



REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE IN CALIFORNIA

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I. BASICS OF SECURED TRANSACTIONS

A. APPLICATION OF REVISED ARTICLE 9

1. Transactions Covered by Revised Article 9.

Unless a transaction is specifically excluded, Revised Article 9 generally applies to consensual security interests in personal property or fixtures, the sale of accounts, chattel paper, payment intangibles or promissory notes as well as the following other transactions:¹ (a) an agricultural lien²; (b) a consignment; (c) a security interest arising under Section 2401 [security interests reserved by the seller in connection with the sale of goods] or 2505 [security interests reserved by a seller in connection with a shipment of goods], or under subdivision (3) of Section 2711 [a buyer's security interest in goods in his possession for payment of any payments made in connection with a rightful rejection or justifiable revocation of acceptance of purchased goods], or subdivision (e) of Section 10508 [a lessee's security interest in goods in his possession for payment of any payments made in connection with a rightful rejection or justifiable revocation of acceptance of leased goods], as provided in Section 9110; and (d) a security interest arising under Section 4210 [a collecting bank's security interest in various items deposited into an account] or 5118 [security interest of an issuer of a letter of credit in a document presented under a letter of credit].

Important Effect of Revised Article 9: As discussed in greater detail in **Section III** of these materials, the scope of Revised Article 9 is broader than prior Article 9. For example, the following transactions are now covered by Revised Article 9: (i) agricultural liens, (ii) the sale of "payment intangibles" and promissory notes, (iii) the sale of health-care-insurance receivables, and (iv) consignments. In addition, due to the modification of various categories of collateral, additional types of collateral are now covered by Revised Article 9 as discussed in more detail in **Section III** of these materials.

2. Specific Exclusions from Revised Article 9 Where Other Statutes Apply.

Article 9 of the California Commercial Code does not apply to a transaction if the following is true about such transaction:³

- (a) A statute, regulation or treaty of the United States preempts Revised Article 9 (i.e. the Federal Aviation Act with respect to aircraft and aircraft engines);
- (b) Another California statute expressly governs the creation, perfection, priority, or enforcement of a security interest created by the State of California or a governmental unit of the State of California;
- (c) A statute of another state, foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly govern the creation, perfection, priority, or enforcement of a security interest created by the state, country or governmental unit;
- (d) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Section 5114 of the California Commercial Code.

3. Specific Exclusions from Revised Article 9 for Certain Types of Liens.

Revised Article 9 does not apply to the following:⁴

- (a) A landlord's lien, other than an agricultural lien;
- (b) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 9333 applies with respect to the priority of such lien;
- (c) An assignment of a claim for wages, salary, or other compensation of an employee;
- (d) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
- (e) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

¹ California Commercial Code, Section 9109(a).

² California Commercial Code, Section 9102(a)(5).

³ California Commercial Code, Section 9109(c).

⁴ California Commercial Code Section 9109(d).

- (f) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
- (g) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
- (h) Any loan made by an insurance company pursuant to the provisions of a policy or contract issued by it and upon the sole security of the policy or contract;
- (i) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
- (j) A right of recoupment or setoff in connection with a deposit account, provided that certain requirements are fulfilled;
- (k) The creation or transfer of an interest in or a lien on real property, including a lease or rents thereunder, except to the extent that provision is made for each of the following:
 - (i) Liens on real property in Sections 9203 and 9308;
 - (ii) Fixtures in Section 9334;
 - (iii) Fixture filings in Sections 9501, 9502, 9512, 9516 and 9519; and
 - (iv) Security agreements covering personal and real property in Section 9604;
- (l) An assignment of a claim arising in tort, other than a commercial tort claim, but Sections 9315 and 9322 apply with respect to proceeds and priorities in proceeds;
- (m) An assignment of a deposit account in a consumer transaction, but Sections 9315 and 9322 apply with respect to proceeds and priorities in proceeds;
- (n) Any security interest created by the assignment of benefits of any public construction contract under the Improvement Act of 1911;
- (o) Transition property, as defined in Section 840 of the Public Utilities Code with certain exceptions.

B. CERTAIN DEFINITIONS

1. **“Collateral”** is defined in Section 9102(a)(12) of Revised Article 9 as the property subject to a security interest or agricultural lien. The term also includes all of the following:
 - (a) Proceeds to which a security interest attaches.
 - (b) Accounts, chattel paper, payment intangibles and promissory notes that have been sold.
 - (c) Goods that are the subject of a consignment.
2. **“Debtor”** is defined in Section 9102(a)(28) of Revised Article 9 to mean any of the following:
 - (a) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor (i.e. a third party who is willing to make its property available as collateral even though that third party is not obligated on the underlying obligation or a person to whom the property has been transferred when that transferee has not assumed the debt);
 - (b) A seller of accounts, chattel paper, payment intangibles or promissory notes; and
 - (c) A consignee.
3. **“Secured Party”** is defined in Section 9102(a)(72) of Revised Article 9 to mean any of the following:
 - (a) A person in whose favor a security interest has been created or provided for under a security agreement, whether or not any obligation to be secured is outstanding.
 - (b) A person that holds an agricultural lien.
 - (c) A consignor.
 - (d) A person to which accounts, chattel paper, payment intangibles or promissory notes have been sold.

- (e) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for.
 - (f) A person that holds a security interest arising from Section 2401 [security interests reserved by the seller in connection with the sale of goods] or 2505 [security interests reserved by a seller in connection with a shipment of goods], Section 4210 [a collecting bank's security interest in various items deposited into an account], Section 5118 [security interest of an issuer of a letter of credit in a document presented under a letter of credit] or under subdivision (3) of Section 2711 [a buyer's security interest in goods in his possession for payment of any payments made in connection with a rightful rejection or justifiable revocation of acceptance of purchased goods], or subdivision (e) of Section 10508 [a lessee's security interest in goods in his possession for payment of any payments made in connection with a rightful rejection or justifiable revocation of acceptance of leased goods].
4. **"Security Agreement"** is defined in Section 9102(73) as "an agreement that creates or provides for a security interest."
5. **"Security Interest"** is defined in Section 1201(36)(a) of Revised Article 9 to mean "an interest in personal property or fixtures that secures payment or performance of an obligation." The term can also include any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Revised Article 9. Note also that the retention or reservation of title by a seller of goods after delivering the goods to the buyer is treated as a reservation of a security interest. In some situations, a transaction documented as a lease will be treated as a security interest depending on the facts of the case.⁵

Documentation Required For A Secured Transaction.

1. **Evidence of Indebtedness.** Since a security interest is an interest in personal property that secures payment or performance of an obligation, there must be a promissory note, another evidence of indebtedness or a contract that sets forth the payment and/or other obligations of the debtor are secured by the security interest.
2. **Attachment and Enforceability of a Security Interest.** Generally, a security interest "attaches" to the collateral when it becomes enforceable by the secured party against the debtor with respect to the collateral.⁶ Revised Article 9 contains essentially the same requirements as prior Article 9 for a security interest to be enforceable against a debtor and third parties with respect to the collateral. The security interest "attaches" only if EACH of the following conditions is satisfied:⁷
 - (a) Value has been given. [Generally, value has been given when there is consideration sufficient to support the contract such as when the secured party makes a loan or provides some other financial accommodation to the debtor.]
 - (b) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party. [A debtor will have rights in the collateral when the debtor owns the collateral, or, with respect to an account receivable, when the debtor has a right to payment from an account party. Generally, the secured party cannot obtain greater rights than the debtor holds.]
 - (c) One of the following conditions is met:
 - (i) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned. [See **Section IV(A)** of these materials for a description of the new concept of "authenticated."]
 - (ii) The collateral is not a certificated security and is in the possession of the secured party under Section 9313 pursuant to the debtor's security agreement.

⁵ Although beyond the scope of these materials, see generally California Commercial Code Section 1201(36)(b), (c) and (d) of Revised Article 9 for guidelines in making the determination of whether a transaction should be treated as a lease or a security interest.

⁶ California Commercial Code, Section 9203(a).

⁷ California Commercial Code, Section 9203(b).

- (iii) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8301 pursuant to the debtor's security agreement.
- (iv) The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under Section 9104, 9105, 9106, or 9107 pursuant to the debtor's security agreement.

In most instances, the condition required by subparagraph (3) above is met by the debtor entering into a security agreement with the secured party, but the secured party may also obtain possession or control of the collateral to satisfy this requirement.

3. Perfection of the Security Interest.

- (a) **Reasons to Perfect the Security Interest.** As noted above, a security interest is enforceable by the secured party against the debtor when the security interest "attaches." However, main reason a secured party wants to obtain a security interest is for the secured party to obtain priority with respect to the collateral against other adverse parties who may have an interest in the collateral. Those adverse parties may include (i) purchasers of the collateral from the debtor, (although it is important to remember that ordinary course buyers of inventory and holders in due course of negotiable instruments may still have rights that will "trump" the rights of a holder of a perfected security interest), (ii) unsecured creditors of the debtor (which will be represented by the debtor's trustee in bankruptcy or the debtor in possession in a bankruptcy situation), (iii) other creditors with some type of priority, including holders of common law and statutory liens, real estate mortgagees, federal, state and local tax lien holders, and (iv) other secured creditors. To obtain a priority position with respect to the collateral against most other adverse parties, the security interest must be "perfected."
- (b) **Procedures to Perfect a Security Interest.** Revised Article 9 separates collateral into various different categories. It is important to remember that a security interest cannot be perfected unless it has first attached.⁸ There are several procedures a secured party may follow to obtain perfection of a security interest. It is important to understand the categories of collateral involved so the secured party can follow the correct procedure to perfect its security interest in that specific category of collateral. Also, it is important to remember that certain categories of collateral, a security interest may be perfected by using more than one procedure although it is possible for a secured party who perfects by one procedure to obtain priority over another secured party in the same collateral who perfected its security interest by using a different procedure. Briefly, the procedures to perfect a security interest in collateral are as follows:
 - (i) **Filing a Financing Statement.** For most categories of collateral, such as accounts receivable, general intangibles, goods, instruments and investment property, a secured party must file a financing statement in the proper office and in the proper jurisdiction to perfect the security interest.⁹ The procedures for filing a financing statement and the proper office in which to file a financing statement under Revised Article 9 will be discussed in more detail in [Section V](#) of these materials.
 - (ii) **Obtain Possession of the Collateral.** For some categories of collateral, such as negotiable documents, goods, instruments, money, tangible chattel paper, certificated securities in registered form, the secured party may or must perfect its security interest by obtaining possession of the collateral.¹⁰ A more detailed review of the new Revised Article 9 requirements with respect to the perfection of security interests through the possession of collateral will be discussed in [Section V](#) of these materials. If possession is the only method for perfection of a security interest in a particular category of collateral, a secured party obtaining a security interest only in such category of collateral does not need to file a financing statement to perfect its security interest in such collateral. However, many secured parties will file a financing statement anyway to put the world on notice of their security interest.

