanation**: Under § 9-503(a)(1) a financing statement sufficiently provides the name of a debtor that is a registered organization only if it provides the name of the debtor indicated on the public record of the debtor’s jurisdiction of organization.
However, some states maintain more than one public record showing a debtor’s name. For example, a state may maintain as a public record the charter document of the organization, and it may also maintain as a public record an on-line searchable data base for organizations of the same type. For a variety of reasons, the debtor’s name in one public record may vary from the debtor’s name in another public record. The International Association of Commercial Administrators (“IACA”) has proposed that states amend Article 9 to provide that the name of the debtor as set forth in its charter document be determinative.

The resolution of this issue may also relate to the definition of “registered organization” in § 9-102(a)(70). The definition states that a “registered organization” is “an organization 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” (emphasis added). Most state public records laws were written without Article 9 in mind. Thus, in many states the duty of the state to maintain public records relating to organizations is not always clear, even if the state does in practice maintain the public records. Because the public record that provides the debtor’s name for purposes of § 9-503(a)(1) would likely be the public record that the state “must maintain” for the organization, consideration might also be given to providing a further explanation of the “must maintain” reference in the definition, perhaps in an expanded Official Comment if not in the definition of “registered organization” itself.

The Committee agreed that there are two related issues in this problem: (1) which public record controls (the organic documents, a certificate of good standing, or the searchable database); and (2) must the office be required to maintain the records. As to the first issue, the point was made that electronic records can changed without the consent of the filer (for example, the filing office might choose to “correct” them) and there might be no evidence preserved of when or how the change was made. The issue thus comes down to whether the name used should be the one on the entity’s organic documents, a state-generated certificate of organization, a certificate of good standing, or the state’s electronic database. The consensus was that the name on the organic documents should be the only correct name, and that this should be a statutory change.

As to the second issue, there was a consensus that the “must maintain” language is problematic and should be changed. There was also consensus that “registered organizations” should include anything that is created by the state or for which filing with the state is required for it to exist. It was not clear whether this phrasing would include business trusts. The Committee charged the reporter with the task of crafting a proposal that removes the ambiguity while also covering the types of statutory and business trusts that meet this standard.

20. **Issue:** Whether § 9-503(a)(3) should be stated expressly not to apply to a business trust that is a registered organization.
Explanation: Section 9-503(a)(3) sets forth the rules for determining the name of a debtor that is a trust or a trustee acting with respect to property held in trust. However, it is possible that a trust may be a business trust that is itself a registered organization. In that case, there has been some confusion in practice as to whether the debtor’s name should be determined under § 9-503(a)(3) or, alternatively, under § 9-503(a)(1) which provides the rules for determining the name of a registered organization. While the Review Committee believes that the better interpretation is that the debtor’s name should be determined under the registered organization rules, Delaware has enacted a non-uniform amendment that makes this result clear under the statute.

There was agreement that if the debtor is a trust and the trust is a registered organization then the rule of § 9-503(a)(1) should apply, not the rule in paragraph (a)(3), and that a statutory change is needed to clarify that this is the rule. If, on the other hand, the debtor is a trustee, then even if the trustee is a registered organization, paragraph (a)(3) should apply. The reporter will clarify this. No transition rule is needed because this is a clarification of the law.

21. **Issue:** Whether to clarify that § 9-307(c) has no application to a registered organization.

Explanation: Determining which jurisdiction’s law governs perfection, the effect of perfection or non-perfection, or priority of a security interest under the choice-of-law rules in §§ 9-301 and 9-305(c) often requires a preliminary determination of where a debtor is “located.” That location is determined by § 9-307. The rules in that section are complex, consisting of a three-part general rule in § 9-307(b) and a series of exceptions. The general rule is that a debtor who is an individual is located at his or her residence, and a debtor that is an organization is located at its place of business or chief executive office, as applicable.

Two important exceptions to the general rule are found in §§ 9-307(c) and 9-307(e). Section 9-307(c) provides that subsection (b) “applies only if [the law of the jurisdiction to which subsection (b) points] 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. If subsection (b) does not apply, the debtor is located in the District of Columbia.” Subsection (e) provides that “a registered organization that is organized under the law of a State is located in that State.”

Consider the case of a debtor incorporated in Delaware but whose chief executive office is in a foreign jurisdiction whose law does not generally require filing as a condition of priority over a lien creditor. A fair reading of § 9-307(c) reflects the clear intent of the drafters: the debtor is located in Delaware by virtue of § 9-307(e). But it may be possible to read § 9-307(c) incorrectly as providing that the debtor is located in the District of Columbia. This is because the first sentence of that subsection provides that, in light of the law of the foreign jurisdiction,
subsection (b) does not apply and the second sentence provides that “if subsection (b) does not apply, the debtor is located in the District of Columbia.” This reading is possible because, unlike subsection (b), subsection (c) does not state that its rules are subject to rules appearing elsewhere in § 9-307.

A drafting committee might consider revising § 9-307 to avoid the incorrect reading or providing an expanded Official Comment to do so. The drafting committee might also consider clarifying that subsection (c) has no application to a debtor described in subsections (f), (i), and (j), or alternatively it might consider an expanded Official Comment to guide the reader to the same result.

There was consensus that the rule of § 9-307(e) should and does apply, and that this should be clarified by comment.

22. **Issue:** Whether § 9-307(f)(2) should be modified to state more completely how federal law may designate the location of a debtor that is a registered organization organized under federal law.

**Explanation:** § 9-307(f)(2) locates a registered organization organized under the law of the United States “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.” Official Comment 5 to § 9-307 notes that banking law often permits a registered organization to designate a main office, home office, or other comparable office, and states that “[d]esignation of such an office constitutes the designation of the State of location for purposes of Section 9-307(f)(2).”

Delaware has adopted a non-uniform version of § 9-307(f)(2) that adds a sentence in the text of the statute similar in substance to the quoted portion of Official Comment 5: “For purposes of paragraph (2) above, if a registered organization designates a main office, a home office, or other comparable office in accordance with the law of the United States, such registered organization is located in the State that such main office, home office, or other comparable office is located.”

The basis for the non-uniform amendment is that a literal reading of the statute itself would not provide a clear rule for the location of a national bank, because the National Bank Act does not, in terms, authorize a bank to designate “its State of location.” As the issuance of Official Comment 5 indicates, the Article 9 drafters understood this point. The Delaware legislature, however, sought to provide more definitive treatment by putting this material in the statute.

The issue often arises in practice, especially opinion practice.

There was general agreement that the comment should be elevated to the statute, as in Delaware, if the general policy is not changed. The Committee discussed whether, because of the difficulty of determining the state designated, the place to file against national banks should simply be a designed jurisdiction, such as the District of Columbia. No decision was reached, in part because of the problems of transition.
23. **Issue:** Whether Article 9 should provide a more certain rule to determine the name of a debtor who is an individual.

**Explanation:** Section 9-502(a)(1) provides that a financing statement must, among other requirements, provide the name of the debtor in order for the financing statement to be sufficient. Section 9-503(a)(4)(A) states that, if the debtor is an individual who has a name, the financing statement must provide the individual debtor’s name. Because under § 9-519 financing statements are indexed by the filing office of each state under the debtor’s name, a subsequent searcher will need to know under what debtor name to search for a financing statement. Accordingly, § 9-506 provides that a financing statement is seriously misleading, and is therefore ineffective, if the financing statement provides a debtor name other than the name required by § 9-503(a)(4)(A) unless a search under the required name, using the filing office’s standard search logic, will disclose the financing statement.

Article 9 tells us what the debtor’s name is if the debtor is a corporation or other registered organization. Under § 9-503(a)(1) that name is the name of the organization indicated on the public record of the debtor’s jurisdiction of organization. However, Article 9 does not tell us what the debtor’s name is if the debtor is an individual. And courts, in interpreting §§ 9-503(a)(4)(A) and 9-506, have struggled in determining whether a particular financing statement that contains the debtor’s name as reflected on his or her birth certificate, driver’s license, passport or other identification, or even a debtor’s nickname or commonly used name, is the correct name of the debtor for the financing statement to be sufficient.

Recently, several states – Nebraska, Tennessee and Texas - have passed non-uniform amendments to their Article 9 to attempt to resolve this issue. Nebraska has enacted legislation to the effect that a financing statement containing the debtor’s last name is sufficient. Tennessee and Texas permit the name of the debtor as reflected on his or her driver’s license to be sufficient.

If a drafting committee considers a uniform statutory solution for determining the name of an individual debtor for purposes of satisfying the sufficiency requirements for a financing statement, that solution would logically apply as well to the sufficiency on a financing statement of the name of an individual who is a trustee or a settlor of a trust for purposes of § 9-503(a)(3) or who is a decedent for purposes of § 9-503(a)(2).

There was a very extended discussion centered around having a safe harbor rule or mandatory rule, possibly based on the debtor’s driver’s license. The discussion included the reliability of driver’s licenses (what happens if the name on the license changes; what if not all of the characters that can appear on a license cannot be input into the filing office’s records), whether any safe harbor should have multiple options or only one, and whether any safe harbor for perfection should also preserve priority. The greatest support was for a single safe harbor based on driver’s license issued by the state in which the debtor is deemed to be located under § 9-307, and that the safe harbor should work for both perfection and priority. Nevertheless, no final resolution was reached. The Committee anticipates receiving an extensive report on the subject from the UCC Committee of the State Bar of California.
The Committee discussed the possible transition problems of using a safe harbor based on the debtor’s driver’s license, but tentatively concluded that they were not likely to be severe (they would arise only if there was an incorrect filing based on the debtor’s driver’s license that would not be deemed effective under current law and it was followed by a correct filing – a prospect that seemed unlikely).

24. Issue: Whether the provisions of Article 9 providing for a correction statement should be reexamined.

Explanation: To address concerns about “bogus” filings against a debtor, § 9-518 permits a debtor to file a “correction statement” to indicate that a filed record is incorrect or wrongfully filed. The filing of a correction statement is for informational purposes only. It does not affect the effectiveness of a filed financing statement.

In practice secured parties have attempted to file correction statements even though § 9-518 permits a correction statement to be filed only by a debtor. This practice has often arisen when a secured party’s financing statement has been wrongfully terminated by another secured party’s termination statement that incorrectly referred to the file number of the financing statement of the first secured party. Of course, under § 9-510 the termination statement, filed without authorization of the first secured party, would be ineffective.

IACA has proposed that states amend their Article 9 so that a correction statement would be capable of being filed by a secured party or by anyone else who was entitled to file the initial financing statement. The California State Bar UCC Committee has objected to the proposal out of concern that the amendment would encourage the filing of extraneous records that do not affect the effectiveness or lack of effectiveness of financing statements, thus “clogging” the records of the filing offices and burdening both filing offices and subsequent searchers.

If the IACA proposal is not considered favorably by a drafting committee, consideration might also be given to whether Sec. 9-518 should be retained. Under other provisions of Article 9, the financing statement is not effective. The correction statement itself has no legal effect. Even a termination statement would produce only the consequence that the financing statement has become ineffective. That is a consequence that would already be the case for a “bogus filing”. Furthermore, non-Article 9 law in various states provides a debtor with some additional remedies, ranging from tort claims for slander of title and the like to judicial procedures by which a “bogus filing” may be removed from the record. In addition, the misuse of the public records and the intentional conduct of the sort involved in making a bogus filing might be a crime under the laws of some states.

The Committee discussed situations in which someone other than the debtor might wish to file a correction statement. For example, if SP1 improperly terminates SP2’s filing, SP1 might wish to file a correction statement to reduce its liability (to SP2 or other potential SPs) and SP2 might wish to file a correction statement to put others on notice that the termination
statement *might* be inaccurate. However, it was noted that SP2 has an alternative way to give notice: to file a new financing statement.

Moreover, if the facts are different, if SP1 inadvertently terminates its own filing, the termination statement is effective. A later correction statement would have no legal effect (whereas filing a new financing statement would have legal effect) and the Committee does not want to confuse filers in that situation into thinking that the correction statement would be effective.

There was no support for getting rid of § 9-518 because it fulfills its purpose of helping debtors deal with bogus filings. There was some support for expanding the scope of § 9-518 beyond its original purpose and along the lines IACA suggests but the tentative consensus was to not invite further clutter of the filing system with “correction” statements that have no effect. However, the Committee will listen further on this issue, from both filers and filing officers.

25. **Issue:** Whether the approval of changes to the initial financing statement form and amendment form should be delegated to IACA or to a state’s secretary of state.

   **Explanation:** Section 9-521(a) provides that, if a filing office accepts an initial financing statement in written form, it must accept an initial financing statement in the form set forth in that subsection. Section 9-521(b) contains a similar provision for an amendment and also sets forth a statutory form of amendment. Now that the statutory forms of initial financing statement and amendment have been in use since 2001, IACA has recommended a few changes to the forms. To accommodate these and possible further changes over time, IACA has proposed that states amend their Article 9 so that the forms of initial financing statement and amendment would be deleted from the statute and so that IACA itself would approve the forms from time to time. In a state that is not permitted by its constitution or other law to delegate the approval process to IACA, IACA recommends that the state’s Article 9 be amended to provide that the forms be approved by the state’s secretary of state. The California State Bar UCC Committee has objected to the proposal to amend § 9-521 out of concern that the amendment might result in no single written form of financing statement or amendment being accepted in all states.

   Under current law, states are free to create their own form that will be effective, but states must accept the official form. In short, the official form is a safe harbor. The IACA proposal would undermine the uniform effectiveness of the official safe-harbor form.

   Several states have already amended their statutes to eliminate the safe harbor because it includes the debtor’s social security number, and this seems to be the driving force behind the proposal. The consensus was to preserve a safe harbor form, to change the official form to remove the social security box or black out that box, but not to delegate to IACA the authority to revise the official form.
26. It was suggested that some state filing offices currently apply different rules for paper and electronic filings. For example, there may be no explanation given for why an electronic record is rejected (although an explanation is given for why a written financing statement is rejected) and some filing offices have a system in place to reject electronic filings with certain key words common to bogus filings. The offices also have differing standards on what characters can be input and how many characters can be input for the debtor’s name (and other fields). The Committee discussed the ramifications of these differences and whether the Code should include standards for electronic filings. The Committee agreed to review an upcoming report by the Task Force on Filing Office Operations and Search Logic.

27. **Issue:** Whether a right to payment on chattel paper, if assigned separately from the chattel paper, should be characterized as chattel paper, a payment intangible or an account.