⁸ California Commercial Code, Section 9308(a).

⁹ California Commercial Code, Section 9310.

¹⁰ California Commercial Code, Section 9313.

(iii) **Obtaining Control of the Collateral.** For some categories of collateral, such as deposit accounts and investment property, the secured party must obtain “control” of the collateral.¹¹ The procedures to obtain control of collateral will be discussed in more detail in **Section V** of these materials.

(iv) **Automatic Perfection.** It is possible to obtain perfection with respect to certain types of collateral under Revised Article 9 automatically as soon as the security interest attaches to the collateral. For example, a purchase money security interest in consumer goods in some circumstances can be perfected without filing of a financing statement or obtaining possession of the consumer goods.¹² Other security interests that can be perfected automatically are described in Section 9309 of Revised Article 9.

Now that the basics of secured transactions have been discussed, the remainder of these materials will focus on certain specific changes to Article 9 of the Uniform Commercial Code that have been enacted through Revised Article 9.

II. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTERESTS

A. NEW CONCEPT OF “AUTHENTICATED RECORD.”

One of the most dramatic changes brought about by Revised Article 9 is the concept of media neutrality and the recognition of electronic transactions. One way in which Revised Article 9 provides for media neutrality is the replacement of the words “sign” and “signed” in most places throughout Revised Article 9 with the words “authenticate” and “authenticated.” According to Section 9102(a)(7) of Revised Article 9, the term “authenticate” means to do either of the following:

- (i) To sign.
- (ii) 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 ability to “authenticate” a document or “record” is important in the concept of media neutrality. Section 9102(a)(69) of Revised Article 9 which makes it clear that a “record” is broader than just a written document when it defines a “record” as “information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.” The definition of “authenticate” and “record” would allow an electronic “mouse click” to be one way for a debtor to authenticate a security agreement.

Note that the term “authenticated” is used in the following contexts in Revised Article 9:

Section 9203(b) of Revised Article 9 provides that one way a security agreement “attaches” to collateral is when “the debtor has *authenticated* a security agreement that provides a description of the collateral”

Section 9620(a)(2) of Revised Article 9 provides that a person may object to a proposal for the acceptance of collateral in full or partial satisfaction of the obligation it secures in an *authenticated* record. Section 9620(b)(1) of Revised Article 9 provides that a secured party may consent to the acceptance of collateral in full or partial satisfaction of the obligation it secures in an *authenticated* record. Section 9620(c) of Revised Article 9 provides that a debtor may consent or object to the acceptance of collateral in full or partial satisfaction of the obligation it secures in an *authenticated* record.

Section 9102(a)(4) of Revised Article 9 provides that an accounting may be *authenticated* by a secured party.

Section 9404(a)(2) of Revised Article 9 provides that an assignment of an account may be *authenticated* by an assignor or assignee.

Section 9509(a)(1) of Revised Article 9 provides that a debtor may authorize the filing of a financing statement in an *authenticated* record and Section 9509(b) of Revised Article 9 provides that by *authenticating* or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment of the financing statement covering certain described collateral.

¹¹ California Commercial Code, Section 9314.

¹² California Commercial Code, Section 9309(1).

Section 9334(f)(1) of Revised Article 9 provides that an encumbrancer or owner may consent to a security interest or disclaim an interest in goods as fixtures in an *authenticated* record.

Sections 9208, 9209, 9210, 9513, 9608, and 9615 of Revised Article 9 provide that *authenticated* demands may be made by the debtor in various circumstances.

Section 9406 of Revised Article 9 provides that a notification of an assignment of an account may be *authenticated* by an assignor or an assignee.

Section 9621 of Revised Article 9 provides that a person must provide an *authenticated* notification of a claim of an interest in collateral that is proposed to be accepted in full or partial satisfaction of an obligation.

Section 9611 of Revised Article 9 provides that a secured party must send to the debtor and any secondary obligor an *authenticated* notification of the disposition of collateral.

Section 9324(b)(2) of Revised Article 9 provides that a purchase money secured party must send an *authenticated* notification to the holder of a conflicting interest in inventory in order to obtain priority over a prior perfected security interest in inventory held by such holder.

Section 9102 of Revised Article 9 provides that a “proposal” is a record *authenticated* by a secured party that includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures.

Section 9313 of Revised Article 9 provides that a person in possession of collateral may *authenticate* a record acknowledging that it holds possession of the collateral for a secured party’s benefit.

Section 9104 of Revised Article 9 provides that a debtor, secured party and a bank may agree in an *authenticated* record that the bank will comply with instructions originated by a secured party directing disposition of funds in a deposit account without further consent by the debtor.

Section 9210 of Revised Article 9 provides that a debtor may request an accounting, a list of collateral or a statement of account in a record *authenticated* by the debtor and Section 9616 (a)(2)(A) of Revised Article 9 provides that a debtor or consumer obligor may request certain explanations in an *authenticated* record.

Section 9208 of Revised Article 9 provides that a debtor may send an *authenticated* demand that a secured party send an *authenticated* statement releasing a bank from further obligations to comply with instructions originated by the secured party when there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value to the debtor.

Section 9619 of Revised Article 9 provides that a secured party may provide a “transfer statement” to a transferee after a default by the debtor entitling the transferee to all rights of the debtor in collateral specified in the statement and that the “transfer statement” is a record *authenticated* by the secured party that contains certain requirements.

Section 9624 of Revised Article 9 provides that a debtor or secondary obligor may waive certain rights only by an agreement to that effect entered into and *authenticated* after default.

B. COLLATERAL DESCRIPTIONS FOR SECURITY AGREEMENTS.

1. New Collateral Definitions

Revised Article 9 has created some new collateral categories and has also modified the existing categories of collateral. It is important to use the correct new collateral categories contained in Revised Article 9 for the descriptions of collateral in both the security agreement and the financing statement. Old forms for security agreements in use prior to the effective date of Revised Article 9 should be carefully reviewed and updated to make sure they use the correct references to the collateral categories. The following is a listing of the collateral categories contained in Revised Article 9:

Accounts - Section 9102(a)(2) of Revised Article 9 defines “accounts” as:

a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire

of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims [defined in Section 9102(a)(13)], (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights [defined in Section 9102(a)(51)] or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

Important Effect of Revised Article 9: The term “accounts” now specifically includes health care insurance receivables which is a subcategory of accounts.

As-Extracted Collateral - Section 9102(a)(6) of Revised Article 9 means either of the following:

- (a) Oil, gas, or other minerals that are subject to a security interest that does both of the following:
 - (i) Is created by a debtor having an interest in the minerals before extraction.
 - (ii) Attaches to the minerals as extracted.
- (b) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

Chattel Paper - Section 9102(a)(11) of Revised Article 9 defines “chattel paper” as:

a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and a license of software used in the goods, a lease of specific goods, or a lease of specific goods and a license of software used in the goods.

The term “chattel paper” does not include, according to Section 9102(a)(11) of Revised Article 9: (i) charters or other contracts involving the use or hire of a vessel, or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. Note that if a transaction is evidenced by records that include an instrument or a series of instruments, the group of records taken together constitutes the chattel paper. The term “chattel paper” encompasses the following collateral subcategories: (i) tangible chattel paper [Section 9102(a)(78) of Revised Article 9] evidenced by a record or records consisting of information that is inscribed on a tangible medium, and (ii) electronic chattel paper [Section 9102(a)(31) of Revised Article 9] evidenced by a record or record consisting of information stored in an electronic medium.

Important Effect of Revised Article 9: Prior to Revised Article 9, there was no category for electronic chattel paper.

Commercial Tort Claim - Section 9102(a)(13) of Revised Article 9 defines a “commercial tort claim” as:

A claim arising in tort with respect to which either of the following conditions is satisfied:

- (a) The claimant is an organization.
- (b) The claimant is an individual and both of the following conditions are satisfied regarding the claim:
 - (i) It arose in the course of the claimant’s business or profession.
 - (ii) It does not include damages arising out of personal injury to or the death of an individual.

Note that a secured party cannot obtain a security interest in “all commercial tort claims” of a debtor. To obtain a security interest in a commercial tort claim, it must be described with specificity (i.e. all of the Debtor’s claims arising out of the alleged breach of that certain contract, dated January 1, 2002, between Debtor and XYZ Corporation).¹³ If a commercial tort claim is settled by the parties in a settlement agreement, the debtor’s obligations to pay under the settlement agreement that are not reduced to a promissory note or other instrument will no longer be viewed as a commercial tort claim, but would then become a payment intangible and the secured party should follow the perfection procedures for a payment

¹³ California Commercial Code, Section 9108(e)(1).

intangible which is a subcategory of general intangibles.¹⁴ Similarly, if the debtor is required to provide a promissory note or other instrument as a result of a settlement agreement involving a commercial tort claim, the claim is no longer a commercial tort claim and the secured party should follow the perfection procedures for a promissory note or instrument, as applicable.

Important Effect of Revised Article 9: “Commercial tort claims” are a new collateral category added by Revised Article 9. Commercial tort claims were not covered by Prior Article 9.

Consumer Goods - Section 9102(a)(23) of Revised Article 9 defines “consumer goods” as “goods that are used or bought for use primarily for personal, family or household purposes.” Consumer goods are a subcategory of “Goods.” This definition has not changed under Revised Article 9.

Deposit Accounts - Section 9102(a)(29) of Revised Article 9 defines a “deposit account” as “a demand, time, savings, passbook, or similar account maintained with a bank. It does not include investment property or accounts evidenced by an instrument.”

Important Effect of Revised Article 9: The Uniform Commercial Code adopted in many states other than California did not cover deposit accounts at all. In California, deposit accounts were covered by prior Article 9.¹⁵ Note, however, that the manner of perfection of a security interest in a deposit account has been changed under California law from the secured party sending a notification to the bank under prior Article 9 to the secured party obtaining “control” of the deposit account in Revised Article 9¹⁶ as described in more detail in Section V(C) of these materials.

Documents - Section 9102(a)(30) of Revised Article 9 defines a “document” as “a document of title or a receipt of the type described in subdivision (2) of Section 7201 [which covers warehouse receipts issued by a warehouseman and other similar receipts]. This definition is not significantly changed from prior Article 9.¹⁷

Equipment - - Section 9102(a)(33) of Revised Article 9 defines “equipment” as goods other than inventory, farm products or consumer goods. This definition is not significantly changed from Prior Article 9.¹⁸ Equipment is a subcategory of “Goods.”

Farm Products - Section 9102(a)(34) of Revised Article 9 defines “farm products” as goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are any of the following:

- (a) Crops grown, growing, or to be grown, including both of the following:
 - (i) Crops produced on trees, vines, and bushes.
 - (ii) Aquatic goods produced in aquacultural operations.
- (b) Livestock, born or unborn, including aquatic goods produced in aquacultural operations.
- (c) Supplies used or produced in a farming operation.
- (d) Products of crops or livestock in their unmanufactured states.

Important Effect of Revised Article 9: The definition of “farm products” has been modified only slightly by Revised Article 9.¹⁹

General Intangibles - Section 9102(a)(42) of Revised Article 9 defines a “general intangible” as:

Any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles [defined in Section 9102(a)(61) of Revised Article 9 as general intangibles under which the account debtor’s principal obligation is a monetary obligation] and software [defined in Section 9102(a)(75) of Revised Article 9 as a computer program and any supporting information provided in

¹⁴ See Official Comment 15 to California Commercial Code Section 9109.

¹⁵ Prior California Commercial Code, Section 9105(1)(e).

¹⁶ California Commercial Code, Section 9314(a).

¹⁷ Prior California Commercial Code, Section 9105(f).

¹⁸ Prior California Commercial Code, Section 9109(2).

¹⁹ Prior California Commercial Code, Section 9109(3).

connection with a transaction relating to the program, but not a computer program that is included in the definition of “goods”].

Important Effect of Revised Article 9: The definition of “general intangible” is somewhat narrower under Revised Article 9 than under prior Article 9 because certain new categories of collateral used to be lumped into the “general intangible” category and now are separate categories (i.e. commercial tort claims and deposit accounts).

Goods - Section 9102(a)(44) of Revised Article 9 defines “goods” as:

All things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded.

The term “goods” encompasses the following collateral subcategories: (i) Consumer Goods - Section 9102(a)(23) of Revised Article 9, (ii) Inventory - Section 9102(a)(48) of Revised Article 9, (iii) Farm Products - Section 9102(a)(34) of Revised Article 9, and (iv) Equipment - Section 9102(a)(33) of Revised Article 9.

Important Effect of Revised Article 9: The term “goods” now includes computer programs, such as software, embedded into the goods and any supporting information provided in connection with a transaction related to the program.

Health Care Insurance Receivable - Section 9102(a)(46) of Revised Article 9 defines “health care insurance receivable” as “an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided.”

Important Effect of Revised Article 9: This is a new collateral category under Revised Article 9.

Instruments - Section 9102(a)(47) of Revised Article 9 defines an “instrument” as:

A negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

Important Effect of Revised Article 9: Revised Article 9 makes it clear that the term “instrument” does not include credit card slips.

Inventory - Section 9102(a)(48) defines “inventory” as goods, other than farm products which are any of the following:

- (a) Leased by a person as lessor.
- (b) Held by a person for sale or lease or to be furnished under a contract of service.
- (c) Furnished by a person under a contract of service.
- (d) Consist of raw materials, work in process, or materials used or consumed in a business.

Investment Property - Section 9102(a)(49) of Revised Article 9 defines “investment property” as “a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.” This definition is basically the same under Revised Article 9 as prior Article 9.²⁰

Letter-of-Credit Rights - Section 9102(a)(51) of Revised Article 9 defines a “letter of credit right” as:

²⁰ Prior California Commercial Code, Section 9115(1)(f).

A right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

Important Effect of Revised Article 9: This is a new collateral category added by Revised Article 9. Note that it does not include the debtor's drawing rights as a beneficiary under the letter of credit.

Money - Section 1201(24) of Revised Article 9 defines "money" as "a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations." This definition is basically the same under Revised Article 9 as prior Article 9.²¹

Payment Intangible - Section 9102(a)(61) defines "payment intangible" as "a general intangible under which the account debtor's principal obligation is a monetary obligation." Note that payment intangibles are a subcategory of general intangibles.

Important Effect of Revised Article 9: This is a new collateral category added by Revised Article 9.

Promissory Note - Section 9102(a)(65) defines a "promissory note" as:

An instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money of funds.

A promissory note is a subcategory of instruments and is not a check which would be an "order to pay" or an instrument such as a certificate of deposit acknowledging receipt of funds by a bank.

Software - Section 9102(a)(75) of Revised Article 9 defines "software" as:

A computer program and any supporting information in connection with a transaction relating to that program. The term does not include a computer program that is included in the definition of goods [i.e. software embedded in the goods if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods].

It is important to remember that software embedded into goods and generally viewed as part of the goods are treated as goods.²² Note that software is a subcategory of general intangibles.

Supporting Obligation - Section 9102(a)(77) of Revised Article 9 defines a "supporting obligation" as "a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, document, general intangible, instrument, or investment property."

Important Effect of Revised Article 9: This is a new collateral category added by Revised Article 9 and covers the most common types of credit enhancements - suretyship obligations (including guarantees) and letter-of-credit rights that support one of the types of collateral specified in the definition.

2. Supergeneric Collateral Descriptions ARE NOT PERMITTED in a Security Agreement.

It is important to note that Section 9108(c) of Revised Article 9 provides that a description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does NOT reasonably identify the collateral in a security agreement. This is different than the rule under Section 9504 of Revised Article 9 that a financing statement sufficiently indicates the collateral if it "covers all assets or all personal property." While these rules may appear to be contradictory, the purpose of a financing statement is to provide notice to others of the security interest in the collateral and the purpose of the security agreement is to provide identification of the collateral with more specificity so that the secured party can repossess the collateral after a default by the debtor if necessary. According to Comment No. 2 of the Assembly Committee Comments and the Official Uniform Commercial Code Comment:

²¹ Prior California Commercial Code, Section 1201(25).

²² California Commercial Code, Section 9102(a)(44).

The purpose of requiring a description of collateral in a security agreement under Section 9203 is evidentiary. The test of sufficiency of a description under this section, as under former Section 9110, is that the description do the job assigned to it: make possible the identification of the collateral described.

Therefore, it is acceptable to use the “all assets” or “all personal property” collateral description in a financing statement, but it is not permissible to use such a generic description in a security agreement.

C. AFTER-ACQUIRED PROPERTY.

Section 9204(a) of Revised Article 9 provides, with some exceptions, that a security agreement may create or provide for a security interest in after acquired collateral. According to Comment No. 2 of the Uniform Commercial Code Comments to Section 9204 makes it clear that “a security interest arising by virtue of an after-acquired property clause is no less valid than a security interest in collateral in which the debtor has rights at the time value is given.” No further action, such as an amendment to the original security agreement will be required by the secured party to obtain a security interest in after acquired collateral if the original security agreement contains an after acquired property clause. However, 9204(b) of Revised Article 9 provides that a security interest does not attach to either (i) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value, or (ii) commercial tort claims. Therefore, a security interest in commercial tort claims will attach only to a tort claim existing at the time the security agreement is authenticated and not to future commercial tort claims that may arise after the security agreement is authenticated.

D. PROCEEDS AND ACCESSIONS.

1. Proceeds.

Section 9102(a)(64) of Revised Article 9 defines “proceeds” generally as any of the following:

- (a) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral.
- (b) Whatever is collected on, or distributed on account of collateral.
- (c) Rights arising out of collateral.
- (d) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral.
- (e) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringements of rights in, or damage to, the collateral.

Important Effect of Revised Article 9: The definition of proceeds has been expanded in Revised Article 9 to include rights arising out of the license of property and distributions on stock.

A security interest automatically attaches to the proceeds of collateral provided by Section 9315 of Revised Article 9 and also to the supporting obligations for the collateral according to Section 9203(f) of Revised Article 9. Section 9315(a)(2) of Revised Article 9 provides that a security interest attaches to any identifiable proceeds of collateral and Section 9315(c) of Revised Article 9 provides that a security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected. Therefore, a secured party does not need to obtain a supplemental security agreement or amendment to the original security agreement in order for its security interest to attach in identifiable proceeds of the original collateral.