**Explanation:** The decision in *In re Commercial Money Center*, 350 B.R. 465 (9th. Cir. BAP 2006), raised the question of whether a payment right “stripped” from chattel paper was still “chattel paper” or whether the payment right becomes a “payment intangible.” The answer is important because the sale of a payment intangible enjoys “automatic” perfection under § 9-309(3), while a buyer of chattel paper, to perfect its interest in the chattel paper, must either take possession or control of the chattel paper or file a financing statement against the debtor covering the chattel paper. In addition, the answer would affect certain priority rules, such as the “super-priority” in favor of certain purchasers of chattel paper who take possession or control of the chattel paper. See §§ 9-330(a) and (b).

The existing Official Comments to Article 9 are inconclusive on the characterization issue. Compare § 9-109, Official Comment 5 to § 9-102, Official Comment 5.d. There is also a question as to whether the problem is limited to “true lease” chattel paper given that § 9-203(g) would already appear to address chattel paper in which the payment right is secured by a security interest. That section provides that a security interest securing a payment right is transferred with the payment right and would support a characterization that the payment right, when transferred, is still chattel paper unless perhaps the security interest is disclaimed by the transferee.

If a drafting committee determines that a payment right “stripped” from chattel paper should not be characterized as chattel paper, it might consider whether the payment right should be characterized as an account instead of a payment intangible.

The *Commercial Money Center* decision has created priority concerns for chattel paper purchasers in practice, and the California State Bar UCC Committee has urged that the PEB address the issue.

There was consensus that a purchaser of chattel paper who takes possession of the chattel paper should beat a previous buyer of the payment stream. As to how to achieve that, there seemed
to be consensus that the best way to deal with it was to provide that stripped payment rights from chattel paper remain chattel paper. There was concern about whether this should be expressed generally for all stripped rights or, if phrased only with respect to chattel paper, whether it would create a negative implication regarding other stripped rights (e.g., from a promissory note, general intangible, or security). A tentative decision was to phrase the point narrowly with respect only to chattel paper and to make the point by comment rather than by change to the Code.

28. **Issue:** Whether an Official Comment should indicate by illustration what is sufficient for an e-mail to be “authenticated.”

**Explanation:** Several provisions in Article 9 require that a record be “authenticated.” Many have noted that the definition of “authenticate” in § 9-102(a)(7)(B) does not provide clear guidance as to whether an e-mail is authenticated. Consider three situations in which a person composes and sends an e-mail. In the first situation, the person types the text of the message and also types his or her name at the end of the message, and then enters the command to send the message to the recipient. In the second situation, the person types the text of the message, but does not type his or her name at the end of the message, and enters the command to send the message to the recipient. In the third situation, the person types the text of the message and does not type his or her name at the end of the message; when the sender enters the command to send the message to the recipient, however, the sender’s name is automatically added to the bottom of the message as a result of an option previously selected by the sender in configuring his or her e-mail system. It seems clear that the first situation describes an authenticated e-mail. It is less clear, though, whether the second and third situations fulfill the requirements for authentication.

The Committee decided not to address this question.

29. **Issue:** Whether the *Enron* debt trading case, distinguishing between a “sale” and an “assignment” of a loan, should be addressed in the Official Comments.

**Explanation:** In connection with claims trading the question sometimes arises as to whether the obligor on a debt may assert claims and defenses against the transferee of the claim. Traditionally this issue has been analyzed by considering whether the transferee qualifies as a holder in due course (in the case of a claim embodied in a negotiable instrument) or other good faith purchaser for value (in the case of other claims), in which case the obligor generally may not assert claims and defenses against the transferee. In addressing this issue with respect to the bankruptcy rights of a transferee, the court in *In re Enron Corp.*, 379 B.R. 425 (S.D.N.Y. 2007), by interpreting several cases under state law, has articulated a distinction between “assignments” and “sales.” According to the court, a claim of
a transforee who takes by sale is not subject to equitable subordination or disallowance under the Bankruptcy Code, while a claim that is taken by assignment is subject to these disabilities. No such distinction appears in the Uniform Commercial Code. The Official Comments might confirm that, when the term “assignment” is used in the Uniform Commercial Code, the term includes a sale and is not distinct from a sale. *Cf.* Official Comment 26 to § 9-102.

The Committee decided not to address this issue.

30. **Issue:** Whether an Official Comment to § 9-104 should clarify that § 8-106(d)(3) reflects a principle of agency law that is also applicable to § 9-104.

**Explanation:** Section 8-106(d)(3) provides that a purchaser may achieve control of a security entitlement if another person has control on behalf of the purchaser or, if the person already has control, acknowledges that it has control on behalf of the purchaser. No similar provision is contained in § 9-104 addressing control of a deposit account. However, under § 1-103, the law of principal and agent applies to the Uniform Commercial Code unless displaced by a particular provision. An Official Comment might be provided to § 9-104 to overcome any negative inference regarding the ability of an agent to have control for its principal under § 9-104.

The Committee acknowledged that agency law supplements the Code in many places and that this point does not need to be expressed in every place it may be relevant. However, the Committee concluded that the rule in § 8-106(d)(3) goes beyond agency principles, and thus if it were to be made applicable to control in §§ 9-104 and 9-106, statutory change is necessary. The Committee decided that such a statutory change is appropriate and that it should be accompanied by a comment that makes clear that agency principles have always applied and continue to apply.

31. **Issue:** Whether an Official Comment should address the role, if any, of the parties’ intent in interpreting § 9-109(a)(1).

**Explanation:** Section 9-109(a)(1) restates the traditional rule that Article 9’s rules apply to a transaction “regardless of its form” if it creates what amounts to a security interest in personal property. Thus, courts have felt free to recharacterize sales as secured transactions when the economic effects of the transaction made that appropriate. It is inherent in that rule that the parties cannot control application of the statute by mere pronouncement that a transaction is not (or is) intended to create a security interest. Nevertheless, some courts have continued to look to the intent of the parties, as reflected in the transaction documents, to determine whether to characterize the transaction as a security interest.
The Committee concluded that § 9-109 comment 2 is misleading in its statement that no change was intended by the removal of the word “intent.” It therefore concluded that a change to that comment was needed.

32. **Issue**: Whether an Official Comment might clarify that § 9-307(c) should apply to the specific collateral in question in contrast to collateral generally.

   **Explanation**: As mentioned above, § 9-307(b) provides the general rules for determining where a given debtor is located for purposes of the choice-of-law rules in Article 9. Under § 9-307(b), a non-US debtor normally would be located in a foreign jurisdiction and foreign law would govern perfection. If foreign law affords no public notice of security interests, the general rules yield unacceptable results. Accordingly, § 9-307(c) provides that the general rules for determining the location of a debtor 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.” If the location lacks such a public-notice system for the collateral in question, then the general rules in § 9-307(b) do not apply, the debtor is located in the District of Columbia, and the law of the District of Columbia governs perfection. Some have read § 9-307(c) to refer to collateral generally rather to the particular collateral at issue. The latter reading would require a broader and more difficult inquiry than § 9-307(c) requires.

The Committee concluded that the reference to “the collateral” is to the collateral in the deal, not merely to collateral generally. A new comment will be drafted to this effect. The comment will not address whether the foreign filing system must apply to the particular type of debtor or the particular transaction. The Committee will then decide whether the draft comment would be a net benefit.

33. **Issue**: Whether an Official Comment to § 9-316(d) should make clear that § 9-316(d) does not apply in cases where perfection is accomplished in one state by a method other than compliance with that state’s certificate-of-title law, the debtor relocates to a state whose certificate-of-title law governs perfection, and then the goods become covered by a certificate in the new state.

   **Explanation**: § 9-316(d) is not ambiguous, but its application when a secured party is perfected in one state by a method other than compliance with that state’s certificate-of-title law, the debtor relocates to a state whose certificate-of-title law governs perfection, and then the goods become covered by a certificate in the new state.

   § 9-316(d) is not ambiguous, but its application when a secured party is perfected in one state by a method other than notation of its security interest on the certificate-of-title and the goods then become covered by a certificate of title issued by another state is complex and might be clarified by an Official Comment. More specifically, there is some concern that the distinction between § 9-316(a) and § 9-316(d) might not be obvious. For example, assume that perfection of a security interest in a boat in State A is not governed by a certificate-of-title statute in State A
whereas the opposite is true in State B. If a secured party’s security interest in the boat is perfected by filing (or otherwise, as by automatic perfection in the case of a purchase-money security interest in consumer goods) in State A and the debtor relocates to State B, § 9-316(a) applies and § 9-316(d) does not. The reason subsection (d) does not apply is that as soon as the debtor relocates, the law of State B governs perfection under § 9-301(1) and the requirement of subsection (d) that the goods “be perfected by the law of another jurisdiction when the goods become covered by a certificate of title” issued by State B cannot be satisfied. An explanatory Official Comment might note that subsection (d) applies only when the debtor remains in the jurisdiction where non-certificate-of-title perfection was accomplished and the goods become covered by a certificate of title issued by another jurisdiction.

A new comment will be drafted to make this clarification.

34. Issue: Whether, in a priority dispute between SP1 and SP2 as to the post-merger accounts in the following fact pattern, an Official Comment should clarify that the dispute is resolved under § 9-326, not § 9-322(a).

ABC and XYZ are registered organizations located in the same state. SP1 has a filed perfected security interest in existing and after-acquired accounts of ABC. SP2 has a filed perfected security interest in existing and after-acquired accounts of XYZ. ABC merges into XYZ. SP1 files against XYZ during § 9-508(b)’s four-month grace period.

Explanation: In this fact pattern, XYZ is a “new debtor” from SP1’s perspective, and so SP1’s security interest attaches to accounts acquired by XYZ after the merger. See § 9-203(d), (e). Even if SP1 takes no action, the financing statement that SP1 filed against ABC is effective to perfect a security interest in accounts that XYZ acquires during the four-month period following the merger. See §§ 9-509(a) and (b). SP2’s security interest also attaches to accounts acquired by its debtor, XYZ, after the merger. Section 9-326(a) operates to subordinate SP1’s security interest to SP2’s with respect to “collateral in which a new debtor has or acquires rights,” but only if SP1’s security interest is “perfected by a filed financing statement that is effective solely under Section 9 508.” Without § 9-508, SP1’s financing statement would have no effect with respect to the accounts acquired by XYZ after the merger. Accordingly, SP1’s financing statement would be “effective solely under Section 9-508” with respect to that collateral, and § 9-326(a) would subordinate SP1’s security interest in that collateral to SP2’s.

Note, however, that even without § 9-508, SP1’s financing statement would be effective against other collateral owned by XYZ, specifically, any accounts acquired from ABC as part of the merger. See §§ 9-507(a) and 9-508(c). An Official Comment might provide guidance to the effect that one must look only at the
collateral in question when determining whether a financing statement “is effective solely under Section 9 508.”

The Committee agreed and a new comment to this effect will be drafted.

35. **Issue:** Whether an Official Comment should explain that a fixture filing for a debtor that is a transmitting utility must be made in the central filing office in each state in which the fixtures are located rather than in the central filing office in the state in which the debtor is located.

**Explanation:** Section 9-501(b) permits a financing statement for which the debtor is a transmitting utility to be filed in the central filing office of the state. Under § 9-301(1), as a general matter, the financing statement would be filed in the state in which the transmitting utility debtor is located. Section 9-501(b) goes on, though, to provide in a second sentence that a fixture filing against a transmitting utility debtor may also be filed in the central filing office. Some have read this sentence to suggest that the fixture filing should be made in the central filing office of the state in which the transmitting utility debtor is located. However, because under § 9-301(3)(A) the perfection of a security interest in fixtures is governed by the law of the state in which the fixtures are located, the better reading of the sentence, when considered together with § 9-301(3)(A), is that a transmitting utility debtor fixture filing must be made in the central filing office of each state in which the fixtures are located, not as a single fixture filing in central filing office of the state in which the debtor is located.

A new comment will be drafted to indicate that the filing must be made in each state where the collateral is located.

36. **Issue:** Whether an Official Comment to § 9-509 should explain the circumstances in which an assignee of a security interest may be impliedly authorized by the assignor to file an assignment to the assignee of the assignor’s filed financing statement covering the collateral.

**Explanation:** Section 9-509(d)(1) provides that, in the case of an assignment of a security interest, the “secured party of record” must authorize the filing of any amendment to the financing statement that shows the new holder of the security interest as the successor secured party of record. In some transactions involving the sale of an obligation secured by a security interest, the parties may not think to include an express authorization for the transferee of the security interest to file an amendment to the financing statement to show the transferee as the successor secured party of record. Article 9 does not require that the “authorization” be in an authenticated record, and it would seem that the authorization would often be implied as part of the transfer itself.
A new sentence will be inserted in § 9-509 comment 6 that provides that authorization to file need not be in an authenticated record.

37. Issue: Whether the last two sentences of Official Comment 3 to § 9-509, providing for later ratification by the debtor of the filing of a financing statement by the secured party without the debtor’s authorization in an authenticated record, should be modified to refer to the Restatement 3d of Agency’s provisions addressing the ratification by a principal of the prior acts of its agent.

Explanation: Section 9-510 provides that a filed record (e.g., a financing statement) is effective only to the extent that it was filed by a person that may file it under § 9-509. Section 9-509 generally provides that a person may file an initial financing statement only if the debtor authorizes the filing in an authenticated record. The section specifically provides that, by authenticating a security agreement, a debtor authorizes the filing of an initial financing statement covering the collateral described in the security agreement. Secured parties often file an initial financing statement while the details of a financing are being negotiated and before the debtor authenticates a security agreement. If the debtor has not authorized the filing of such a financing statement in an authenticated record, then the financing statement is ineffective. However, the debtor’s subsequent authentication of the security agreement would ratify the filing and make the financing statement effective. See Official Comment 3 to § 9-509 (explaining that law other than Article 9, “including the law with respect to ratification of past acts, generally determines whether a person has the requisite authority to file a record” under § 9-509).

Some have questioned whether, for purposes of the first-to-file-or-perfect rule in § 9-322(a), the priority of a financing statement whose filing has been ratified should date from the date of filing or from the date of ratification. Inasmuch as the public notice afforded by an unratified financing statement is equal to that of a financing statement whose filing was authorized ab initio, there is no reason not to date the priority of a ratified filing from the date of filing. Although Restatement (3d) of Agency § 4.02 might be read to suggest otherwise, Comment e to that section explains that “If other law provides rules for priority of rights, that other law governs. See, e.g., U.C.C. §§ 9-322 and 9-509 and Comment 3 to § 9-509 (last sentence).” The last two sentences of Official Comment 3 to § 9-509 might be modified to refer to Comment e to § 4.02 of the Restatement (3d) of Agency.