Section 9315(d) of Revised Article 9 provides that a perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless any of the following conditions is satisfied:

- (a) All of the following are satisfied:
 - (i) A filed financing statement covers the original collateral.
 - (ii) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed.
 - (iii) The proceeds are not acquired with cash proceeds, or
- (b) The proceeds are identifiable cash proceeds.

- (c) The security interest in the proceeds is perfected other than under subdivision (c) [the automatic perfection in Section 9315(c)] when the security interest attaches to the proceeds or within 20 days thereafter.

Important Effect of Revised Article 9: The period of automatic perfection has been extended by Revised Article 9 from 10 days to 20 days after the security interest attaches to the proceeds.

2. Accessions.

Section 9102(a)(1) of Revised Article 9 defines an “accession” as “goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.” If one item of collateral is combined with another item of collateral, each would be an “accession” to the other. According to Section 9335(a) of Revised Article 9, a security interest may be created in an accession and continue in collateral that becomes an accession. If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral according to Section 9335(b) of Revised Article 9 notwithstanding its attachment to other goods. A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate of title statute under Section 9311 of Revised Article 9 (i.e. an engine attached to a motor vehicles). After a default, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole according to Section 9335(e) of Revised Article 9. However, a secured party that removes an accession from other goods under Section 9335(e) of Revised Article 9 must promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of any physical injury to the whole or the other goods. Notwithstanding the foregoing requirement, the secured party does not have to reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse. The priority of a security interest in an accession is determined with reference to other sections of Revised Article 9.

Important Effect of Revised Article 9: Prior to the effective date of Revised Article 9, special rules were applicable for determining the priority between a secured party holding a security interest in an accession and a secured party holding a security interest in the goods as a whole after being combined with other goods. Section 9335 of Revised Article 9 does not specifically address the priority dispute other than in subsection (c) which refers to the other provisions of Revised Article 9 to determine the priority of a security interest in an accession. The only exception to that general rule is that Section 9335(d) of Revised Article 9 provides that a security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate of title statute under subdivision (b) of Section 9311.

E. SUGGESTED CHANGES TO OLD SECURITY AGREEMENT FORMS.

1. New Collateral Descriptions.

All security agreements entered into after the effective date of Revised Article 9 should describe the collateral covered thereby with the new collateral categories set forth in Revised Article 9. As noted in more detail above, several new collateral categories have been created and others have been broadened or narrowed. It is important to accurately describe the collateral. Note, in particular, that the “all assets” or “all personal property” blanket description is not effective in a security agreement²³ even though it is effective for purposes of a collateral description on a financing statement if it accurately describes the agreement between the debtor and the secured party.²⁴

2. Authorization for the Secured Party to File and/or Pre-File Financing Statements.

Prior to Revised Article 9, most security agreement forms provided a section where the debtor agreed to sign any financing statements reasonably requested by the secured party to perfect the secured party’s security interest under the Uniform Commercial Code. Section 9509(a) of Revised Article 9 provides that for non-agricultural liens, a person may file an initial financing statement, an amendment that adds

²³ California Commercial Code, Section 9108(c).

²⁴ California Commercial Code, Section 9504 (2).

collateral covered by a financing statement, or an amendment that adds a debtor to a financing statement only if the debtor authorizes the filing in an authenticated record. However, Section 9509(b) of Revised Article 9 provides that by authenticating or becoming bound as a debtor by a security agreement, a debtor or new debtor automatically authorizes the filing of an initial financing statement and an amendment covering both the collateral described in the security agreement and property that becomes collateral under that security agreement. Based on Section 9509(b) of Revised Article 9, the standard language from prior security agreements requiring a debtor to sign financing statements is no longer necessary and should be deleted or modified as noted below.

Notwithstanding the foregoing, an issue still arises because many lenders choose to *pre-file* financing statements and then perform a post-filing/pre-funding search to confirm that the lender's security interest in the collateral is in a first priority position before funding a loan. Generally, the pre-filing of a financing statement is done prior to the time the debtor has authenticated the security agreement and implicitly consented to the filing of a financing statement pursuant to Section 9509(b) of Revised Article 9. While some might argue that it is not necessary to obtain a separate authenticated authorization from the debtor for the pre-filing of a financing statement because a security agreement will soon be entered into and the secured party will then be able to rely on the automatic authorization of Section 9509, it is recommended that a separate authenticated authorization be obtained from the debtor allowing the secured party to pre-file a financing statement because (i) it is possible that the lender may pre-file a financing statement and the transaction may never actual close and in that situation, there is no specific authorization for the pre-filing, and (ii) although Section 9509 of Revised Article 9 does provide that a secured lender is automatically authorized to file a financing statement when a debtor authenticates a security agreement, it does not specifically provide that the secured lender may pre-file a financing statement. Therefore, it is recommended that a secured party obtain a separate authenticated authorization before or at the time the financing statement is pre-filed. In addition or in the alternative, the security agreement could be modified to specifically ratify and approve any pre-filed financing statements as well as any other financing statements and amendments that the secured party believes are necessary to obtain and maintain perfection of the secured party's security interest. Simple language to accomplish this task is as follows:

Financing Statements. Debtor hereby authorizes Secured Party to file one or more financing statements and amendments thereto describing the Collateral and containing any other information required by the applicable Uniform Commercial Code. Debtor specifically agrees that this authorization shall be applicable to any financing statements and/or amendments pre-filed by Secured Party prior to the authentication of this Agreement by Debtor.

3. Cooperation in Obtaining Possession and Control of Collateral.

As discussed in more detail in **Section V(B)** and **Section V(C)** of these materials, a secured party must sometimes obtain possession of collateral or obtain control of collateral in order to perfect a security interest in certain categories of collateral. Therefore, a security agreement should require a debtor to provide such possession to the secured party or cooperate with the secured party obtaining control of the collateral. Sample language is as follows:

Possession and Control of Certain Types of Collateral. Secured Party shall have the right to possess any chattel paper or instrument that constitutes a part of the Collateral, and any other Collateral in which Secured Party's security interest may be perfected by obtaining possession thereof. In addition, Debtor will not create or obtain any chattel paper without, at Secured Party's option, either placing a legend on the chattel paper acceptable to Secured Party indicating Secured Party's security interest therein or transferring possession of all such chattel paper to Secured Party. Where Collateral is in the possession of a third party, Debtor will cooperate with Secured Party in notifying the third party of Secured Party's security interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Secured Party. Debtor will cooperate with Secured Party in obtaining control of any Collateral consisting of deposit accounts, electronic chattel paper, investment property, letter-of-credit rights and any other Collateral in which Secured Party's security interest may be perfected by obtaining control thereof.

4. Representations Made by the Debtor so the Secured Party May Perfect its Security Interest by Filing Financing Statements in the Correct Location.

Location of Goods. Most forms of security agreement prior to Revised Article 9 required the debtor to make representations to the secured party regarding the location of any collateral consisting of goods so that the secured party could file its financing statements in all applicable states where the goods were

located as required under Prior Revised Article 9. Further, such pre-Revised Article 9 security agreements required that the debtor agree not to change the state in which collateral consisting of goods was located without prior written notice to the secured party so that the secured party could file new financing statements in the state where the goods were to be relocated. This is no longer required. Revised Article 9 requires financing statements to be filed in the jurisdiction where the debtor is located according to Section 9301(1) of Revised Article 9 regardless of where the goods are located or relocated. There is no longer a requirement to file in each state where the goods are located. Therefore, a secured party does not need a representation concerning the state in which collateral consisting of goods is located or any prohibition on the movement of goods without prior written notice to the secured party. Of course, a secured party may want a prohibition on the relocation of all collateral or other collateral reporting requirements as a matter of policy to make it easier for the secured party to keep track of the location of the collateral.

Suggested Representations and Covenants Regarding Debtor's Name and Other Applicable Information. Section 9502(a)(1) of Revised Article 9 continues to require that a financing statement include the debtor's name. Section 9503(c) of Revised Article 9 provides that a financing statement that contains only the debtor's trade name does not sufficiently provide the name of the debtor. Section 9506(c) of Revised Article 9 provides that 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 to disclose a financing statement that fails sufficiently to provide the name of the debtor as required by Section 9503(a) of Revised Article 9, then the name provided does not make the financing statement seriously misleading. Therefore, it is critical for the secured party to make sure that the exact legal name of the debtor is included on the financing statement. Thus, it is recommended that a secured party verify the debtor's name with a search of the appropriate public records if the debtor was formed by a filing in any jurisdiction. It is also recommended that the security agreement provide a representation from the debtor to the secured party regarding the debtor's exact legal name.

In addition to the name of the debtor, it is important for secured parties to note that the new national form of financing statement also requires the inclusion of the debtor's type of entity, the state of the debtor's organization and the organizational identification number of the debtor, if one has been provided by its state of organization. While this information is not specifically included in the minimum requirements for a financing statement in Section 9502 of Revised Article 9, a financing statement omitting this information could be rejected by the filing office. It is recommended that the secured party independently verify that all such information is correct on the financing statement by a search of the appropriate public records. In addition, it is recommended that security agreements entered into after the effective date of Revised Article 9 require the debtor (i) to represent and warrant that all such required information is correct and (ii) to covenant to provide advance written notice to the secured party if there is any change in such information through a change in the debtor's name, a change in the debtor's type of entity, a change in the debtor's state of organization or a change of the debtor's organizational identification number. The following representation, warranty and covenant is an example of some recommended language:

Debtor's exact legal name, type of entity, state of organization and organizational identification number, if applicable, is as set forth in the preamble of this Agreement. Debtor shall not change its name, its type of entity, its state of organization, or its organizational identification number without providing Secured Party at least thirty (30) days prior written notice of each and every such proposed change.