The Committee decided that the comment should be clarified to expressly state that subsequent authorization to file makes the filing effective to perfect. The comment should also make it clear that the subsequent authorization makes the filing effective – for priority purposes – from when it was filed. If the comment cannot be drafted in a manner that will be effective, a statutory change will be pursued.
38. **Issue:** Whether the Official Comments to §§ 9-613 and 9-614 should explain how a notification of an internet disposition may comply with those sections.

   **Explanation:** Sections 9-613 and 9-614 provide that a notification of a disposition of collateral must provide the time and place of a public disposition or the time after which any other disposition is to be made. Each section also provides a safe-harbor form of notification that, when properly completed, is sufficient to comply with the requirements of the section. The use of on-line auctions for the disposition of collateral has become widespread. Secured parties have found that the internet expands the marketplace for repossessed goods and other collateral and that it is an efficient marketplace that benefits both secured party and debtor. However, neither §§ 9-613 and 9-614, nor the Official Comments, give guidance to secured parties on how to comply with the notification requirements, or use the safe harbor forms, when disposing of collateral through on-line sales and auctions.

   The Committee decided a comment should be drafted to clarify how the notification requirements can be satisfied for internet sales.

39. **Issue:** Whether it should be clarified by an Official Comment to § 9-706 that § 9-506(c) applies to an “in lieu” initial financing statement.

   **Explanation:** During the transition period following the enactment of revised Article 9, and today under more limited circumstances, secured parties file “in-lieu” initial financing statements in a new filing office to move filing office records evidencing perfection by filing of a security interest from one jurisdiction to another as required by the choice-of-law and filing rules of Article 9. In addition to the information required by Part 5 of Article 9 for an initial financing statement, the “in-lieu” initial financing statement must contain the information required by §§ 9-706(c)(2) and (3). The additional information relates to the financing statement filed in the original filing office and dates the priority of the secured party’s security interest from a date established by the original filing. However, if there is a minor error in the additional information required by § 9-706, a court could find the error not to be covered by the minor errors rule of § 9-506 because of a reference in § 9-506 to “the requirements of this part. . . .” The reference to “this part” of Article 9 is to Part 5 of Article 9, suggesting that the provision has no application to the transition rules in Part 7.

   The Committee decided that a new comment to Part 7 should be drafted to clarify that § 9-506 applies to in lieu filings.
Committee members and observers raised the following additional issues. The Committee’s authority is limited to addressing the issues identified in the June 2008 report of the Article 9 Review Committee. If the Committee wishes to address other issues, it must seek authorization to do so.

40. Should the Code or comments make it clear that a secured party may take an assignment of a filing if there is no underlying security agreement or security interest?

The Committee decided not to seek the authority to address this issue.

41. Whether section 9-318 should be clarified to make it clear that it does not alter the 9-322 priority rules in the following situation:

SP1 files as to accounts. SP2 files and buys them. SP1 then buys (or takes a security interest) in the same accounts.

Section 9-318 would seem to indicate that SP1 gets no interest at all, but the result should be that SP1 wins.

The Committee agreed to clarify this (treating it as related to the § 9-318 issues it was already authorized to address)

42. Should the rules of § 9-322(c) be modified to clarify that they relate only to disputes between a secured party with non-temporal perfection and another secured party with temporal perfection?

The Committee agreed to explore at a later time whether this issue is something the Committee should seek authority to address. Professor Ken Kettering agreed to provide material to the Committee on this issue.

43. Should the choice-of-law rule that applies when the collateral is held in trust be changed to the law chosen in the trust agreement? Currently, there is substantial confusion about where to file because it is often difficult to determine whether the trust or the trustee is considered the owner.

The Committee concluded that the problems associated with transitions, non-uniformity (from non-simultaneous enactments) would make this proposed change extremely difficult. In addition, it noted that the law chosen in the trust agreement could change at any time. The Committee therefore chose not to pursue this issue.

44. Do we need to conforming amendments to § 3-302(e) and § 3-303(a)(2), or to their comments, to make it clear that “security interest” in those provisions refer only to security interests
that secure an obligation (not a sale of a promissory note)? For example, with regard to § 3-302(e),
the law prior to the Article 9 amendments would not have allowed a buyer of a promissory note who
has not yet paid to qualify as a holder in due course. The amendments to Article 9 may have
inadvertently changed this.

The Committee agreed to pursue a change to the comments.

45. Should there be a change to § 9-105 to make clear that you can have a written amendment
to electronic chattel paper without affecting control? This is particularly important since the servicer
of the chattel paper, which might agree to the amendment, is often not the originator.

The Committee asked Tom Buiteweg for a memo on whether it should address this issue.
The Committee’s goal is to provide guidance to the reporter so that he can complete drafting on all approved issues before the scheduled meeting in March. The Committee then plans to have a first reading of its proposed revisions at the ULC’s annual meeting in the summer.

The Committee will turn to other issues that it deems worthy of attention and, after obtaining approval to address them, deal with drafting in the Fall.
What follows is a list of the issues on the Committee’s agenda for the meeting, followed by an indication of the Committee’s tentative decision or conclusion. Material in brown is the text of the reporter’s proposal on the issue.

1. Right to Record Assignment of Mortgage upon Mortgagor’s Default

§ 9-607(b). [Nonjudicial enforcement of mortgage.] If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

   (1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and
   (2) the secured party’s sworn affidavit in recordable form stating that:

      (A) a default has occurred with respect to the obligation secured by the mortgage [and assigned to the secured party]; and
      (B) the secured party is entitled to enforce the mortgage nonjudicially.

The Committee agreed to this, without the bracketed language, and with the understanding that the comments would explain that the default need not be a payment default, any default under the terms of the mortgage would suffice.

2. Strict Foreclosure as the Only Way to “Waive” the Prohibition on Private Sale to 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. With the exception of Section 9-620(e), the provisions of these sections cannot be waived by the debtor or a secondary obligor. See 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. With the exception of Section 9-620(e), the provisions of these sections cannot be waived by the debtor or a secondary obligor. See Section 9-624(b).

The Committee agreed to this.
3. 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: * * *

The Committee agreed to this, even though subsection captions are not part of the Statute. See § 9-101 cmt. 3. Cf. § 1-109 (dealing with section captions).

4. 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 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. * * *

A notification of a public disposition by auction conducted over the Internet satisfies paragraph (1)(E) if it states the date and time of the scheduled beginning and end of the auction and the Uniform Resource Locator (URL) or other Internet address where information about the collateral may be obtained and bids may be placed.

The comment to § 9-610 will be revised to remove any ambiguity and make it clear that it applies to both public and private dispositions.

The Committee agreed in general to the comment to § 9-613 but tentatively agreed to delete “by auction” in the first line and changed “auction” to “disposition” in the fourth line. There was also sentiment for deleting the reference to the URL and relying instead on more general language.

The Committee discussed whether the comment should refer to the end of the disposition and concluded that it need not. However, the internet address should provide the terms of the sale and be the place where bids can be placed. The Committee also discussed how specific the URL or internet address needs to be. It agreed the specificity needed should be analogous to the specificity needed for a physical location. The reporter will redraft the comment.
5. Repeal of Article 11

The Committee agreed to this.

6. Payoff Letter

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

(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 the date of the record, the amount that, if received by the secured party, would entitle the debtor to the filing of a termination statement under Section 9-513(c); and
   (C)(iii) identifying the components of the obligations in reasonable detail.

§ 9-210(b) [Duty to respond to requests.] 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 days after receipt:
   (1) in the case of a request for an accounting, by authenticating and sending to the debtor or to a person designated by the debtor in a request for an accounting, an accounting; and * * *

This issue is whether there should be some way to compel a lender to supply the information needed to facilitate a refinancing (i.e., a payoff amount). If the draft language were to fulfill its objective, it would have to include a per diem or be based on a date in the future. Despite the narrow scope of the draft provision, consumers too might want the right to a payoff letter. Concern was raised, however, about how the secured party could possibly respond if the collateral secures non-monetary, unliquidated, or contingent obligations. A member of the Committee and one of the advisors will work together to revise the draft for the next meeting. In doing so, they will review the language in the Uniform Consumer Mortgage Satisfaction Act.
7. Expansion of § 9-317(d)

§ 9-317(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 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 and believes it reflects what was always intended. There will be no accompanying comment. Thus the change will be prospective but the amendments will be silent as to whether it really represents a change in the law.

8. 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 authenticate or adopt a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

The Committee agreed to this, after changing “authenticate or adopt” to “adopt or accept,” so as to mirror the language in the § 1-201(b)(39) definition of “signed.”

9. Definition of “Control”

§ 9-105. CONTROL OF ELECTRONIC CHATTEL PAPER.
(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 [issued or] transferred [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;

[Paragraph (b)(2)—Alternative A]

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

[Paragraph (b)(2)—Alternative B]

(2) the authoritative copy identifies the secured party as: the assignee of the record or records
(A) the person to which the record or records were issued; or
(B) if the authoritative copy indicates that the record or records have been transferred, the person to which the record or records were most recently [transferred] [assigned];

[Paragraph (b)(2)—Alternative C]

(2) the authoritative copy identifies the secured party as: the assignee of the record or records the person to which the record or records were most recently [transferred] [assigned];

[End of Alternatives]

(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.

The Committee decided that there was no need to refer to issuance and decided to refer to “assign” rather the “transferred” because that is more consistent with the language throughout Article 9. The Committee chose to go with Alternative A.

With respect to paragraph (4), the Committee decided to use “consent” rather than “participation.”

10. Effectiveness of Filed Financing Statement with Respect to Property Acquired after Debtor’s Relocation to Another Jurisdiction

§ 9-316 (h) [Effect on filed financing statement of change in governing law.] 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 collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction if the financing statement otherwise would have been effective to perfect a security interest in the collateral. If a security interest that is perfected by a financing statement that is effective under the preceding sentence 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. 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.

The Committee agreed to this change in principle. The text will be modified to better distinguish the old jurisdiction from the new jurisdiction.

The Committee did not yet – but later will – address whether this rule should apply to property that would not be subject to a certificate of title in the old jurisdiction but would be covered by a certificate of title in the new jurisdiction.

There was extensive discussion of whether the secured party who does file within the four-month grace period should nevertheless lose to a secured party who perfects or buyer who buys before the secured party files in the new state. The Committee concluded that the buyers and new secured parties who perfect first should have priority over the old secured party (as they do under current law). In other words, the change should affect perfection, not priority over purchasers. The reporter will attempt to draft one or more priority rules (to accompany this perfection rule) protecting purchasers. If that proves too complicated, the Committee may revisit its conclusion about whether to propose this change.

11. Effectiveness of Financing Statement with Respect to Property Acquired by New Debtor Located in Same Jurisdiction

§ 9-326 comment 2. Subordination of Security Interests Created by New Debtor. This section addresses the priority contests that may arise when a new debtor becomes bound by the security agreement of an original debtor and each debtor has a secured creditor.

Subsection (a) subordinates the original debtor’s secured party’s security interest perfected against the new debtor solely under Section 9-508. The security interest is subordinated to security interests in the same collateral perfected by another method, e.g., by filing against the new debtor. As used in this section, “a filed financing statement that is effective solely under Section 9-508” refers to a financing statement filed against the
original debtor that continues to be is effective under Section 9-508 to perfect a security interest in the collateral in question. It does not encompass a new initial financing statement providing the name of the new debtor, even if the initial financing statement is filed to maintain the effectiveness of a financing statement under the circumstances described in Section 9-508(b). Nor does it encompass a financing statement filed against the original debtor which remains effective against collateral transferred by the original debtor to the new debtor. See Section 9-508(c). Concerning priority contests involving transferred collateral, see Sections 9-325 and 9-507.

The Committee deferred discussion until it sees the reporter’s work on Issue # 10.

12. Effectiveness of Financing Statement with Respect to Property Acquired by New Debtor Located in Different Jurisdiction

§ 9-316. Continued Perfection of Security Interest Following Effect of Change in Governing Law.

* * *

(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) 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 otherwise would have been effective to perfect a security interest in the collateral.

(2) 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 (i) the expiration of the four-month period or (ii) 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.

The Committee deferred discussion until it sees the reporter’s work on Issue # 10.
13. Treatment of Consumer-Goods-Related Intangibles

The issue presented is whether automatic perfection under § 9-309(1) should extend to security interests in such things as extended warranty contracts. Those contracts are general intangibles, and thus are not covered by an automatic perfection rule, even though there may be substantial cancellation value. The Committee discussed whether and how this might affect the way PMSIs are treated in bankruptcy. After consideration, the Committee decided not to pursue this issue.

14. Difference Between Control Requirements under § 8-106 and Control Requirements under §§ 9-104 and 9-106

§ 9-104 comment 3. * * *

Subsection (a) contains no analogue to Section 8-106(d)(3), which provides that a purchaser has control of a security entitlement if another person has control of the security entitlement on behalf of the purchaser or if the other person, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser. However, inasmuch as subsection (a) does not displace the common law of agency, see Section 1-103(b), a secured party has control of a deposit account if its agent has control. Of course, the debtor cannot qualify as an agent for the secured party for purposes of the secured party’s having control. Cf. Section 9-313, Comment 3.

At its last meeting, the Committee decided to deal with this issue by statutory change. After reviewing the drafted new comment, the Committee again decided to pursue a statutory change, by adding something akin to § 8-106(d)(3) into § 9-104.

15. Definition of “Certificate of Title”

The issue is whether the current definition inadvertently excludes several state certificate of title statutes because those statutes expressly deal with priority over other consensual lienors or buyers, but not over lien creditors. An advisor will review the certificate of title laws and report on whether this is a real problem and, if so, suggest a solution.
16. Effect of Anti-assignment Clauses

[Alternative A]

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

[Alternative B]

§ 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 (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 (Section 9-610), of the payment intangible or promissory note.

[Alternative C]

§ 9-406 Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, and Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.

* * *

(d) [Term restricting assignment generally ineffective.] Except as otherwise provided in subsection (e) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor on an account or chattel paper and an assignor or in a promissory note is ineffective to the extent that it:

1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, or chattel paper, payment intangible, or promissory note; or

2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, or chattel paper, payment intangible, or promissory note.

(e) [Inapplicability of subsection (d) to payment intangibles.] Subsection (d) does not apply to the sale of a payment intangible or promissory note. [Reserved.]

§ 9-408(b) [Applicability of subsection (a) to sales of certain rights to payment intangibles.] Subsection (a) applies to a security interest in a payment intangible or promissory note.
intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note. [Reserved.]

The Committee discussed this at some length. Some members noted that some borrowers have a real and reasonable interest in making sure that their loan does not end up with another party, such as a competitor. Others responded that could be dealt with by restricting who is entitled to the borrower’s financial information or otherwise imposing an impediment to transfer. See § 9-406 comment 5 (3rd ¶). After further discussion, the Committee decided to go with Alternative B.

17. Effect of Filing with Respect to Sales of Payment Intangibles

The issue is essentially this: SP-1 buys payment intangibles on periodic basis from Debtor and files a financing statement. That filing is not necessary but is apparently a permissible method of perfection. SP-2 later buys a payment intangible (for which perfection is automatic). SP-1 then buys or lends against the same payment intangible. Does SP-1 win under § 9-322 – that is, is the filing truly effective to perfect and preserve its priority position – or does SP-2 win under § 9-318.

One argument for treating SP-1’s filing as effective, and for having SP-1 win the priority battle, is that it avoids the need to distinguish a sale from a secured borrowing. It does mean that the payment intangibles buyer has to search, but that is true anyway because they need to search for perfected lenders. Moreover, borrowers have some control over this because they do not have to authorize the filing.

After lengthy discussion, the Committee decided not to change or clarify the law on the perfection issue. As to the priority issue, see Issue #43 infra.

18. Classification of “Stripped” Rentals

§ 9-102 comment 5d. * * *

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), where the lessor’s rights under a lease would constitute chattel paper, an assignment of the lessor’s right to payment under the lease would be chattel paper, even if the assignment purports to exclude those ancillary rights.

The Committee discussed whether to broaden the comment to cover rights stripped from things other than leases, such as rights stripped from notes or from conditional sales contracts. Eventually, it decided to retain the narrow focus of the comment but delete the word “purports” and add the phrase “for example.”

19. 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. Where 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. 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).

[a cross reference to this would be added to § 9-509 cmt. 3]

The Committee discussed at length whether this proposed comment would be sufficient or whether a statutory change was required. It concluded that the comment would suffice. It also concluded that this provision did not create an incentive to make unauthorized filings because there are both statutory and other penalties for bogus filings.
20. Irrelevance of Parties’ Intention to Characterization of 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 comment, although it will continue to evaluate whether it fully makes clear that neither the parties’ subjective intent nor the labels they put on a transaction are the issue; what matters is the economic substance of the transaction.

21. Transmitting Utilities – Lapse Period

§ 9-515(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. The idea is that filers should not be able to use an amendment to convert a normal filing into a transmitting utility financing statement because that presents a problem for filing officers. A draft reporter’s note indicates that this would be a change in the law, implicitly suggesting that previous attempts to do this by amendment were effective, given the definition of “financing statement” in § 9-102(a)(39). After a lengthy discussion, the Committee decided to adopt the proposed the statutory note but to not include the draft reporter’s comment. In this way, the Committee will be silent about the efficacy of prior amendments.

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 this collateral by a fixture filing, a financing statement should be filed in the office specified by Section 9-501(b) as enacted in the jurisdiction in which the goods are located. Where the fixtures collateral is located in more than one State, filing in more than one State will be necessary to perfect a security interest in all the 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 where 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). Where a security interest in goods is perfected by a filing a fixture filing, however, the law of the jurisdiction in which the goods are located governs perfection. See Section 9-301(3)(A). As a consequence, filing in the filing office of more than one State may be necessary to perfect a security interest in collateral of a transmitting utility by a fixture filing. See Section 9-301, Comment 5.b.

The Committee agreed to these clarifying comments.

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 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) the name of the debtor which is indicated on the most recently filed record that is intended to state, amend, or restate the debtor’s name; and

(2) if that record 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.

* * *

(67A) “Public organic record” means 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 [amends or restates] [effects an amendment or restatement of] the initial record, if the record or records are available to the public for inspection. The term includes an organic record or records of a business trust that is initially filed with a State and any record filed with the State which [amends or restates] [effects an amendment or restatement of] the initial record, if the record or records be filed with the State and the record or records are available to the public for inspection.

* * *

(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. 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 idea behind these changes is to provide more guidance on what name to use when filing a financing statement against a registered organization. Specifically, the name to be used is the name of the forming documents – provided those documents are available for public inspection – rather than whatever database or index is generated by the filing office (and is therefore not filed by the debtor).

The Committee discussed how this draft applies if the entity is technically formed by the issuance of a state charter, rather than by the entity filing an application. The desired solution would be for the entity to still be a “registered organization” and that the proper name to be the name on the charter. Further consideration will be given to this and whether a change to the draft is need to provide the needed clarity or whether a clarifying comment would suffice.

The Committee decided to use “effects an amendment . . . “ rather than “amends . . . ” on the theory that it is broader and more fully covers what it intended (because some states may not refer to a correction as an amendment or restatement).

There was extensive discussion about the language relating to business trusts and whether it covers what is desired. The Committee reached no resolution on that and will consider the matter further.

The Committee generally agreed with the draft of § 9-503(f) but asked the reporter to consider whether the language may inadvertently include a slightly erroneous name that is put on a document to make some other amendment to the organization’s charter.
24. Application of § 9-503(a) to Debtor That Is Both Trust and Registered Organization

§ 9-503(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 (i) a trust that is not a registered organization or (ii) 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; and

(4) in other cases:

   (A) 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.

§ 9-503 comment 2. Debtor’s Name. The requirement that a financing statement provide the debtor’s name is particularly important. Financing statements are indexed under the name of the debtor, and those who wish to find financing statements search for them under the debtor’s name. Subsection (a) explains what the debtor’s name is for purposes of a financing statement. If the debtor is a “registered organization” (defined in Section 9-102 so as to ordinarily include corporations, limited partnerships, and limited liability companies), then the debtor’s name is the name shown on the public records of the debtor’s “jurisdiction of organization” (also defined in Section 9-102). Subsections (a)(2) and (a)(3) contain special rules for decedent’s estates and common-law trusts. (Subsection (a)(1) applies to business trusts that are registered organizations; however it does not apply to a trustee acting with respect to property held in trust, even if the trustee is a registered organization.)

The Committee agreed to this change.
25. § 9-307(c) – Application to Registered Organizations

§ 9-307 comment 3. **Non-U.S. Debtors.** Under the general rules of this section subsection (b), a non-U.S. debtor normally 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 general 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 describe legal regimes that generally require notice in a filing or recording system as a condition of perfecting nonpossessory security interests in the relevant collateral in transactions of the type involved, 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 with respect to the relevant collateral in transactions of the type involved, and if none of the special rules in subsections (e), (f), (i), and (j) applies, the debtor is located in the District of Columbia with respect to the relevant collateral.

**Example 1:** Debtor is an English corporation with 7 offices in the United States and its chief executive office in London, England. Debtor creates a security interest in its accounts. Under subsection (b)(3), Debtor would be located in England. However, subsection (c) provides that subsection (b) applies only if English law generally conditions perfection of a security interest in accounts on giving public notice in a filing, recording, or registration system for purposes of perfecting a security interest in the accounts. Otherwise, Debtor is located in the District of Columbia. Under Section 9-301(1), perfection, the effect of perfection, and priority are governed by the law of the jurisdiction of the debtor’s location—here, England or the District of Columbia (depending on the content of English law).

**Example 2:** Debtor is an English corporation with 7 offices in the United States and its chief executive office in London, England. Debtor creates a security interest in equipment located in London. Under subsection (b)(3) Debtor would be located in England. However, subsection (c) provides that subsection (b) applies only if English law generally conditions perfection on giving public notice in a filing, recording, or registration system for perfection of a security interest in equipment.
Otherwise, Debtor is located in the District of Columbia. Under Section 9-301(1), perfection is governed by the law of the jurisdiction of the debtor’s location, whereas, under Section 9-301(3), the law of the jurisdiction in which the collateral is located—here, England—governs priority.

Under this rule, a debtor may be located in one jurisdiction for purposes of a security interest in one type of collateral and a different jurisdiction for a security interest in another type of collateral.

The changes to the comment make it clear that § 9-307(c) applies only if subsections (e), (f), (i) and (j) do not. The Committee agreed to this and agreed that it could be handled by comment.

The draft changes also try to add clarity as to when a foreign filing system “generally requires” filing to perfect. Issues arise as to whether: (i) that language is specific to the collateral at issue or more general; and that language is specific to the type of transaction contemplated or more general. After extended discussion, the committee decided that these clarifications were not needed because they would have no impact on good practice, which requires filing in DC and compliance with foreign law whenever there is any doubt.

It was pointed out that the language of § 9-307(c) is not expressly limited to foreign debtors, and thus pick up a domestic individual if the secured party has a PMSI in consumer goods but wants to file for priority under § 9-320(b). The Committee will consider further whether any change is needed on this point.

26. Location of Registered Organization Organized under Federal Law

§ 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.

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 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).

In cases not governed by subsection (f) or (i), the location of a foreign bank is determined by subsections (b) and (c).

The Committee agreed to this.

27. **Correction Statements**

At its last meeting, the Committee decided to make no change (*i.e.*, not authorize secured parties or others to file correction statements). IACA expressed a strong desire to allow secured parties to file correction statements, particularly if an interloper filed a termination statement. After discussion, the
Committee decided not to address this problem. The secured party already has the ability to clear up the public record by filing an amendment or a new financing statement. Moreover, we don’t want to confuse secured parties into thinking this is a way to deal with their own erroneous filings or to imply that a secured party who fails to correct the public record should be estopped from relying on its filing.

However, the Committee decided to consider allowing secured parties to file something – not denominated a correction statement – in response to a termination statement, release of collateral, or the like. The reporter will draft language, possible for a new section, for the Committee to consider.

28. Safe Harbor Forms

The issue is largely whether the form should be amended to delete the place for the debtor’s taxpayer ID number. However, IACA has other changes it wishes to make to the form. The discussion then focused on whether IACA wants to create its own form that all filing offices will use or prefer – which current law does not in any way restrict – or whether IACA wants states to be able to reject the current safe harbor form.

The Committee agreed to give IACA an opportunity to develop a new form to replace the one currently in § 9-521, and to present that to the Committee for discussion.

29. 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 prudence usually dictates that an authorization to file be evidenced by an authenticated record, 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 comment.
30. 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 comment.

31. Name of Individual Debtor

§ 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.

§ 9-506(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.

§ 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 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 whether a filing against the debtor’s name on a driver’s license or state-issued ID – if that is in fact not the debtor’s correct name – should be effective. There seemed to be consensus on this point. It then discussed at length whether the name on the driver’s license or state-issued ID should be: (i) a safe harbor; (ii) the only proper name; or (iii) a proper approach that also has priority over any effective filing that does not use the name on the driver’s license or state-issued ID.

The Committee then discussed whether expiration of the driver’s license or state-issued ID (if no new one is issued) should be treated as a name change. The subsequent searcher may have no way of ascertaining what the name on that ID was.

Initially, the Committee was largely divided among the three approaches. It was then noted that the third approach could create a circularity in certain PMSI situations. For example, SP-1 files against the debtor’s ID name, SP-2 has a PMSI and files against the debtor’s correct (but not ID) name, and then SP-3 files against the debtor’s ID name. If SP-2’s PMSI loses to SP-1’s, then there will be no circularity problem, but PMSI priority is not as strong as it was (unless the PMSI lender files under the ID name).
If SP-2’s PMSI has priority over SP-1’s interest, then we end up with an anomaly. Either SP-3 beats SP-2 and there’s a circularity or SP-2 beats and SP-3 and the priority that SP-3 expected by filing under the ID name is not achieved, in which case the goal of giving both filers and searchers one name to use and rely upon is undermined.\(^1\) As a result, there was little support left for the third approach.

The Committee decided to take this matter up again at its meeting in March.

**POTENTIAL NEW ISSUES**

32. **Debtor with Respect to Property Held in Trust**

Under current law, if the collateral is assets held in a trust, the first issue is whether (under the law governing the trust) the debtor is the trust or the trustee, and this can be very difficult and costly to resolve. So, the issue was whether each state should make a determination as to what that law is, and then make that express in its version of Article 9.

The Committee concluded that it would be a good idea for states to provide some guidance on this issue, but reached no conclusion on how. It decided to seek permission to address this issue.

33. **Proliferation of State Bogus Filing Statutes**

Many states are enacting statutes – often inside their version of Article 9 – to deal with fraudulent filings against public officials. These are nonuniform and can implicate the integrity of the Article 9 filing system. At the March meeting, the Committee will discuss whether to seek permission to take up this issue.

34. **Comment on Hybrid Chattel Paper.**

The issue is whether modifications to electronic chattel paper that are agreed to in writing undermine the status of the original rights as electronic chattel paper. Presumably, a creditor with control of the electronic chattel paper who takes possession of the amendment should be perfected and have

\(^1\) Although not discussed at the meeting, a circularity could arise in other ways as well. For example, if SP-1 filed against the debtor’s correct (non-ID) name, SP-2 then perfected by possession or acquired a judicial lien, and then SP-3 perfected by filing against the debtor’s ID name, then SP-1 would have priority over SP-2, SP-2 would have priority over SP-3, and SP-3 would have priority over SP-1.
priority. However, the priority rule of § 9-330(a)(1) gives priority to a purchaser that “takes possession of the chattel paper or obtains control of the chattel paper.” In that provision, is “or” exclusive? The same issue can arise in reverse, if the chattel paper is tangible and the amendment is agreed to in electronic form.

The Committee decided that this was a significant issue and would draft a comment to deal with it.

35. **Highland Capital**

The Committee had previously decided to deal with this case by comment and leave to New York whether and how to deal the matter in that state. The New York City Bar drafted a statutory change to § 8-102, although the Committee had concerns about whether the draft accomplished its ends without doing anything unintended. The Committee discussed whether to pursue a uniform statutory change, both to preserve uniformity and to perhaps even enhance the prospect of enactment in New York. Two Committee members will work with some advisors to draft a proposal for review by the Committee at the next meeting.

36. **Definition of “Good Faith”**

The issue is whether to fix the definition of “good faith” in § 9-102(a)(43) along the lines of § 8-101(a)(10). Section 9-102 comment 19 tries to accomplish by statute should be done in the statute: make the heightened standard of good faith applicable to the Article 1 duty of good faith in an Article 9 transaction. This is important for: (i) the states that have not yet enacted revised Article 1; and (ii) those which have enacted revised Article 1 but chosen to retain the old, purely subjective standard of good faith.

The Committee decided not to address this issue.

37. **Definition of “Proceeds”**

A suggestion was made to remove the limitation in § 9-102(a)(64)(D), (E) to the value of the original collateral. There is often no way to ascertain the value of the collateral before it was damaged or destroyed. It can be impossible to value it after it was damaged or destroyed. Moreover, if the insurance covers replacement value, all of that should be proceeds.