5. Event of Default if Financing Statement Improperly Terminated by the Debtor.

Section 9509(d)(2) of Revised Article 9 provides that a debtor may file an amendment or termination statement for a financing statement if the secured party of record has failed to file or send a termination statement as required by Section 9513. Section 9513 of Revised Article 9 requires the secured party of record to file or send to the debtor a termination statement upon certain conditions (i.e. there is no longer an obligation to be secured, the debtor did not authorize the filing, etc.) Further, since the signature of the secured party is no longer required on UCC-3 financing statement amendments, a debtor could file an amendment or termination of a financing statement without the authorization of the secured party. Section 9518 of Revised Article 9 allows a debtor to file a correction statement if the debtor believes that the record is inaccurate or was wrongly filed. The new national standard forms of UCC-3 financing statement amendment provides a box for the name of the secured party authorizing the amendment or termination. If the amendment or termination is authorized by the debtor, then a box needs to be checked. Although Revised Article 9 provides that lien searches performed after the effective date of Revised Article 9 should still reflect the original filing and all terminations until one year beyond the lapse date and a correction statement does not affect the effectiveness of the related financing statements, many lenders worry about the ability of a debtor to improperly file amendments, termination statements and correction statements.

To address this issue, some lenders have added language to the security agreement making it an event of default under the security agreement if a termination statement or correction statement is improperly filed. Sample language is as follows:

It shall be an additional Event of Default hereunder if Debtor, improperly files an amendment, correction statement or termination statement relating to a filed financing statement evidencing Secured Party's security interest in the Collateral.

III. PERFECTION OF SECURITY INTERESTS

A. PERFECTION BY FILING

1. Collateral Where Perfection By Filing Is Required/Allowed.

Section 9310 of Revised Article 9 has expanded the categories of collateral where a secured party can perfect its security interest by filing a financing statement. The general rule found in Section 9310(a) of Revised Article 9 is that a financing statement must be filed to perfect all security interests and agricultural liens unless perfection is obtained by another permissible method such as the secured party obtaining possession or control or if an exclusion to the general rule applies. A security interest in the following categories of collateral may be perfected by filing a financing statement (although with respect to some of the following categories of collateral and subcategories of collateral), another method of perfection may also be applicable):

- Accounts - Section 9310
 - Health-care insurance receivables - Section 9310
- Agricultural Lien -Section 9310
- Chattel Paper -Section 9310; Section 9312(a)
 - Tangible Chattel Paper²⁵
 - Electronic Chattel Paper²⁶
- Commercial Tort Claims - Section 9310
- Documents - Section 9312(a)
 - Negotiable Documents - Section 9310; Section 9312(a)²⁷
 - Promissory Note (as security) - Section 9312(a)
- General Intangibles - Section 9310
 - Payment Intangibles - Section 9310
 - Software - Section 9310
- Goods - Section 9310
 - Consumer Goods - Section 9310
 - Equipment - Section 9310
 - Farm Products - Section 9310
 - Inventory - Section 9310
- Instruments - Section 9312(a)²⁸
- Investment Property (other than certificated securities)- 9312(a)²⁹
 - Oil, Gas or other Minerals Before Extraction - Section 9310

2. Law Governing Perfection.

Revised Article 9 substantially simplifies the choice of law rules according to Comment No. 4 of the Official Comments to Section 9301 of Revised Article 9.

²⁵ Perfection can also occur by possession of tangible chattel paper pursuant to Section 9313(a).

²⁶ Perfection can also occur by control of electronic chattel paper pursuant to Section 9314(a).

²⁷ Perfection can also occur by possession of negotiable documents pursuant to Section 9313(a).

²⁸ Perfection can also occur by possession of instruments pursuant to Section 9313(a).

²⁹ Perfection can also occur by control of investment property pursuant to Section 9314(a).

General Rules. Pursuant to Section 9301 of Revised Article 9, the general rules determining the law governing the perfection, the effect of perfection or nonperfection, and the priority of a security interest in both tangible and intangible collateral area as follows:

- (a) While a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.
- (b) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a **possessory security interest in that collateral**.
- (c) While negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs all of the following:
 - (i) Perfection of a security interest in the goods by filing a **fixture filing**. [Note that fixtures are goods under Section 9102.]
 - (ii) Perfection of a security interest **in timber to be cut**. [Note that this does not apply to timber that has already been cut. Once the timber has been cut, the general rule will become applicable. To ensure continued perfection, a secured party should file in both the jurisdiction in which the timer to be cut is located and in the state where the debtor is located.³⁰
 - (iii) The effect of perfection or nonperfection and the priority of a **nonpossessory security interest in the collateral**.
- (d) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

There are several exceptions to the general rules, however for the following categories of collateral.

Farm Products. While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.³¹

Goods Covered by a Certificate of Title. The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.³²

Deposit Accounts. The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.³³ If the debtor and the bank have expressly agreed that a particular jurisdiction is the bank's jurisdiction, that jurisdiction will be the bank's jurisdiction.³⁴ If not, and an agreement between the bank and the debtor governing the deposit account provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.³⁵ If neither of the two scenarios is applicable and there is an agreement between the bank and its customer governing the deposit account that expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.³⁶ If none of the preceding scenarios is applicable, then the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.³⁷ If none of the foregoing situations is applicable, then the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.³⁸

³⁰ *Comment No. 5(c), Uniform Commercial Code Comments to Section 9301.*

³¹ *California Commercial Code, Section 9302.*

³² *California Commercial Code, Section 9303(c).*

³³ *California Commercial Code, Section 9304(a).*

³⁴ *California Commercial Code, Section 9304(b)(1).*

³⁵ *California Commercial Code, Section 9304(b)(2).*

³⁶ *California Commercial Code, Section 9304(b)(3).*

³⁷ *California Commercial Code, Section 9304(b)(4).*

³⁸ *California Commercial Code, Section 9304(b)(5).*

Investment Property. Generally, the local law of the jurisdiction in which the debtor is located governs the perfection of a security interest in investment property by filing, automatic perfection of a security interest in investment property created by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.³⁹ Except as set forth above, while a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.⁴⁰ For uncertificated securities, the local law of the issuer's jurisdiction specified in Section 8110(d) of Revised Article 9 governs perfection, the effect of perfection or nonperfection, and the priority of a security interest.⁴¹ The local law of the securities intermediary's jurisdiction as specified in Section 8110(3) of Revised Article 9 governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.⁴² The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.⁴³

Letter of Credit Rights. Other than a security interest that is perfected only as a supporting obligation for the collateral under Section 9308(d), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter of credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.⁴⁴

Note that if the debtor changes its location to another jurisdiction, the jurisdiction whose law governs perfection will change as well.⁴⁵ Also, if the collateral is moved to a new location in some situations, the law governing perfection of a possessory security interest in collateral under paragraph (2) will change.⁴⁶ Therefore, the secured party may have to perfect its security interest in a new jurisdiction in those circumstances.

3. "Registered Entities," Foreign Persons And Natural Persons.

Section 9307 of Revised Article 9 provides the rules for determining the location of the debtor for purposes of determining which jurisdiction's law will govern the perfection of a security interest in collateral owned by such debtor. The rules, in a nutshell, are as follows:

Natural Persons. The general rule is that a debtor who is an individual is located at the individual's principal residence according to Section 9307(b)(1). Note that a person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by Section 9307(b) according to Section 9307(d).

Organizations. The general rule is that a debtor that is an organization (other than a registered entity) and has only one place of business is located at its place of business according to Section 9307(b)(2). If the debtor that is an organization (other than a registered entity) has more than one place of business, it is located at its chief executive office according to Section 9307(b)(3).

Foreign Persons. The general rules with respect to individuals and organizations described in Section 9307(b) of Revised Article 9 applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in 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 Section 9307(b) of Revised Article 9 does not apply, then the debtor is deemed to be located in the District of Columbia. According to Comment No. 3 of the Uniform Commercial Code Comments to Section 9307, a non-U.S. debtor normally would be located in a foreign jurisdiction and, as a consequence, foreign law would govern perfection. However, if foreign law afford no public notice of security interests, then Section 9307 of Revised Article 9 provides that the debtor is deemed to be located in the District of Columbia. Note that a person that ceases to exist, have a residence, or have a place of

³⁹ California Commercial Code, Section 9305(c).

⁴⁰ California Commercial Code, Section 9305(a)(1).

⁴¹ California Commercial Code, Section 9305(a)(2).

⁴² California Commercial Code, Section 9305(a)(3).

⁴³ California Commercial Code, Section 9305(a)(4).

⁴⁴ California Commercial Code, Section 9306(a).

⁴⁵ California Commercial Code, Section 9301, Uniform Commercial Code Comment No. 6.

⁴⁶ California Commercial Code, Section 9301, Uniform Commercial Code Comment No. 6.

business continues to be located in the jurisdiction specified by Section 9307(c) of Revised Article 9 according to Section 9307(d) of Revised Article 9.

Registered Entities. A registered organization that is organized under the law of a state is located in that state pursuant to Section 9307(e) of Revised Article 9. Note that a registered organization continues to be located in the jurisdiction specified in Section 9307(e) of Revised Article 9 notwithstanding either (i) the suspension, revocation, forfeiture, or lapse of the registered organization’s status as such in its jurisdiction of organization, or (ii) the dissolution, winding up, or cancellation of the existence of the registered organization.

4. Fixture Filings and Agricultural Liens.

If the collateral is goods that are or are to become fixtures, the office designated for the filing or recording of a record of a mortgage on the related real property is the office in which to file a financing statement to perfect a security interest in such fixtures according to Section 9501(a)(1)(B) of Revised Article 9. This rule is the same under Revised Article 9 as under prior Article 9.

Agricultural Lien. An agricultural lien is an interest, **other than a security interest**, in farm products that:

- (a) It secures payment or performance of an obligation for either of the following:
 - (i) Goods or services furnished in connection with a debtor’s farming operation.
 - (ii) Rent on real property leased by a debtor in connection with its farming operation.
- (b) It is created by statute in favor of a person that does either of the following:
 - (i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor’s farming operation.
 - (ii) Leased real property to a debtor in connection with the debtor’s farming operation.⁴⁷

For example, an agricultural laborer’s lien arising under California Civil Code, Section 3061.5, would be an “agricultural lien” for purposes of Revised Article 9.

Farm products are goods other than standing timber, with respect to which the debtor is engaged in a farming operation and which are any of the following⁴⁸:

- (a) Crops grown, growing, or to be grown, including both of the following:
 - (i) Crops produced on trees, vines, and bushes.
 - (ii) Aquatic goods produced in aquacultural operations.
- (b) Livestock, born or unborn, including aquatic goods produced in aquacultural operations.
- (c) Supplies used or produced in a farming operation.
- (d) Products of crops or livestock in their unmanufactured states.

Agricultural liens are part of the expanded scope of Revised Article 9. As described earlier in these materials, while farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection and the priority of an agricultural lien on farm products according to Section 9302 of Revised Article 9. An agricultural lien is perfected by filing a financing statement pursuant to Section 9310(a) of Revised Article 9. Section 9308(b) of Revised Article 9 provides that an agricultural lien is perfected if it becomes effective and all of the applicable requirements for perfection in Section 9310 of Revised Article 9 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective. Note that there is no reference to “attachment” for agricultural liens, but instead a reference to when they become effective under applicable law.

5. Supergeneric Collateral Descriptions ARE Permitted for Financing Statements.

It is important to note that although Section 9108(c) of Revised Article 9 provides that a description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import

⁴⁷ California Commercial Code, Section 9102(a)(5).

⁴⁸ California Commercial Code, Section 9102(a)(34).

does NOT reasonably identify the collateral **in a security agreement**, Section 9504 specifically provides that a **financing statement** sufficiently indicates the collateral if it “covers all assets or all personal property.” Therefore, it is acceptable to use the “all assets” or “all personal property” collateral description in a financing statement even though it is not permissible to use such a generic description in a security agreement.

6. Signatures No Longer Required.

A handwritten signature is no longer required on any document referred to in Revised Article 9. As described earlier in these materials, Section 9102(a)(7) provides that “authenticate” means to do either of the following:

- (a) To sign.
- (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 the record.

According to Official Comment No. 9(b) of the Uniform Commercial Code Comments to Section 9102 of Revised Article 9, the term “authenticate” and “authenticated” generally replace the terms “sign” and “signed” and the term “record” includes information that is in intangible form (i.e. electronically stored) as well as tangible form (i.e. written on paper). In addition, the terms “communicate” defined in Section 9102(a)(18) of Revised Article 9 includes sending by a written or other tangible record as well as a transmission by any means agreed upon by the persons sending and receiving the record. Section 9102(a)(74) of Revised Article 9 defines “send” as depositing in the mail or delivering for transmission or transmitting by any other usual means of communication. See **Section IV(A)** of these materials for a description of the various contexts in which a party may “authenticate” a record instead of “sign” a record.

7. Electronic Filing

As noted above, the terms “send,” “communicate” and “record” in Section 9102 of Revised Article 9 are all intended to make Revised Article 9 “medium neutral.” According to Comment No. 9(a) of the Uniform Commercial Code Comments to Section 9102 of Revised Article 9,

“[g]iven the rapid development and commercial adoption of modern communication and storage technologies, requirements that documents or communications be “written,” “in writing,” or otherwise in tangible form do not necessarily reflect or aid commercial practices.”

Further, part of the definition of “communicate” in Section 9102(a)(18)(C) refers to transmissions of a record to or by a filing office to transmit a record by any means prescribed by filing office rule. This is clearly in contemplation of filing offices setting up procedures whereby they can accept electronic filings. The California Secretary of State is in the process of updating its computer systems to create a way to do on-line searching as well as on-line filing of financing statements. According to sources in the California Secretary of State’s office, it is anticipated that such system will not be up and ready to use until the fourth quarter of 2003.

8. Where To Search And File (See Also “Transition Rules”).

Generally, lenders will require that their security interest be in a first priority position with respect to other creditors. To determine whether any other creditors have filed financing statements against a particular debtor, most lenders will perform or cause to be performed a Uniform Commercial Code lien search of the filing offices where a financing statement is intended to be filed. For example, before the effective date of Revised Article 9, for a Delaware corporation with its chief executive office in California, a lender would search the records of the Secretary of State in the State of California because the proper place to file a financing statement against a corporation with a chief executive office in California would be the California Secretary of State’s office. The lender may also search the filing offices of states in which collateral consisting of goods are or are to be located because a financing statement covering collateral consisting of goods needed to be filed in each jurisdiction in which the goods were to be located. Similarly, after the effective date of Revised Article 9, for a Delaware corporation with its chief executive office in California, a lender would search the records of the Secretary of State in the State of Delaware because the proper place to file a financing statement against a Delaware corporation is the Delaware Secretary of State’s office because the Delaware corporation is “located” in Delaware for purposes of Revised Article 9. However, based on the transition rules applicable to Revised Article 9 and discussed in greater detail in **Section IX** of these materials, it is clear that pre-effective-date financing statements filed under prior Article 9 are still

effective for some period of time after the effective date of Revised Article 9. Therefore, until July 1, 2006, it is recommended that all Uniform Commercial Code lien searches be performed in all jurisdictions where a financing statement could or should have been filed under prior Article 9 as well as all jurisdictions where financing statements should be filed under Revised Article 9.

9. Amendments, Continuations, Terminations.

Amendments. As discussed in more detail in **Section V** of these materials regarding the changes to the jurisdiction for filing financing statements, it is possible that some pre-effective date financing statements are filed in the correct state under Revised Article 9 and it is also possible that some pre-effective-date financing statements are filed in the incorrect state under Revised Article 9. Pursuant to Section 9707(b) of Revised Article 9, after the effective date of Revised Article 9, amendments to pre-effective-date financing statements can only be done only in accordance with the law of the jurisdiction governing perfection under Revised Article 9. An amendment to a pre-effective-date financing statement can occur by following the following procedures pursuant to Section 9707(c) of Revised Article 9:

- (a) The pre-effective-date financing statement and an amendment are filed in the office specified in Section 9501 (i.e. in the jurisdiction required by Revised Article 9);
- (b) An amendment is filed in the office specified in Section 9501 concurrently with, or after the filing in that office of, an initial financing statement that satisfied subsection (c) of Section 9706 (i.e. an “*in lieu*” financing statement which is discussed in more detail in **Section V(A)(10)** and **Section IX(D)** of these materials); or
- (c) An initial financing statement (i.e. an “*in lieu*” financing statement which is discussed in more detail in **Section V(A)(10)** and **Section IX(D)** of these materials) that provides the information as amended and satisfied subsection (c) of Section 9706 is filed in the office specified in Section 9501.

Example No. 1: If a pre-effective-date financing statement is filed with the California Secretary of State’s office for a California corporation with its chief executive office in California, the proper place to file an amendment to such pre-effective-date financing statement is the California Secretary of State’s office pursuant to Section 9707(c)(1) of Revised Article 9. This is fairly straight forward because the place to file under prior Article 9 is the same place to file under Revised Article 9.

Example No. 2: If a pre-effective-date financing statement was filed with the California Secretary of State’s office for a Delaware corporation with its chief executive office in California, the proper method to amend such pre-effective-date financing statement is to either (1) file an initial “*in lieu*” financing statement with the Delaware Secretary of State’s office under Section 9706 of Revised Article 9 (as this procedure is described in further detail in **Section V(A)(10)** and **Section IX(D)** of these materials) and concurrently therewith or immediately after that filing, file an amendment to the initial “*in lieu*” financing statement in the Delaware Secretary of State’s office pursuant to Section 9707(c)(2) of Revised Article 9, or (2) file an initial “*in lieu*” financing statement with the Delaware Secretary of State’s office under Section 9706 of Revised Article 9 (as this procedure is described in further detail in **Section V(A)(10)** and **Section IX(D)** of these materials) that provides the information as amended pursuant to Section 9707(c)(3) of Revised Article 9.

Continuations. Section 9705(d) of Revised Article 9 provides that the filing of a traditional continuation statement after July 1, 2001 does not continue the effectiveness of the financing statement filed before the effective date of Revised Article 9. However, upon the timely filing of a continuation statement after the effective date of Revised Article 9, and in accordance with the requirements of the jurisdiction governing perfection as provided in Revised Article 9, the effectiveness of a financing statement filed in the same office in that jurisdiction before the effective date of Revised Article 9 continues for the period provided by the law of that jurisdiction (5 years in California). Therefore, traditional continuation statements can only be filed to amend pre-effective-date financing statements after the effective date of Revised Article 9 if:

- (a) they are filed in the state where the original financing statement was filed under prior law;
- (b) that state is the correct state for filing a *new* financing statement under Revised Article 9, and
- (c) the continuation statement updates the prior financing statement to comply with the requirements of Revised Article 9, if necessary.

For example, if a debtor is a California corporation with a California chief executive office, under Section 9302(1) of prior Article 9, a secured party would be required to perfect its security interest in inventory by

filing a financing statement and Section 9403 of prior Article 9 provides that the financing statement must be filed with the office of the California Secretary of State because the debtor's chief executive office is in California. Under Section 9310 of Revised Article 9, a financing statement is still required for the secured party to perfect its security interest in inventory, Section 9301(1) of Revised Article 9 requires the financing statement to be filed in the state where the debtor is located, and Section 9307(e) of Revised Article 9 provides that a California corporation is "located" in California. In this example, (a) the continuation statement would be filed in California, the state where the original financing statement was filed under prior Article 9, (b) California is still the correct state for filing a *new* financing statement under Revised Article 9, and (c) if applicable, the continuation statement should update the prior financing statement to comply with the requirements of Revised Article 9, if necessary.