The Committee decided not to address this issue.
38. Fix Comment 2 to Section 9-621

The last sentence of § 9-621 comment 2 indicates that a lienor with the right to notification of a proposed acceptance of collateral who does not receive it has a cause of action against the secured party conducting the acceptance. This comment is correct if the notification was not sent, but is not accurate if the proposal was properly sent and simply not received.

The reporter will draft a correction.

39. Clarify whether/when a secured party must notify the debtor before foreclosing on an account debtor’s collateral

Hypothetical:
Account Debtor borrows from Dealer, and grants Dealer a security interest in specific goods. Dealer assigns the chattel paper to Creditor with recourse. In seeking to collect from Account Debtor, Creditor repossesses the goods and is preparing to dispose of them. Must Creditor give notification of the disposition to Dealer?

If the chattel paper was used as collateral for a loan (not sold without recourse), Dealer qualifies as an “obligor” under 9-102(a)(59) because Dealer either owes performance of Account Debtor’s obligation or “is otherwise accountable in whole or in part for payment or performance of the obligation.” Moreover, Dealer is likely to be a secondary obligor because Dealer probably has a right of recourse against Account Debtor. See § 9-102(a)(71(B); Restatement (Third) of Suretyship and Guaranty § 1 & comment c. As a result, Creditor must generally give notification to Debtor of almost any planned disposition of Account Debtor’s collateral. It was suggested that this result would be a surprise to most SPs and arguably inconsistent with the thrust of § 9-607(a), and therefore a clarifying comment should be added.

The Committee decided not to address this issue.

40. Attempt (subject to preemption issues) to provide for temporary continuity of perfection for a copyright that becomes registered.

Under current law, the financing of debtors who acquire or generate copyrightable works (publishers and software developers) is problematic because even though a security interest will attach to after-acquired copyrights, perfection will be lost immediately upon federal registration and even if a federal
filing is promptly made, the security interest remains vulnerable to preference attach for 90 days. A suggestion was made to add a temporary perfection period. Such an effort might be pre-empted, but might not given the Copyright Act’s lack of a reference to lien creditors.

The Committee decided not to address this issue.

41. Revise § 9-331 comment 5

The comment suggests that failure to search is a lack of good faith. A suggestion was made that the comment has been used and extended improperly by In re Jersey Tractor Trailer Training, Inc., 2008 WL 2783342 (D.N.J. 2008) (holding that a purchaser of accounts who searched under an incorrect name of the debtor and therefore failed to discover a proper filing by a previous secured party could not qualify as a holder in due course; the purchaser should have searched under the debtor’s correct name and roots of that name).

The Committee decided not to address this issue.

42. Consider revising § 9-607(c).

That rule limits a secured party’s duty to collect from account debtors in a commercially reasonable manner to situations in which the secured party has some right of recourse against the debtor or secondary obligor. In short, it imposes this duty in connection with loans secured by receivables rather than to pure sales of receivables. The suggestion was made that this limitation makes sense so long as the duty relates to only how the receivable is settled or compromised. See § 9-607 comment 9. However, to the extent that the duty of commercial reasonableness encompasses more – such as prohibiting the secured party from collecting in ways that injure the debtor’s business reputation – it should apply even when the receivables have been sold.

The Committee decided not to address this issue on the ground that it is adequately handled by other law, such as tort.

43. Comment That § 9-318 Is Not a Priority Rule

The Committee returned to the priority part of issue #17.
The issue arises in a variety of additional contexts. For example, if SP-1 pre-files as to accounts. Then the debtor sells accounts to SP-2. Then SP-1 purports to get a security interest in the accounts.

The Committee decided to address this by comment. One of the advisors and Committee members will work on a proposal.

44. Revision of § 9-322(c)

A suggestion was made to revise § 9-322(c) to correct its application to competing control security interests, and to correct or explicate its application to situations in which it awards priority in proceeds to a security interest that qualifies for priority under a non-temporal priority rule even though there is no actual conflicting security interest in the original collateral. For example, there could be multiple secured parties with control over an asset that is later converted to cash proceeds. The theory is that their relative priorities in the proceeds should be the same as their relative priorities in the original collateral.

The Committee decided to ask one of the advisors to draft a comment on this issue.

45. Minimum Standards for Electronic Filing

States have very different rules on such things as the field size for the debtor’s name of the collateral description. In some states, those field sizes can present a problem for filers. A suggestion was made to develop minimum standards and to incorporate these into Article 9.

The Committee decided to table this matter, pending receipt of more information from IACA.

46. Make Clear that the Rules Applicable to Paper Filings Also Apply to Electronic Filings.

Some states have software that rejects a filing if it has certain words in the collateral description. This appears to contravene § 9-520(a). Other states have no place on their electronic filing systems to make important designations (such as designation of the debtor as a trust). A suggestion was made to make it clear that filing offices must treat electronic filings in the same manner as paper filings.

FOOSL and IACA will produce more information on the scope of the issue/problem and report back.
47. Garnishee as a “Transferee” for the Purposes of § 9-332

Some concern has arisen over the result in *Orix Financial Services, Inc. v. Kovacs*, 83 Cal. Rptr. 3d 300 (2008), which ruled that the lien creditor was a transferee who took free of the security interest.

The Committee decided not to address this issue.

48. Location of Governmental Units

The suggestion was made that Article 9 does not specify where governmental units, such as the Port Authority of New York and New Jersey, are located. The Committee concluded that Article 9 does deal with this already (the Port Authority is an organization and is located at its chief executive office). Therefore, the Committee decided not to address this issue.

49. Inclusion of Non-negotiable instruments in § 9-406

The Code has no setoff rules or notice rules to deal with non-negotiable instruments. They are therefore one of very few rights to payment for which there are no such rules in the Code. The Committee noted that this silence was intentional and did not create a big problem in practice, and thus decided not to address this issue.

50. Harmonization with the U.N. Receivables Convention

A question was raised about whether there should there be commentary in Article 9 to alert people to the different rules that might apply if the U.S. ratifies the convention? The Committee decided not to address this issue.

51. Updating Comments to Reflect Changes to Bankruptcy Code

If anyone is aware of any outdated cross-references or statements of bankruptcy law, please let the reporter know so that they can be changed.
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: **

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   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 an 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].
§ 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;
  (A)(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
  (A)(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:
  (+A) in the case of a request for an accounting, by authenticating and
sending to the debtor an accounting; and
  (+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 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 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 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 reperfected under Alabama’s Section 9-311(b) or 9-313 in a timely manner. See subsection (e).
**Reporters 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 is 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 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 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.

[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.

(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.

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 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)(c) [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 a 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 hip-pocket 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 ans 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**

<table>
<thead>
<tr>
<th>A. NAME &amp; PHONE OF CONTACT AT FILER [optional]</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B. SEND ACKNOWLEDGMENT TO: (Name and Address)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>1. DEBTOR’S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names</th>
</tr>
</thead>
<tbody>
<tr>
<td>OR</td>
</tr>
<tr>
<td>1a. ORGANIZATION’S NAME</td>
</tr>
<tr>
<td>1b. INDIVIDUAL’S LAST NAME</td>
</tr>
<tr>
<td>FIRST NAME</td>
</tr>
<tr>
<td>MIDDLE NAME</td>
</tr>
<tr>
<td>SUFFIX</td>
</tr>
<tr>
<td>1c. MAILING ADDRESS</td>
</tr>
<tr>
<td>CITY</td>
</tr>
<tr>
<td>STATE</td>
</tr>
<tr>
<td>POSTAL CODE</td>
</tr>
<tr>
<td>COUNTRY</td>
</tr>
<tr>
<td>1d. Check only if applicable and check only one</td>
</tr>
<tr>
<td>Debtor is a Trust</td>
</tr>
<tr>
<td>Debtor is a Trustee acting with respect to property held in trust</td>
</tr>
<tr>
<td>Debtor is a Decedent’s Estate</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. ADDITIONAL DEBTOR’S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names</th>
</tr>
</thead>
<tbody>
<tr>
<td>OR</td>
</tr>
<tr>
<td>2a. ORGANIZATION’S NAME</td>
</tr>
<tr>
<td>2b. INDIVIDUAL’S LAST NAME</td>
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<tr>
<td>FIRST NAME</td>
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<tr>
<td>MIDDLE NAME</td>
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<tr>
<td>SUFFIX</td>
</tr>
<tr>
<td>2c. MAILING ADDRESS</td>
</tr>
<tr>
<td>CITY</td>
</tr>
<tr>
<td>STATE</td>
</tr>
<tr>
<td>POSTAL CODE</td>
</tr>
<tr>
<td>COUNTRY</td>
</tr>
<tr>
<td>2d. Check only if applicable and check only one</td>
</tr>
<tr>
<td>Debtor is a Trust</td>
</tr>
<tr>
<td>Debtor is a Trustee acting with respect to property held in trust</td>
</tr>
<tr>
<td>Debtor is a Decedent’s Estate</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3. SECURED PARTY’S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>OR</td>
</tr>
<tr>
<td>3a. ORGANIZATION’S NAME</td>
</tr>
<tr>
<td>3b. INDIVIDUAL’S LAST NAME</td>
</tr>
<tr>
<td>FIRST NAME</td>
</tr>
<tr>
<td>MIDDLE NAME</td>
</tr>
<tr>
<td>SUFFIX</td>
</tr>
<tr>
<td>3c. MAILING ADDRESS</td>
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<tr>
<td>CITY</td>
</tr>
<tr>
<td>STATE</td>
</tr>
<tr>
<td>POSTAL CODE</td>
</tr>
<tr>
<td>COUNTRY</td>
</tr>
</tbody>
</table>

| 4. This FINANCING STATEMENT covers the following collateral: |

<table>
<thead>
<tr>
<th>5. Check only if applicable and check only one box.</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Debtor is a TRANSMITTING UTILITY</td>
</tr>
<tr>
<td>Filed in connection with a Public-Finance Transaction</td>
</tr>
<tr>
<td>Filed in connection with a Manufactured-Home Transaction</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6. ALTERNATIVE DESIGNATION (if applicable):</th>
</tr>
</thead>
<tbody>
<tr>
<td>LESSEE/LESSOR</td>
</tr>
<tr>
<td>CONSIGNEE/CONSIGNOR</td>
</tr>
<tr>
<td>BAilee/BAILOR</td>
</tr>
<tr>
<td>SELLER/BUYER</td>
</tr>
</tbody>
</table>

| 7. OPTIONAL FILER REFERENCE DATA             |

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International Association of Commercial Administrators (IACA)

UCC FINANCING STATEMENT (FORM UCC1) (REV. DRAFT 02/28/09)
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).

2. **Debtor’s trade name, DBA, AKA, FKA, Division name, etc.**. 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).

3. **Total Assignee’s name and address**. 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. **Debtor’s use only. For filer’s convenience of reference, filer may enter in item 7 any identifying information (e.g., Debtor’s name or other identification, state in which form is being filed, etc.) that filer may find useful.**
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 Debt 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:

<table>
<thead>
<tr>
<th>6a. ORGANIZATION’S NAME</th>
<th>6b. INDIVIDUAL’S LAST NAME</th>
<th>FIRST NAME</th>
<th>MIDDLE NAME</th>
<th>SUFFIX</th>
</tr>
</thead>
</table>

7. AMENDED OR ADDED INFORMATION:

<table>
<thead>
<tr>
<th>7a. ORGANIZATION’S NAME</th>
<th>7b. INDIVIDUAL’S LAST NAME</th>
<th>FIRST NAME</th>
<th>MIDDLE NAME</th>
<th>SUFFIX</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>7c. MAILING ADDRESS</th>
<th>CITY</th>
<th>STATE</th>
<th>POSTAL CODE</th>
<th>COUNTRY</th>
</tr>
</thead>
</table>

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.

<table>
<thead>
<tr>
<th>9a. ORGANIZATION’S NAME</th>
<th>9b. INDIVIDUAL’S LAST NAME</th>
<th>FIRST NAME</th>
<th>MIDDLE NAME</th>
<th>SUFFIX</th>
</tr>
</thead>
</table>

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, 7b, or both. Also enter assignor’s address in item 7c. 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.
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)

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

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

International Association of Commercial Administrators (IACA)
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.
Chair Report:

A proposal will be made to the PEB about issuing a commentary on papering out electronic chattel paper, to permit more detailed discussion than would be possible in a comment.

The goal is to complete the project this spring and seek approval from the ALI and ULC later in 2010.
1. Relationship of Article 9 to Receivables Convention

The Report of the Committee to Harmonize North American Law with Regard to the Assignment of Receivables in International Trade Convention (June 15, 2007) suggested that the Convention, if ratified, would be self-executing, and that there was no need to amend the text of Article 9 to coordinate with it. The Report did suggest, however, the comments should be amended to alert people to the choice-of-law changes the Convention would make. At the ULC annual meeting, some concern was expressed about this approach, and some urged that the UCC itself be amended.

The Committee discussed what approach it would recommend. There was no interest in amending the Code. Doing so would be complicated, it might become outdated if the Convention is amended, and international transactions in receivables tend to be lawyered transactions among sophisticated parties. The Committee voted unanimously to no amend Article 9 to deal with this.

2. Amendments to Article 3 – References to Security Interests

By a memo of August 11, 2009, the Reporter concluded that no amendments to Article 3 were necessary to deal with the broadening of the definition of “security interest” in Article 1 to cover sales of promissory notes.

The Committee decided not to pursue this matter.

3. Entity Conversion Issues

In some entity conversion statutes, it is not clear if the new entity is the same entity or new entity. If it is the same entity and the name changes, then a secured party should file an amendment to its filing. If the entity is a new entity, then a secured party should file a new financing statement (i.e., leave the original filing intact). One solution to the dilemma of which action to follow is to file an amendment that adds a new debtor name to the original financing statement.

The Committee agreed to create a comment to explain the problem and proposed solution and to make it clear on the form (or its instructions) that an amendment can add a name (not just a debtor).

4. Certificates of Title

The current draft amends § 9-102(a)(10) to cover electronic records under a certificate of title act. A new comment also tries to make it clear that the definition
covers certificates issued in a state whose statute does not expressly mention perfection of which treats presentation of the application as perfection.

The Committee agreed to this proposal, but wants § 9-337 amended to clearly cover both clean paper certificates and clean electronic certificates. The Committee also would like a legislative note to States that if their certificates do not identify second or third liens, then the certificate should at least state that other liens may exist.

The comments will be amended to add a sentence that a certificate of title issued pursuant to a statute that permits both paper certificates and electronic records is a certificate of title. In other words, if the first sentence of § 9-102(a)(10) applies, the “as an alternative” language in the second sentence of the proposal does not contradict that.

The Committee also agreed to the draft additions to the comment.

5. Section 9-318 comments

These comments are attempting to clarify that § 9-318(a) does not operate as a priority rule; that even if a debtor retains no interest in them, the debtor may have a the power to transfer rights in them, provided the priority rules of Article 9 apply.

There was extensive discussion about whether to address this at all, whether to do it by comment, or whether to do it by amending that statute. There was no interest in pursuing a statutory change. The Committee then included that the benefits of a comment are outweighed by its risks. The Committee will therefore not propose any change on this issue.

6. Control of Deposit Accounts

The draft contains a new example of perfection though an agent.

The Committee agreed to the comment. The Committee also discussed and noted that the amendment to § 9-104(a) would allow for perfection by control through a representative, whether or not the representative qualifies as agent under the common law. It also allows for control without the agreement of the depositary.

Question arose whether the operation of § 9-104(a)(4) could be overridden by the control agreement. The issue would arise as well under § 8-106. The Committee chose not to deal with that issue.

The question was raised as to whether a similar provision should be added to §§ 9-105 and 9-107, dealing with control of electronic chattel paper and letter-of-credit rights, respectively. The Committee chose not to pursue that. Adding the provision to § 9-104 is necessary not only to mirror
§ 8-106 but also to avoid the characterization problem of whether the collateral is a deposit account or securities account. That characterization problem does not exist with respect to electronic chattel paper or letter-of-credit rights.

7. New Comment to § 9-611 on Compliance with Other Law

The new comment alerts people to the fact that federal law may require additional notifications of disposition.

The Committee agreed to the idea behind the comment but the comment will be revised to make it clear that the effect of a failure to give such a notification is left to other law.

8. Comment To Clarify Merchant’s Right to Credit Card Payments

A proposal was made that a comment be drafted to clarify that a merchant’s right to receive payment from its credit card bank for charges initiated by the merchant’s customers (the cardholders). The theory is that it is not an account under § 9-102(a)(2)(i) because the cardholder’s obligation is discharged and thus right to payment is not for goods or services, but pursuant to the bank-merchant contract. It is not an account under § 9-102(a)(vii) because that provision covers the card issuer’s right to payment.

The Committee agreed to ask the reporter to draft a comment on this matter.

9. Filing Issues: Debtor with Respect to Property Held in Trust

The Committee reviewed a proposal derived from an earlier proposal from the State Bar of Texas UCC Committee to amend § 9-102(a)(28) to add a new subparagraph (D) saying “if the collateral is property held in trust in an express trust created or organized under the law of this State, [the trustee of the trust] [the trust].”

The Committee noted that one problem of giving states freedom to identify either the trust or the trustee as the debtor is that a different state’s law might apply. The choice of law is largely (but not entirely) determined by where the debtor is located. If different states will point to different answers about who the debtor is, then we could have significant interpretive problems.

The problem is compounded by the fact that states have different types of trusts, and may need different answers for different types of trusts.

The Committee then discussed as an alternative the following addition to § 9-307:
If the debtor is a trust that is not a registered organization or a trustee acting in relation to property held in trust, the debtor is located in the jurisdiction under whose law the trust is [formed] [organized].

At its first meeting, the Committee concluded that the problems associated with transitions, non-uniformity (from non-simultaneous enactments) would make this such a change extremely difficult. In addition, it noted that the law chosen in the trust agreement could change at any time. The Committee therefore chose not to pursue this issue.

The Committee likes the rule, but remains concerned about transition. If we would have a uniform effective date (for this rule), then the problems would be manageable. Although that would still have to be several years out and we would still need in lieu filings. The Committee will return to this matter.

10. Debtor’s Name: Trust Issues

SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.

(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 is a trustee acting with respect to property held in trust for the beneficial owner of a trust that is not a registered organization, 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;

(4) if the debtor is a trustee acting with respect to property held in trust for the beneficial owner of a trust that is a registered organization, only if the financing statement provides the name of the trust indicated on the public organic record filed with or issued or enacted by the trust’s jurisdiction of organization; and

(5) in other cases:

(A) 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.

* * *
The Committee discussed whether the phrase “for the beneficial owner of a trust” needs to be included in paragraphs (3) and (4), and tentatively concluded that it does not.

The Committee also discussed whether the additional material required by § 9-503(a)(3)(A) and (B) is part of the debtor’s name or merely a requirement for an effective filing. The Committee agreed to amend (A) and (B) to make the additional required information not part of the debtor’s name.

11. Debtor’s Name in Public Organic Record

SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.

(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 or enacted by the debtor’s jurisdiction of organization which shows the debtor to have been organized;

* * *

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

(1) if the public organic record is composed of a single record that states the name of the debtor, the name of the debtor which that record states to be the debtor’s name;

(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, issued, or enacted record that is intended to amend or restate the debtor’s name; and

(3) if the most recently filed or issued record of a kind 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.

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

(a) [Article 9 definitions.] In this article:

* * *

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

* * *

(67A) “Public organic record” means:

(A) a record or records composed of the record initially filed with or issued by a State or the United States to form or organize an organization and any record filed with or issued by 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) an organic record or records of a business trust composed of the record 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 record or records composed of legislation enacted by the legislature of a State or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the State or United States which states the name of the organization, if the record or records are available to the public for inspection.

* * *

(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 issuance of a public organic record by, or the enactment of legislation by the State or United States. 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.

* * *

These amendments are designed to cover a wide array of different types of organizations. The Committee invited comment as to whether the language reaches the desired breadth.

12. Individual Debtor’s Name

The Committee decided not to adopt the “priority approach.” The Committee then discussed the “only-if” rule. In doing so, it noted several potential problems:

A. Possible inconsistency between the office issuing the ID and the UCC filing office as to character set and character size.

B. The rule increases the prospect for name changes, which may lead to a loss of perfection in after-acquired collateral. Indeed, debtors who have granted security interest in after-acquired collateral may strategically change their ID to destroy perfection. Thus there is a monitoring requirement that the safe harbor rule does not indirectly impose.

C. It deceives the searcher into thinking that all they need to do is search under the current ID, when in fact they need to search under the name depicted in prior IDs, and those names may be difficult or impossible to discover.

D. About eleven states do not put middle names or middle initials in a driver’s license. This could lead to massive responses to a search request against a debtor with a common given name and a common surname.

E. Unlike a safe-harbor rule, it presents a significant transition-rule problem.

The Committee will have a follow-up conference call on this issue. In advance of this, the reporter will prepare a memorandum detailing the concerns with the only-if rule, the Committee will
share that memo with the American Banker’s Association working group, and that group will be asked to prepare a response. The Committee will make a decision either at the end of the conference call or at its next meeting.

The Committee then discussed changes to the “only-if” rule proposed by the American Banker’s Association. That proposal deletes the passport as a source of the debtor’s name, makes an expiration of the ID not a name change, and deletes the word “given” after “first” and “second.”

There was also some discussion on how to identify the surname, whether a period goes after the initial, *etc.*

Even if using an ID name, filers may still have the problem of identifying which is the surname.

13. **Claim Concerning Inaccurate or Wrongfully Filed Record**

**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]
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 that filed the record was not entitled to do so under Section 9-509(d).

**[Subsection (d)—Alternative A]**

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 that filed the record was not entitled to do so under Section 9-509(d).

**[Subsection (d)—Alternative B]**

A statement of a claim under subsection (c) must:

1. identify the record to which it relates by:
   1. the file number assigned to the initial financing statement to which the record relates; and
   2. if the statement relates to a record filed in a filing office described in Section 9-501(a)(1), the date and time that the initial financing statement was filed 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]**

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 delete “of a claim” It also agreed to consider a new comment to make it clear that a filer has no duty (good faith or otherwise) to file such a statement, even if it knows of an error in the public record.

14. Termination of Wrongfully Filed Record.

**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 Committee discussed alternative ways to police the filing system of bogus filings, such
as by requiring that filers be pre-approved. There was no great interest in that idea, and the
Committee then turned to the proposed new § 9-513A.

The Committee agreed that the individual should have to include in the affidavit that the
individual is a government employee. A comment was made that the term “government employee”
is very narrow. Another comment was made that the term is very broad, potentially picking up every
member of the armed services or the reserves.

The idea remains that this would be a hip picket amendment, not an alternative section, and
therefore not part of the official text.

15. Official Forms

The Committee reviewed IACA’s draft revisions to the forms and accompanying instructions.
It made several suggestions and noted how previous decisions of the Committee during this meeting
may require some additional minor changes.

16. Indexing Issues

The Committee reviewed a memo from the ABA Task Force on Filing Office Operations and
Search Logic (FOOSL) on how filing offices deal with special characters (e.g. tildes, umlauts).
FOOSL proposed requiring filing offices to replace special characters with a place holder (e.g., “*”).

The Committee concluded that putting new requirements – with financial implications – on
filing offices was not desirable. Therefore, it agreed to instead require filing offices to publicly
disclose its practices/rules with respect to special characters, truncation, and noise words. Such
disclosure needs keep track of how those rules/practices change, at least going forward. Thus, if the
practice is X now and becomes Y later, after the switch the office needs disclose both X and Y, along
with the effective date of the change.
IACA apparently desires guidance on how filing offices should deal with these matters, and FOOSL will continue to work on that.

Concern was also expressed about how the “only-if” rule would work and whether the test of § 9-506(c) can be applied if the filing office will not allow a search under the debtor’s correct name.
Chair Report:

After this meeting, a draft will be prepared for the ALI annual meeting in May and the ULC annual meeting in July, for those organizations to consider and, hopefully, approve.
1. Deletion of Example 9A and the Related text of Comment 5 to Draft § 9-316.

The Committee agreed to this.

2. Considerations in Determining the Relationship of Other Law to the Notification Requirements of Article 9, Part 5 (§ 9-611, Comment 10).

10. Other Law. Other law may contain requirements concerning notification of a disposition of property by a secured party. For example, federal law imposes notification requirements with respect to the enforcement of mortgages on federally documented vessels. Principles of statutory interpretation and, in the context of federal law, supremacy and preemption determine whether and to what extent law other than this Article supplements, displaces, or is displaced by this Article. See Sections 1-103(b), 1-104, 9-109(c)(1).

The Committee agreed to this, but added “state or federal” after the first word.

3. Amendments to Comment 5d to § 9-102, Addressing the Classification of Rights to Payment Related to Credit-card Transactions.

d. “General Intangible”; “Payment Intangible.” “General intangible” is the residual category of personal property, including things in action, that is not included in the other defined types of collateral. Examples are various categories of intellectual property and the right to payment of a loan of funds that is not evidenced by chattel paper or an instrument. A debtor’s right to payment from another person of amounts received by the other person on the debtor’s behalf, including the right of a merchant in a credit-card, debit-card, prepaid-card, or other payment-card transaction to payment of amounts received by its bank from the card system in settlement of the transaction, is also a “general intangible.” (In contrast, the right of a credit-card issuer to payment arising out of the use of a credit card is an “account.”) * * *

The Committee discussed this at some length. The underlying assumption was that the merchant’s agent had been paid and the merchant had a right to payment from its agent.

The Committee decided to delete this addition and instead add a comment relating to the term “account” that says that § 9-102(a)(2)(vii) deals only with the cardholder’s obligation to pay.

4. Anti-Commercial Money Center

[However, a] [A] right to the payment of money is frequently buttressed by ancillary covenants rights, 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 other rights.

The Committee decided to delete “Accordingly and” and to move a portion of first additional sentence – “the lessor’s rights with respect to leased goods that arise upon the lessee’s default” – to end of the first sentence of the paragraph.

5. Addition to Comment 11 to § 9-102

The first sentence of the definition of “certificate of title” includes both tangible and electronic records. If a state’s certificate-of-title statute provides for both a tangible and an electronic record, the term “certificate of title” should be interpreted in a manner consistent with the effect given to the two records by the certificate-of-title statute.

The Committee agreed to this.

6. Changes to Comment 3 to § 9-330

3. Chattel Paper. Subsections (a) and (b) follow former Section 9-308 in distinguishing between earlier-perfected security interests in chattel paper that is claimed merely as proceeds of inventory subject to a security interest and chattel paper that is claimed other than merely as proceeds. Like former Section 9-308, this section does not elaborate upon the phrase “merely as proceeds.” For an elaboration, see PEB Commentary No. 8.

For a security interest to 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 may satisfy this requirement, and perfect a security interest in the chattel paper, by taking possession of the tangible records and having control of the electronic records.

The Committee agreed to this after deciding to move “and perfect a security interest in the chattel paper” to a separate sentence.
7. New Comment 5 to § 9-512

5. Amendment Adding Debtor Name. Many states have enacted statutes governing the “conversion” of one organization, e.g., a corporation, into another, e.g., a limited liability company. This Article defers to those statutes to determine whether the resulting organization is the same legal person as the initial, converting organization (albeit with a different name) or whether the resulting organization is a different legal person. When the governing statute does not clearly resolve the question, a secured party whose debtor is the converting organization may wish to proceed as if the statute provides for both results. In these circumstances, an amendment adding to the initial financing statement the name of the resulting organization may be preferable to an amendment substituting that name for the name of the debtor appearing on the initial financing statement. In the event the governing statute is construed as providing that the resulting organization is the same person as the converting organization but with a different name, the timely filing of such an amendment would satisfy the requirement of Section 9-507(c)(2). If, however, the governing statute is construed as providing that the resulting organization is a different legal person, such an amendment would have the effect of adding the resulting organization as a debtor. See Comment 4. Regardless of how the governing statute is construed, the converting and resulting organizations may be organized under the law of different jurisdictions and so may be located in different jurisdictions under Section 9-307. In that case, a filing in the location of the resulting organization may be advisable.

The Committee agreed to this.

8. The Requirements for the Affidavit of a Debtor Who Initiates a Termination Statement under § 9-513a Now Require the Affiant to State That He Was a Governmental Employee.

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 affiant is an individual who was a government employee at or before the time the financing statement was filed and 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 (i), 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 Committee decided to add a “new value” requirement to subsection (j).

The Committee discussed whether subsection (a) should be limited to government employees of this state. It decided to change “this” to “a” to be sure that a government employee in State A who lives in State B could make use of this provision if the financing statement was filed in State B and State B had enacted this section.