If the requirements of Section 9705(c) of Revised Article 9 are not met because the proper jurisdiction for filing a financing statement are different under Revised Article 9 than under prior Article 9, then the only way to continue such pre-effective-date financing statement is to file an initial "*in lieu*" financing statement that complies with the requirements of Section 9706 of Revised Article 9 as discussed in more detail in **Section V(A)(10)** and **Section IX(D)** of these materials.

Terminations. Pursuant to Section 9707(b) of Revised Article 9, a pre-effective-date-financing statement may be terminated in accordance with the law of the jurisdiction governing perfection under Revised Article 9, but the effectiveness of a pre-effective-date financing statement may also be terminated in accordance with the law of the jurisdiction in which the financing statement was originally filed under prior Article 9. For example, if a pre-effective-date financing statement is filed in a jurisdiction other than the jurisdiction required under Revised Article 9 and needs to be terminated, it may be terminated by filing a termination statement in the jurisdiction in which it was filed. If, however, the pre-effective-date financing statement has been amended or continued by the filing of an initial "*in lieu*" financing statement in the different jurisdiction required under Revised Article 9, then it can be terminated by filing a termination statement in such different jurisdiction.

10. "In Lieu" Financing Statements.

If a traditional continuation statement is not allowed under Section 9705 of Revised Article 9, Section 9-706 of Revised Article 9 requires a continuation statement to be in the form of a new initial financing statement which complies with all of the requirements for an *initial* financing statement under Revised Article 9 and containing all of the information required by Section 9706 of Revised Article 9. The new initial financing statement is to be filed "*in lieu*" of the traditional continuation statement, in the office of the correct state under Revised Article 9 to continue the effectiveness of a pre-effective-date financing statement.

While this may seem a bit confusing, the drafters of Revised Article 9 have actually created a solution to tie pre-effective date financing statements filed in a state that was the correct state under prior law but is not the correct state under Revised Article 9 to the new initial financing statements to be filed in the correct state under Revised Article 9 with cross references from the new Revised Article 9 filings to the pre-effective-date financing statements. The key to this new filing procedure is found in Section 9-706 of Revised Article 9 which provides in subsection (a) that:

The filing of an initial financing statement in the office specified in Section 9501 continues the effectiveness of a financing statement filed before July 1, 2001, if all of the following conditions are satisfied:

- (a) the filing of an initial financing statement in that office would be effective to perfect a security interest under this division;
- (b) the pre-effective date financing statement was filed in an office in another state or another office in this state; and
- (c) the initial financing statement satisfies subsection (c).

Section 9706(c) of Revised Article 9 provides that:

To be effective for purposes of subsection (a), an initial financing statement must do all of the following:

- (a) satisfy the requirements of Chapter 5 (commencing with Section 9501) for an initial financing statement;
- (b) 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 **[Emphasis added.]**

(c) indicate that the pre-effective-date financing statement remains effective.

In the example described above, a debtor is a Delaware corporation with its chief executive office in San Diego, California. Lender is a secured creditor taking a security interest in the debtor's inventory. Under Section 9302(1) of prior Article 9, a financing statement would be required to perfect a security interest in inventory and Section 9401(1)(c) of prior Article 9 would require the financing statement to be filed in the office of the California Secretary of State, where the debtor has its chief executive office. Under Section 9310 of Revised Article 9, a financing statement is still required to perfect a security interest in inventory, but Section 9301(1) of Revised Article 9 requires the filing to be in the state where the Debtor is located and Section 9307(e) of Revised Article 9 provides a Delaware corporation is "located" in Delaware. Therefore, under Revised Article 9, the financing statement must be filed in Delaware to perfect a security interest in the inventory of a Delaware corporation.

Based on the requirements set forth in Section 9706 of Revised Article 9, to continue a pre-effective-date financing statement filed with the California Secretary of State's office against inventory of a Delaware corporation with a chief executive office in California, the secured party will need to file an initial "*in lieu*" financing statement with the office of the Secretary of State of Delaware because Delaware law will govern the perfection of the security interest since the Delaware corporation is "located" in Delaware under Section 9307(e) of Revised Article 9. The initial "*in lieu*" financing statement must satisfy all of the requirements of an initial financing statement contained in Section 9501 of Revised Article 9 including containing (i) the name of the debtor, the name of the secured party or its representative, and a description of the collateral to be covered, either by specific listing, category type, quantity, allocation or any other objectively determinable manner, or as consisting of all assets or all personal property if this is consistent with the security agreement. In addition, an "*in lieu*" financing statement must also specifically identify the pre-effective date financing statement by reference to (i) the office in which it was filed, (ii) the dates of filing of the original pre-effective date financing statement and the most recent continuation statement, and (iii) the file numbers of the original pre-effective date financing statement and the most recent continuation statement. Attached to these materials as **Exhibit A** to this **Section V(A)** of these materials is a sample form of attachment to a UCC-1 financing statement and instructions on the completion of the UCC-1 financing statement to create an "*in lieu*" financing statement that satisfies these basic requirements.

B. PERFECTION BY POSSESSION

1. Collateral Where Perfection By Possession Is Required/Allowed.

Certificated Securities - Section 9313(a)
Goods - Section 9313(a)⁴⁹
Instruments - Section 9313(a)⁵⁰
Money - Section 312(b)(3)
Negotiable Documents - Section 9313(a)⁵¹
Promissory Note (as security) - Section 9313(a)⁵²
Tangible Chattel Paper - Section 9313(a)⁵³

2. How to Obtain Possession.

According to Comment No. 3 of the Uniform Commercial Code Comment to Section 9313, the term "possession" is not defined so the concept is the same as has been developed through case law interpreting prior Article 9. Certainly, collateral locked up in the secured party's office, warehouse or otherwise inaccessible to the debtor would be in the possession of the secured party.

It is also possible for the secured party to possess collateral through a third party agent acting on behalf of the secured party. Section 9313(c) of Revised Article 9 provides that with respect to collateral other than

⁴⁹ Perfection can also occur by filing a financing statement for goods pursuant to Section 9310.

⁵⁰ Perfection can also occur by filing a financing statement for instruments pursuant to Section 9310 and Section 9312(a).

⁵¹ Perfection can also occur by filing a financing statement for negotiable documents pursuant to Section 9310 and Section 9312(a).

⁵² Perfection can also occur by filing a financing statement for a promissory note (as security) pursuant to Section 9310 and Section 9312(a).

⁵³ Perfection can also occur by filing a financing statement for tangible chattel paper pursuant to Section 9310 and Section 9312(a).

certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when either (i) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit, or (ii) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of the collateral for the secured party's benefit.

A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Section 8301 of Revised Article 9 and remains perfected by delivery until the debtor obtains possession of the security certificate.

EXHIBIT A TO SECTION V(A)⁵⁴

Sample Attachment to UCC-1 Financing Statement

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

ORGANIZATION'S NAME		
INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME

This FINANCING STATEMENT is filed in lieu of a continuation statement for the following previously filed financing statement(s) covering the collateral described therein and incorporated herein by this reference, each of which remains effective.

ORIGINAL FINANCING STATEMENT			MOST RECENT CONTINUATION STATEMENT	
FILING OFFICE	ORIGINAL DATE	ORIGINAL NUMBER	CONTINUATION DATE	CONTINUATION NUMBER

⁵⁴ In Box No. 4 of the UCC-1 financing statement, insert (i) the applicable description of the collateral or refer to an attached detailed description of the collateral, and (ii) the following language: "This financing statement is filed in lieu of continuation for the previously filed financing statement(s) described on Attachment No. ___ attached hereto covering the collateral described therein and incorporated herein by this reference, each of which financing statements remains effective."

IV. TRANSITION RULES

A. EFFECTIVE DATE OF REVISED ARTICLE 9

As of July 1, 2001, Revised Article 9 has been adopted by all 50 states and the District of Columbia. All jurisdictions (including California) have adopted Revised Article 9 effective as of July 1, 2001 except the following:

- Alabama - January 1, 2002
- Connecticut - October 1, 2001
- Florida - January 1, 2002
- Mississippi - January 1, 2002

B. CONTINUATION OF PERFECTION FOR SECURITY INTERESTS PERFECTED PRIOR TO THE EFFECTIVE DATE

Pursuant to Section 9702(a) of Revised Article 9, Revised Article 9 applies to a transaction or lien even if the transaction or lien was entered into or created before the effective date of Revised Article 9. Further, according to Section 9702(b)(1) of Revised Article 9, transactions and liens that were not governed by prior Article 9 that were validly entered into or created before the effective date of Revised Article 9, would be subject to Revised Article 9 if they had been entered into or created after the effective date of Revised Article 9 and the rights, duties, and interests flowing from remain effective after the effective date of Revised Article 9. Transactions and liens entered into or created prior to the effective date of Revised Article 9 may be terminated, completed, consummated, and enforced as required or permitted by Revised Article 9 or by the law that otherwise would apply if Revised Article 9 had not taken effect according to Section 9702(b)(2) of Revised Article 9.

According to Section 9703(a) of Revised Article 9, a security interest that has attached and has been perfected before the effective date of Revised Article 9 remains a perfected security interest under Revised Article 9 if, on the effective date of Revised Article 9, the applicable requirements for enforceability and perfection under Revised Article 9 are satisfied without further action. This pre-effective-date security interest will maintain its same priority with respect to other creditors.

It is important to note, however, that pursuant to Section 9703(b) of Revised Article 9, except as otherwise provided in Section 9705 of Revised Article 9 (discussed in more detail below which provides for a 5 year grace period for security interests that were perfected by filing prior to the effective date of Revised Article 9), if immediately before the effective date of Revised Article 9, a security interest is enforceable and perfected, but the applicable requirements for enforceability or perfection under Revised Article 9 are not satisfied on July 1, 2001, then (1) such security interest is perfected until July 1, 2002, (2) it remains enforceable thereafter only if the security interest becomes enforceable under Section 9203 before July 1, 2002, and (3) it remains perfected thereafter only if the applicable requirements for perfection under Revised Article 9 are satisfied before July 1, 2002.