The Committee considered a suggestion to delete “and was filed by an individual not entitled to do so under Section 9-509(a)” from subsection (b) because the filing office would have no way of knowing that. For the same reason, it considered a suggestion to amend subsection (c) by changing “an individual” to “a person.” Eventually the Committee decided to establish a subcommittee to work on revising the section. The Committee also agreed that this section should be not be in or an appendix to Article 9, and should merely be available if and when states seek to deal with the issue of fraudulent financing statements.

9. § 9-518 and Comment 2 (Concerning the “Information Statement”) Have Been Revised and a Conforming Change Has Made to § 9-516.

*** Sometimes a person files a termination statement or other record relating to a financing statement without being entitled to do so. A secured party of record with respect to the financing statement who believes that such a record has been filed may—but need not—file an information statement under subsection (c). If the person filing the record was not entitled to do so, the filed record is ineffective, regardless of whether the secured party of record files an information statement. Likewise, if the person filing the record was entitled to do so, the filed record is effective, even if the secured party of record files an information statement. See Section 9-510(a), 9-518(e).
The Committee agreed to this. The Committee also discussed allowing the person who wrongfully filed a record to file the information statement. This would allow the accidental filer to try to clear up the record without bothering the secured party of record. Moreover, an information statement filed by the person who filed the wrongful record might be more likely to be believed. However, the Committee chose not to expand this section in this manner.

The Committee also agreed to strengthen the comment to make it more clear that the secured party or record, even one who knows of the filing of an unauthorized amendment, has no duty to file an information statement.

10. An erroneous cross-reference in § 9-616, Comment 2, has been corrected.

2. Duty to Send Information Concerning Surplus or Deficiency. * * *

A debtor or secondary obligor need not wait until the secured party commences written collection efforts in order to receive an explanation of how a deficiency or surplus was calculated. Subsection (b)(2)(a)(1)(B) obliges the secured party to send an explanation within 14 days after it receives a “request” (defined in subsection (a)(2)).

The Committee agreed to this but changed the correction to “Subsection (b)(1)(B).”

11. Four-Month Grace Period of Perfection As to New Collateral After Debtor Moves – §§ 9-316(h), 9-322(b)(3), (h)

The Committee considered a proposal to delete the proposed amendments for lack of demonstrated need. The Committee decided to retain the proposal in part because corporate law was changing to allow registered entities to move (i.e., a re-incorporation in a new state would be the same entity).

Later in the meeting, the Committee reviewed an analysis presented to it that the proposed changes could result in circular priorities. Specifically:


As to collateral acquired after the move, Sp2 beats Sp3. § 9-322(a), (b)(3). Sp3 beats Sp1. § 9-322(b)(3). Sp1 beats Sp2. § 9-322(h). Thus we have a circular priority.

In connection with this, the point was made that Sp3 will usually search in Jurisdiction 1 anyway because it will usually be interested in collateral acquired before the move. After some discussion, the Committee decided that if the reporter could easily draft a change that would subordinate Sp3 to Sp1 and Sp2 in post-move collateral if the prior filers re-file in Jurisdiction 2
within four months of the move, then that would be a good change. The Committee reached a similar agreement with respect to the proposed new § 9-316(i) and the accompanying amendments to priority rules

12. Control of Electronic Chattel Paper

SECTION 9-105. CONTROL OF ELECTRONIC CHATTEL PAPER.

(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.

Concern was raised that if there are two assignees and the evidence points to both being in control, then neither of them will have control. The Committee will consider revising the comment to deal with this.

13. Certificates of Title

(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 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 term includes another record maintained by the governmental unit that issues certificates of title as an alternative to issuing a certificate for the collateral if a statute permits the security interest in question to be
indicated on the record 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 agreed to add “of title” before “for the collateral” and o delete “for the collateral.” The Committee also agreed to change “another” to “a.”

14. § 9-104(a)(4), concerning control of a deposit account through another person having control, has been revised and a draft comment added

(4) a person, other than the bank, having previously acquired control of the deposit account, [acknowledges] [authenticates a record acknowledging] that it has control on behalf of the secured party.

Official Comment

3. Requirements for “Control.” This section derives from Section 8-106 of Revised Article 8, which defines “control” of securities and certain other investment property. Under subsection (a)(1), the bank with which the deposit account is maintained has control. The effect of this provision is to afford the bank automatic perfection. No other form of public notice is necessary; all actual and potential creditors of the debtor are always on notice that the bank with which the debtor’s deposit account is maintained may assert a claim against the deposit account.

Example: D maintains a deposit account with Bank A. To secure a loan from Banks X, Y, and Z, D creates a security interest in the deposit account in favor of Bank A, as agent for Banks X, Y, and Z. Because Bank A is a “secured party” as defined in Section 9-102, the security interest is perfected by control under subsection (a)(1).

* * *

Subsection (a)(4) enables a secured party to obtain control through the acknowledgment of another secured party that has control. This subsection differs from the analogous provision in Section 8-106 in two ways. First, it does not expressly provide that a secured party may obtain control of a deposit account if another person has control on its behalf. This result follows from the law of agency, which applies generally to Article 9. See Section 1-103. Second, control does not arise under subsection (a)(4) if the acknowledging secured party is the bank with which the deposit account is maintained. This limitation, which is inherent in Section 8-106, follows from the fact that the key to the control concept is that the secured party has the ability to reach the collateral (here, the funds on deposit) without further action by the debtor. A secured party may lack the ability to reach the funds on deposit without further action by the debtor, even if the bank with which the deposit account is maintained, and which has control under Section 9-104, acknowledges that it has control on behalf of the secured party.
The Committee discussed at length whether and how to mirror the rules for control in § 9-104 to those for control in § 8-106, in particular whether control should be permitted by acknowledgment of someone in control and, if so, whether that should work if the acknowledging party is the intermediary. Eventually the Committee decided to delete the proposed amendments to § 9-104, 9-327, and § 9-607, and to replace them with a comment that control of a deposit account can be effected through an agent. The draft example to § 9-104 cmt. 3 will also be retained.

15. Perfection in Commodity Accounts Through an Agent – § 9-106

(3) another person has control of the commodity contract on behalf of the secured party, or, having previously acquired control of the commodity contract, acknowledges that it has control on behalf of the secured party.

The Committee discussed whether to add this language, which mirrors language in § 8-106, and if so whether this would permit control by the commodities intermediary merely acknowledging that it holds for the new secured party. The Committee decided to delete this proposal, given that it agreed to withdraw the similar change to § 9-104 regarding control of deposit accounts.

16. Placement of Transition Rules

The Committee discussed whether the transition rules should be in the code – such as a Part 8, Transition Rules for the 2010 Amendments – or merely part of the legislative package. It decided that the rules should be Part 8 of Article 9.

17. Uniform Effective Date

The Committee agreed that a uniform effective date was desirable, in part because it signaled to states the need act swiftly. Because time is needed to bring filers up to speed on the new rules and filing offices time to adapt to the new forms, the uniform effective date should be in 2013.

18. § 9-802

SECTION—9-802. DEFINITION. As used in this part, “pre-effective-date financing statement” means a financing statement filed before this [Act] takes effect.

The Committee agreed to give the reporter the discretion to retain or delete this, as needed.
19. § 9-803

**SECTION 9-702 9-803. SAVINGS CLAUSE.**

(a) [Pre-effective-date transactions or liens.] Except as otherwise provided in this part, this [Act] applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this [Act] takes effect.

(b) [Continuing validity.] Except as otherwise provided in subsection (c) and Sections 9-703 through 9-709:

(1) transactions and liens that were not governed by [former Article 9], were validly entered into or created before this [Act] takes effect, and would be subject to this [Act] if they had been entered into or created after this [Act] takes effect, and the rights, duties, and interests flowing from those transactions and liens remain valid after this [Act] takes effect; and

(2) the transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this [Act] or by the law that otherwise would apply if this [Act] had not taken effect.

(c) [Pre-effective-date proceedings.] This [Act] does not affect an action, case, or proceeding commenced before this [Act] takes effect.

The language of proposed § 9-803 is drawn from § 9-702 and redlining is used to show the differences, but no change is to be made to § 9-702. The same is true for the remaining transition rules discussed below.

The Committee agreed that subsection (b) in old § 9-702 is not necessary because there are no new scope rules.

20. § 9-804

**SECTION 9-703 9-804. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE.**

(a) [Continuing priority over lien creditor perfection: perfection requirements satisfied.] A security interest that is enforceable a perfected security interest immediately before this [Act] takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under [Article 9 as amended by this [Act]] if, when this [Act] takes effect, the applicable requirements for enforceability attachment and perfection under [Article 9 as amended by this [Act]] are satisfied without further action.

(b) [Continuing priority over lien creditor perfection: perfection requirements not satisfied.] Except as otherwise provided in Section 9-705 9-806, if, immediately before this [Act] takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time a perfected security interest, but the applicable requirements for enforceability—
perfection under [Article 9 as amended by this [Act]] are not satisfied when this [Act] takes effect, the security interest:

1. is a perfected security interest for one year after this [Act] takes effect;
2. remains enforceable thereafter only if the security interest becomes enforceable under Section 9-203 before the year expires; and
3. remains perfected thereafter only if the applicable requirements for perfection under [Article 9 as amended by this [Act]] are satisfied before the year expires within one year after this [Act] takes effect.

The Committee discussed whether this adequately preserved priority under § 9-317(a)(2) and concluded that it probably did.

The Committee was not certain that subsection (b) was needed, but decided to leave it in.

21. § 9-805

SECTION 9-704 9-805. SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE. A security interest that is enforceable an unperfected security interest immediately before this [Act] takes effect but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

1. remains an enforceable security interest for one year after this [Act] takes effect;
2. remains enforceable thereafter if the security interest becomes enforceable under Section 9-203 when this [Act] takes effect or within one year thereafter; and
3. becomes perfected:
   A(1) without further action, when this [Act] takes effect if the applicable requirements for perfection under [Article 9 as amended by this [Act]] are satisfied before or at that time; or
   B(2) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

The Committee agreed to this.

22. § 9-806

SECTION 9-705 9-806. EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE.

(a) [Pre-effective-date action; one-year perfection period unless reperfected.] If action, other than the filing of a financing statement, is taken before this [Act] takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this [Act] takes effect, the action is effective to perfect a security interest that
attaches under this [Act] within one year after this [Act] takes effect. An attached security interest becomes unperfected one year after this [Act] takes effect unless the security interest becomes a perfected security interest under this [Act] before the expiration of that period.

(b) [Pre-effective-date filing effective.] The filing of a financing statement before this [Act] takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under [Article 9 as amended by this [Act]].

(c) [Pre-effective-date filing in jurisdiction formerly governing perfection When pre-effective-date filing becomes ineffective.] This [Act] does not render ineffective an effective financing statement that, before this [Act] takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in [former Section 9-103 Part 3 of Article 9 in force immediately prior to the effective date of this Act]. However, except as otherwise provided in subsections (dc) and (ed) and Section 9-706 9-807, the financing statement ceases to be effective at the earlier earliest of:

(1) if the financing statement is filed in this State, the time the financing statement would have ceased to be effective had this [Act] not taken effect; or

(2) if the financing statement is filed in another jurisdiction, the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or


(d) [Continuation statement.] The filing of a continuation statement after this [Act] takes effect does not continue the effectiveness of the financing statement filed before this [Act] takes effect. However, upon the timely filing of a continuation statement after this [Act] takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Part 3 [of Article 9 in force immediately prior to the effective date of this Act], the effectiveness of a financing statement filed in the same office in that jurisdiction before this [Act] takes effect continues for the period provided by the law of that jurisdiction.

(e) [Application of subsection (c)(2) (b)(3) to transmitting utility financing statement.] Subsection (c)(2) (b)(3) applies to a financing statement that, before this [Act] takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in [former Section 9-103 Part 3 of Article 9 in force immediately prior to the effective date of this Act], only to the extent that Part 3 as amended by this [Act] provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) [Application of Part 5.] A financing statement that includes a financing statement filed before this [Act] takes effect and a continuation statement filed after this [Act] takes effect is effective only to the extent that it satisfies the requirements of Part 5 as amended by this [Act] for an initial financing statement.
The Committee agreed to this, but paragraphs (b)(2) and (3) will be merged, so that the June 30, 2018 date will apply only to filings in other jurisdictions, thus preserving the efficacy of filings with an effective duration longer than five years. An appropriate change will be made to subsection (d).

The language of subsection (c) will clarified.

23. § 9-807

SECTION 9-706 9-807. WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.

(a) [Initial financing statement in lieu of continuation statement.] The filing of an initial financing statement in the office specified in Section 9-501 continues the effectiveness of a financing statement filed before this [Act] takes effect if:

1. the filing of an initial financing statement in that office would be effective to perfect a security interest under [Article 9 as amended by this [Act]]; and
2. the pre-effective-date financing statement was filed in an office in another State or another office in this State; and
3. the initial financing statement satisfies subsection (c).

(b) [Period of continued effectiveness.] The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

1. if the initial financing statement is filed before this [Act] takes effect, for the period provided in [former Section 9-403 9-515] with respect to an initial financing statement; and
2. if the initial financing statement is filed after this [Act] takes effect, for the period provided in Section 9-515 as amended by this [Act] with respect to an initial financing statement.

(c) [Requirements for initial financing statement under subsection (a).] To be effective for purposes of subsection (a), an initial financing statement must:

1. satisfy the requirements of Part 5 as amended by this [Act] for an initial financing statement;
2. identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and
3. indicate that the pre-effective-date financing statement remains effective.

The Committee agreed to this with the understanding that the reporter will consider whether the deleted language in paragraph (a)(2) should be retained to cover fixture filings or the like.
The scope of subsection (b) is extremely narrow because it applies only to transmitting utilities whose location has changed, and there are very few entities for whom the amendments even arguably change their location. Nevertheless, the Committee chose to retain it.

24. § 9-808

**SECTION 9-707 9-808. AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING STATEMENT.**

(a) [“Pre-effective-date financing statement.”] In this section, “pre-effective-date financing statement” means a financing statement filed before this [Act] takes effect.

(b) [Applicable law.] After this [Act] takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3 as amended by this [Act]. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) [Method of amending: general rule.] Except as otherwise provided in subsection (dc), if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this [Act] takes effect only if:

1. the pre-effective-date financing statement and an amendment are filed in the office specified in Section 9-501;
2. an amendment is filed in the office specified in Section 9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Section 9-706(c) 9-807(c); or
3. an initial financing statement that provides the information as amended and satisfies Section 9-706(c) 9-807(c) is filed in the office specified in Section 9-501.

(d) [Method of amending: continuation.] If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Section 9-705(d) 9-806(c) and (fe) or 9-706 9-807.

(e) [Method of amending: additional termination rule.] Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after this [Act] takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies Section 9-706(c) 9-807(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 as amended by this [Act] as the office in which to file a financing statement.
The Committee agreed to this.

25. § 9-809

**SECTION 9-708 9-809. PERSONS ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT.** A person may file an initial financing statement or a continuation statement under this part if:

1. the secured party of record authorizes the filing; and
2. the filing is necessary under this part:
   a. to continue the effectiveness of a financing statement filed before this [Act] takes effect; or
   b. to perfect or continue the perfection of a security interest.

The Committee agreed to this.

26. § 9-810

**SECTION 9-709 9-810. PRIORITY.**

(a) [Law governing priority.] This [Act] determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this [Act] takes effect, [former pre-amendment Article 9] determines priority.

(b) [Priority if security interest becomes enforceable under Section 9-203.] For purposes of Section 9-322(a), the priority of a security interest that becomes enforceable under Section 9-203 of this [Act] dates from the time this [Act] takes effect if the security interest is perfected under this [Act] by the filing of a financing statement before this [Act] takes effect which would not have been effective to perfect the security interest under [former Article 9]. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

The Committee agreed to this.

27. Transition in General

The comment was made that these transition rules are very complicated – mostly out of completeness – but many have little or no applicability. Therefore, the Committee agreed that a comment was in order to explain that there should in fact be few transition problems.
28. Name of Registered Organization

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

(1) if the public organic record is composed of a single record that states the name of the debtor, the name of the debtor which that record states to be the debtor’s name; and

(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, issued, or enacted record that purports to amend or restate the debtor’s name.

The Committee discussed this at length and the reporter agreed to consider rephrasing the rule to make it simpler: the name of the debtor is the name stated to be the debtor’s name on the most recently filed record that states what the debtor’s name is. The reporter will also change “is comprised” to “consists of.”

29. Business Trusts

(67A) “Public organic record” means:

(A) a record or records composed of the record initially filed with or issued by a State or the United States to form or organize an organization and any record filed with or issued by 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) an organic record or records of a business trust composed of the record 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 record or records composed of legislation enacted by the legislature of a State or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the State or United States which states the name of the organization, if the record or records are available to the public for inspection.

The Committee agreed that a comment should explain that a business trust can be a statutory trust, in which case it would covered by subparagraph (A) or a common-law business trust, in which case it is covered by subparagraph (B). Either way, it would be a registered organization.
30. Name of Decedent’s Estate

Section 9-503(a)(2) begins by with the proviso: “if the debtor is a decedent’s estate.” A suggestion was made that this formulation is problematic because a decedent’s estate is not an entity. The owner is either the personal representative or the heirs. Accordingly, a suggestion was offered to change the introductory phrase to: “if the collateral is being administered by the personal representative of a decedent” and that the name of the debtor on the financing statement should be “[t]he name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the “name of the decedent.”

This suggestion does not deal with who the debtor is or where the debtor is located, merely what name to use. It also implies two additional points. First, if the property passed by operation of law immediately to the beneficiary, this rule would suggest that a name change occurs when the collateral ceases to be administered by the personal representative. If the property is deemed to be owned by the personal representative, then when the passage of the collateral to an heir would a transfer.

The Committee agreed to this, with the understanding that a comment may indicate that the name used should be the “first” name listed in the order appointing the personal representative, if the order lists more than one name for the decedent.

31. Name of Debtor for Property Held in Trust

SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.

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

1. except as otherwise provided in paragraph (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name of the debtor registered organization indicated on the public organic record of filed with or issued or enacted by the debtor’s registered organization’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 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 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;
collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) provides, as the name of the debtor:

(i) if the organic record of the trust specifies the name of the trust, the name so specified; or

(ii) if the organic record of the trust does not specify a name for the trust, the name of the settlor under subsection (x); and

(B) in a separate part of the financing statement:

(i) if the name is provided in accordance with subparagraph (A)(i), indicates that the debtor is a trust or is a trustee acting with respect to property held in a trust; or

(ii) if the name is provided in accordance with subparagraph (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors and indicates that the debtor is a trust or is a trustee acting with respect to property held in a trust, unless the additional information so indicates;

* * *

(x) The “name of the settlor” in subsection (a)(3) means:

(1) if the settlor is a registered organization, the name of the registered organization indicated on the public organic record filed with or issued or enacted by the registered organization’s jurisdiction of organization; and

(2) in other cases, the name of the settlor indicated in the trust’s organic record.

The Committee agreed to this after agreeing to change “the debtor is a trust or is a trustee” in (a)(3)(B) to “the collateral is held in trust.” The Committee also agreed to simplify paragraph (a)(1) “public organic record filed with or issued or enacted by registered organization’s jurisdiction of organization” to “public organic record for the registered organization” or something similar to be drafted by the reporter.

32. Applicability of individual-debtor-name rules to individuals named in mortgages that are effective as fixture filings (§ 9-502(c)), to individuals comprising a nameless debtor (§ 9-504(a)(5)(B)), and to situations in which an individual name is to be used even though the debtor is a different entity (e.g., a partnership).

The Committee agreed that the individual debtor name rules should apply when the debtor is a partnership without a name and the financing statement is to be filed under the partners’ names.

The Committee also agreed that a mortgage should operate as a fixture filing regardless of whether it complies with the new rules on the individual debtor’s name. A fixture filing will have to comply with the new rules on the debtor’s name.
33. Individual Debtor Name

The Committee began its deliberations with the chair summarizing the current two options under consideration: (i) Alternative A – the “only if” rule with the debtor’s driver’s license as the only name to use and, if there is none, the debtor’s first and last name; (ii) Alternative B – the safe harbor rule with the debtor’s driver’s as a safe harbor and, if there is none, the debtor’s first and last name.

A proposal was made to have a legislative note that for states that: (i) have non-driver IDs issued by the same entity that issue driver’s licenses; and (ii) do not allow individuals to have both a driver’s license and a non-driver ID, to permit either to ID to work for both Alternative A and Alternative B. The Committee agreed to this, with the understanding that it may need to hold a conference call after the reporter drafts appropriate language.

34. Alternative A – § 9-503

SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.

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

* * *

(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; and

(4) subject to subsection (g), if the debtor is an individual to whom this State has issued a [driver’s license] that appears not to have expired, only if it provides the name of the individual which is indicated on the [driver’s license];

(5) if the debtor is an individual as to whom paragraph (4) does not apply, only if it provides the individual name of the debtor or the surname and first personal name of the debtor; and

(4)(6) in other cases:

(A) 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) [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 the applicable subparagraph of subsection (a)(4), the one that was issued most recently is the one to which the subparagraph refers.

The Committee agreed to delete “or [identification card]” in subsection (g)
The Committee also agreed to change “appears not to have” to “has not” and to explain in a comment that “expired” relates only to time, not to cancellation or lapse of driving privileges. It then agreed to the alternative as a whole.

35. Alternative B – § 9-503

The Committee agreed to this.

36. Legislative Note Regarding Individual Debtor Name

"Short" Version

This legislation contains two alternative sets of amendments relating to the names of individual debtors. Both alternatives refer, in part, to the name as shown on a debtor’s [driver’s license]. The Legislature should be aware that, in some states, certain characters that may be used by the state’s department of motor vehicles (or similar agency) in the name on a [driver’s license] may not be accepted by the state’s central or local UCC filing offices under current regulations or internal protocols. This may occur because of technological limitations of the filing offices or merely as a result of inconsistent procedures. Similar issues may exist for field sizes as well. In these situations, perfection of a security interest granted by a debtor with such a [driver’s license] may be impossible under Alternative A of the amendments and may be more difficult under Alternative B. Accordingly, the Legislature may wish to determine if one or more of these issues exist in this state and, if so, to make certain that such issues have been resolved, which might be accomplished by statute, agency regulation, or technological change effectuated before or as part of enacting the amendments relating to the name of an individual debtor.

"Long" Version

This legislation contains two alternative sets of amendments relating to the names of individual debtors. Both alternatives refer, in part, to the name as shown on a debtor’s [driver’s license]. The Legislature should be aware that, in some states, certain characters that may be used by the state’s department of motor vehicles (or similar agency) in the name on a [driver’s license] may not be accepted by the state’s central or local UCC filing offices under current regulations or internal protocols. This may occur because of technological limitations of the filing offices or merely as a result of inconsistent procedures. Similarly, the field sizes available in the State’s [driver’s license] system for the surname, first personal name or additional personal names may exceed the analogous field sizes at the UCC filing office, possibly resulting in omission or truncations. If this situation exists in this state, (i) under Alternative A, perfection of a security interest granted by a debtor with such a [driver’s license] may be impossible under Alternative A of the amendments, and (ii) under Alternative B, the flexibility
offered would be diminished to the extent that one of the three statutory safe harbor options might be unreliable. Accordingly, the Legislature may wish to determine if one or more of these issues exist in this state and, if so, to make certain that such issues have been resolved, which might be accomplished by statute, agency regulation, or technological change, effectuated before or as part of enacting the amendments relating to the name of an individual debtor.

If the Legislature wishes to enact this legislation without undertaking the actions mentioned above, the Legislature might consider deferring the effective date of the amendments relating to the name of an individual debtor to a date that will provide sufficient time to resolve issues of the sort described in the previous paragraph.

The Committee agreed to go with the shorter version, but to change the language “and may be more difficult under Alternative B” to something that makes clear that the incompatibilities do not make Alternative B more difficult than current law but merely diminish the benefits of the change by making one of the safe harbors (the driver’s license name) unavailable.

37. Draft Comment on Individual Debtor Name

“Short” Version

In both Alternative A and Alternative B, Sections [9-503(a)(5)] and [9-503(a)(4)(A)] provide in some circumstances for a financing statement to provide the “name” of an individual debtor. Further, Sections [9-503(a)(5)] and [9-503(a)(4)(B)], respectively, provide a “safe harbor” for individuals without a [driver’s license], if the financing statement provides the debtor’s first personal name and surname. In each of these situations, it is the state’s law of names that determines which words constitute the person’s name (including the person’s surname) at the relevant time.

a. Context. When looking to a state’s law of names, it should be noted that the state’s law of names may address a person’s name in other contexts. In determining a person’s name under Article 9, the reference to a state’s law of names should take into account the context of the use of the name under Article 9.

b. Other documents. The name on a person’s birth certificate is not necessarily the person’s name, unless the state’s law of names [considers] [recognizes] the name on the birth certificate to be the person’s name. Further, the words that a person puts into other documents as that person’s name, such as a bankruptcy petition or a tax return, are not the person’s name, unless state law of names [considers] [recognizes] them as the person’s name.

c. Surnames. The identification of an individual debtor’s surname does not depend on the location of the surname in the sequence of words that make up the individual’s
name. While in most cases, the surname is the last word of an individual’s name, in
some cultures the surname is the first word, and in others it may be a word in the
middle. In addition, in some situations, the surname may consist of more than one word,
which may or may not be hyphenated. Moreover, in some cultures, a person may have
two family names, one from the person’s father and one from the person’s mother. In
some cases, the person’s surname consists of both names. In other cases, only one of
those family names is the person’s surname. In all of these situations, it is the state’s law
of names that determines which word or words constitute the person’s surname.

d. Nicknames. A nickname is not a part of a person’s name, unless the nickname has
become the person’s name under the state law of names. See Section 9-503(d)
(providing only a debtor’s trade name on a financing statement is not sufficient).

“Long” Version
(Additions to “short” version are underscored)

In both Alternative A and Alternative B, Sections [9-503(a)(5)] and [9-503(a)(4)(A)]
provide in some circumstances for a financing statement to provide the “name” of an
individual debtor. Further, Sections [9-503(a)(5)] and [9-503(a)(4)(B)], respectively,
provide a “safe harbor” for individuals without a [driver’s license], if the financing
statement provides the debtor’s first personal name and surname. In each of these
situations, it is the state’s law of names that determines which words constitute the
person’s name (including the person’s surname) at the relevant time.

a. Context. When looking to a state’s law of names, it should be noted that the state’s
law of names may address a person’s name in other contexts. In determining a person’s
name under Article 9, the reference to a state’s law of names should take into account
the context of the use of the name under Article 9. The context of the goals of the UCC
is to have an operational system that, by simplicity and predictability, facilitates
financing. There is a value in uniformity in the determination of a person’s name in the
context of the fact that searchers and filers are not necessary local to the state in which
the filing is made.

b. Other documents. The name on a person’s birth certificate is not necessarily the
person’s name, unless the state’s law of names [considers] [recognizes] the name on the
birth certificate to be the person’s name. The text of Article 9 does not refer to a
person’s “legal” name and a court should not rely on the “legal” if the debtor’s name
under the state’s law of names is different from what might be considered the “legal”
name, such as a birth certificate name. Further, the words that a person puts into other
documents as that person’s name, such as a bankruptcy petition or a tax return, are not
the person’s name, unless state law of names [considers] [recognizes] them as the
person’s name.
c. **Surnames.** The identification of an individual debtor’s surname does not depend on the location of the surname in the sequence of words that make up the individual’s name. While in most cases, the surname is the last word of an individual’s name, in some cultures the surname is the first word, and in others it may be a word in the middle. In addition, in some situations, the surname may consist of more than one word, which may or may not be hyphenated. Moreover, in some cultures, a person may have two family names, one from the person’s father and one from the person’s mother. In some cases, the person’s surname consists of both names. In other cases, only one of those family names is the person’s surname. In all of these situations, it is the state’s law of names that determines which word or words constitute the person’s surname.

d. **Nicknames.** A nickname is not a part of a person’s name, unless the nickname has become the person’s name under the state law of names. See Section 9-503(d) (providing only a debtor’s trade name on a financing statement is not sufficient).

The Committee discussed this at some length. Many expressed concern about referencing the law of names, which may not exist, may not be readily ascertainable, and even if it can be discovered is likely to have arisen to deal with issues unrelated to purposes of the Article 9 filing system. A suggestion was made that preference should be given to the name used on government-issued documents. The Committee ultimately decided to leave this to the reporter and that no further statutory changes were needed.

38. **Forms**

The Committee discussed how to conform the official forms to the new statutory text.

39. **Anti-Highland Capital Provision**

**SECTION 8-103. RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS.**

* * *

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

1. maintains records of the owner thereof for a purpose other than registration of transfer; or

2. 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 books are maintained by or on behalf of the issuer 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 is it 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 definitions of “registered form” and “security,” not a change in law.

The Committee agreed to delete the section but retain a modified version of the comment, in Article 8, rejecting the decision, with the hope that New York would enact this section as part of the amendments to Article 9.