Several examples are described in Official Comment No. 2 of the Uniform Commercial Code Comments to Section 9703 including the following:

Example 1: A pre-effective-date security agreement in a consumer transaction covers “all securities accounts.” The security interest is properly perfected. The collateral description was adequate under former Article 9 (see former Section 9-115(3)) but is insufficient under this Article (see Section 9-108(e)(2)). Unless the debtor authenticates a new security agreement describing the collateral other than by “type” (or Section 9-203(b)(3) otherwise is satisfied) within the one-year period following the effective date, the security interest becomes unenforceable at the end of that period.

C. GRACE PERIODS FOR COMPLIANCE IF REVISED ARTICLE 9 REQUIRES DIFFERENT PERFECTION METHOD

1. For Prior Perfection Other Than By Filing.

Pursuant to Section 9705(a) of Revised Article 9, if an action, **other than the filing of a financing statement** is taken before the effective date of Revised Article 9, and the action would have resulted in a secured creditor having a perfected security interest prior to the rights of a person that becomes a lien creditor, the action is effective to perfect a security interest that attaches under Revised Article 9 on or before July 1, 2002. An attached security interest will become unperfected on **July 1, 2002**, unless the security interest becomes a perfected security interest under Revised Article 9 before that date.

For example, a secured party has obtained a security interest in property held by a bailee prior to the effective date of Revised Article 9. Under prior law (Section 9-305 or prior Article 9), the secured party could perfect that security interest by notifying the bailee of the security interest without obtaining any acknowledgment by the bailee that it is holding the collateral for the benefit of the secured party. Section 9313 of Revised Article 9 requires the bailee to acknowledge the notification before the security interest becomes perfected. In this example, the secured party has one year from the effective date of Revised Article 9 to obtain the required acknowledgment from the bailee. Therefore, a secured party who has perfected its security interest by any method other than filing a financing statement has one year following the effective date of Revised Article 9 to complete any new or different procedures for perfection that may be required by Revised Article 9. **In California, that deadline is July 1, 2002.**

2. For Prior Perfection By Filing.

Pursuant to Section 9705(c) of Revised Article 9, if the perfection mechanism required by the law prior to the effective date of Revised Article 9 required **filing a financing statement** to perfect a security interest, the secured party's perfected security interest will remain effective until **the earlier of:**

- (a) the time the financing would have ceased to be effective under the law of the jurisdiction in which it is filed (5 years from the filing date in California); or
- (b) June 30, 2006.

For example, a debtor is a Delaware corporation with its chief executive office in San Diego, California. Lender is a secured creditor taking a security interest in the debtor's inventory. Under Section 9302(1) of prior Article 9, a financing statement would be required to perfect a security interest in inventory, Section 9401(1)(c) of prior Article 9 would require the financing statement to be filed in the office of the California Secretary of State, where the debtor has its chief executive office, and Section 9403 of prior Article 9 provided that the filed financing statement would be effective for 5 years from the filing date. Under Section 9310 of Revised Article 9, a financing statement is still required to perfect a security interest in inventory, but Section 9301(1) of Revised Article 9 requires the filing to be in the state where the Debtor is located and under Section 9307(e) of Revised Article 9, a Delaware corporation is "located" in Delaware. Therefore, under Revised Article 9, the financing statement must be filed in Delaware to perfect a security interest in the inventory of a Delaware corporation. If the financing statement was filed on January 10, 1998, it would be effective through January 9, 2003. Under Section 9705(c) of Revised Article 9, the deadline to file a financing statement in the correct office as required by Article 9 would be the earlier of January 9, 2003 or June 30, 2006 - in this case, January 9, 2003.

D. "IN LIEU" FINANCING STATEMENTS

If a traditional continuation statement is not allowed under Section 9705 of Revised Article 9, Section 9-706 of Revised Article 9 requires a continuation statement to be in the form of a new initial financing statement which complies with all of the requirements for an *initial* financing statement under Revised Article 9 and containing all of the information required by Section 9706 of Revised Article 9, to be filed "*in lieu*" of the traditional continuation statement, in the office of the correct state under Revised Article 9 to continue the effectiveness of a pre-effective date financing statement.

While this may seem a bit confusing, the drafters of Revised Article 9 have actually created a solution to tie pre-effective date financing statements filed in a state that was the correct state under prior law but is not the correct state under Revised Article 9 to the new initial financing statements to be filed in the correct state under Revised Article 9 with cross references from the new Revised Article 9 filings to the pre-effective-date financing statements. The key to this new filing procedure is found in Section 9706 of Revised Article 9 which provides in subsection (a) that:

The filing of an initial financing statement in the office specified in Section 9501 continues the effectiveness of a financing statement filed before July 1, 2001, if all of the following conditions are satisfied:

- (1) the filing of an initial financing statement in that office would be effective to perfect a security interest under this division;
- (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).

Section 9706(c) of Revised Article 9 provides that:

To be effective for purposes of subsection (a), an initial financing statement must do all of the following:

- (1) satisfy the requirements of Chapter 5 (commencing with Section 9501) 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 **[Emphasis added.]**
- (3) indicate that the pre-effective-date financing statement remains effective.

In the example described above, a debtor is a Delaware corporation with its chief executive office in San Diego, California. Lender is a secured creditor taking a security interest in the debtor's inventory. Under Section 9302(1) of prior Article 9, a financing statement would be required to perfect a security interest in inventory and Section 9401(1)(c) of prior Article 9 would require the financing statement to be filed in the office of the California Secretary of State, where the debtor has its chief executive office. Under Section 9310 of Revised Article 9, a financing statement is still required to perfect a security interest in inventory, but Section 9301(1) of Revised Article 9 requires the filing to be in the state where the Debtor is located and Section 9307(e) of Revised Article 9 provides a Delaware corporation is "located" in Delaware. Therefore, under Revised Article 9, the financing statement must be filed in Delaware to perfect a security interest in the inventory of a Delaware corporation.

Based on the requirements set forth in Section 9706 of Revised Article 9, to continue a pre-effective-date financing statement filed with the California Secretary of State's office against inventory of a Delaware corporation with a chief executive office in California, the secured party will need to file an initial "*in lieu*" financing statement with the office of the Secretary of State of Delaware because Delaware law will govern the perfection of the security interest since the Delaware corporation is "located" in Delaware under Section 9307(e) of Revised Article 9. The initial "*in lieu*" financing statement must satisfy all of the requirements of an initial financing statement contained in Section 9501 of Revised Article 9 including containing (i) the name of the debtor, the name of the secured party or its representative, and a description of the collateral to be covered, either by specific listing, category type, quantity, allocation or any other objectively determinable manner, or as consisting of all assets or all personal property if this is consistent with the security agreement. In addition, an "*in lieu*" financing statement must also specifically identify the pre-effective date financing statement by reference to (i) the office in which it was filed, (ii) the dates of filing of the original pre-effective date financing statement and the most recent continuation statement, and (iii) the file numbers of the original pre-effective date financing statement and the most recent continuation statement. See **Exhibit A to Section V(A)** of these materials for a sample attachment to a UCC-1 financing statement and instructions on the completion of the UCC-1 financing statement that can create a simple basic form of "*in lieu*" financing statement.

E. TRADITIONAL CONTINUATION STATEMENTS

Under Section 9705 of Revised Article 9, traditional continuation statements can only be filed after the effective date of Revised Article 9 if

- (1) they are filed in the state where the original financing statement was filed under prior law;
- (2) that state is the correct state for filing a *new* financing statement under Revised Article 9, and
- (3) the continuation statement updates the prior financing statement to comply with the requirements of Revised Article 9, if necessary.

For example, if a debtor is a California corporation with a California chief executive office, under Section 9302(1) of prior Article 9, a secured party would be required to perfect its security interest in inventory by filing a financing statement and Section 9403 of prior Article 9 provided that the financing statement must be filed with the office of the California Secretary of State because the debtor's chief executive office is in California. Under Section 9310 of Revised Article 9, a financing statement is still required for the secured party to perfect its security interest in inventory, Section 9301(1) of Revised Article 9 requires the financing statement to be filed in the state where the debtor is located, and under Section 9307(e) of Revised Article 9, a California corporation is "located" in California. In this example, (a) the continuation statement would be filed in California, the state where the original financing statement was filed under prior law, (b) California is still the correct state for filing a *new* financing statement under Revised Article 9, and (c) if applicable, the continuation statement should update the prior financing statement to comply with the requirements of Revised Article 9, if necessary.

F. LIEN SEARCH PROCEDURES

Generally, lenders will require that their security interest be in a first priority position with respect to other creditors. To determine whether any other creditors have filed financing statements against a particular debtor, most lenders will perform or cause to be performed a Uniform Commercial Code lien search of the filing offices where a financing statement is intended to be filed. For example, before the effective date of Revised Article 9, for a Delaware corporation with its chief executive office in California, a lender would search the records of the Secretary of State in the State of California because the proper place to file a financing statement against a corporation with a chief executive office in California would be the California Secretary of State's office. Similarly, after the effective date of Revised Article 9, for a Delaware corporation with its chief executive office in California, a lender would search the records of the Secretary of State in the State of Delaware because the proper place to file a financing statement against a Delaware corporation is the Delaware Secretary of State's office. However, based on the transition rules discussed above it is clear that financing statements filed under former Article 9 are still effective for some period of time after the effective date of Revised Article 9. Therefore, until July 1, 2006, it is recommended that all Uniform Commercial Code lien searches be performed in all jurisdictions where a financing statement could or should have been filed under prior Article 9 as well as all jurisdictions where financing statements should be filed under Revised Article 9.

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