

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

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The Committee's goal is to provide guidance to the reporter so that he can complete drafting on all approved issues before the scheduled meeting in March. The Committee then plans to have a first reading of its proposed revisions at the ULC's annual meeting in the summer.

The Committee will turn to other issues that it deems worthy of attention and, after obtaining approval to address them, deal with drafting in the Fall.

What follows is a list of the issues on the Committee's agenda for the meeting, followed by an indication of the Committee's tentative decision or conclusion. Material in brown is the text of the reporter's proposal on the issue.

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

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

- (1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and
- (2) the secured party's sworn affidavit in recordable form stating that:
  - (A) a default has occurred with respect to the obligation secured by the mortgage [and assigned to the secured party]; and
  - (B) the secured party is entitled to enforce the mortgage nonjudicially.

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

2. Strict Foreclosure as the Only Way to "Waive" the Prohibition on Private Sale to Secured Party

§ 9-602 comment 3. \* \* \*

Section 9-610(c) limits the circumstances under which a secured party may purchase at its own private disposition. Transactions of this kind are equivalent to "strict foreclosures" and are governed by Sections 9-620, 9-621, and 9-622. With the exception of Section 9-620(e), the provisions of these sections cannot be waived by the debtor or a secondary obligor. See Section 9-624(b).

§ 9-610 comment 7. \* \* \*

A secured party's purchase of collateral at its own private disposition is equivalent to a "strict foreclosure" and is governed by Sections 9-620, 9-621, and 9-622. With the exception of Section 9-620(e), the provisions of these sections cannot be waived by the debtor or a secondary obligor. See Section 9-624(b).

The Committee agreed to this.

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

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

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

4. Disposition via Internet

§ 9-610 comment 2. **Commercially Reasonable Dispositions.** Subsection (a) follows former Section 9-504 by permitting a secured party to dispose of collateral in a commercially reasonable manner following a default. Although subsection (b) permits both public and private dispositions, including dispositions conducted over the Internet, “every aspect of a disposition . . . must be commercially reasonable.” This section encourages private dispositions on the assumption that they frequently will result in higher realization on collateral for the benefit of all concerned. Subsection (a) does not restrict dispositions to sales; collateral may be sold, leased, licensed, or otherwise disposed. Section 9-627 provides guidance for determining the circumstances under which a disposition is “commercially reasonable.” \* \* \*

§ 9-613 comment 2. \* \* \*

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

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

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

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

5. Repeal of Article 11

The Committee agreed to this.

6. Payoff Letter

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

(A) in a consumer transaction, a record:

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

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

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

and

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

(i) authenticated by a secured party;

(ii) indicating as of the date of the record, the amount that, if received by the secured party, would entitle the debtor to the filing of a termination statement under Section 9-513(c); and

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

§ 9-210(b) [**Duty to respond to requests.**] Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(1) in the case of a request for an accounting, by authenticating and sending to the debtor or to a person designated by the debtor in a request for an accounting, an accounting; and \* \* \*

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

7. Expansion of § 9-317(d)

§ 9-317(d) **[Licensees and buyers of certain collateral.]** A licensee of a general intangible or a buyer, other than a secured party, of ~~accounts, electronic chattel paper, general intangibles, or investment property~~ collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

The Committee agreed to this and believes it reflects what was always intended. There will be no accompanying comment. Thus the change will be prospective but the amendments will be silent as to whether it really represents a change in the law.

8. Definition of “Authenticate”

§ 9-102(a)(7) “Authenticate” means:

(A) to sign; or

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

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

9. Definition of “Control”

§ 9-105. **CONTROL OF ELECTRONIC CHATTEL PAPER.**

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

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

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

*[Paragraph (b)(2)—Alternative A]*

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

*[Paragraph (b)(2)—Alternative B]*

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

(A) the person to which the record or records were issued; or

(B) if the authoritative copy indicates that the record or records have been transferred, the person to which the record or records were most recently [transferred] [assigned];

*[Paragraph (b)(2)—Alternative C]*

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

*[End of Alternatives]*

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

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

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

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

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

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

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

§ 9-316 (h) [Effect on filed financing statement of change in governing law.] A financing statement filed pursuant to the law of the jurisdiction designated in Section

9-301(1) or 9-305(c) is effective to perfect a security interest in collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction if the financing statement otherwise would have been effective to perfect a security interest in the collateral. If a security interest that is perfected by a financing statement that is effective under the preceding sentence becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

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

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

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

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

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

Subsection (a) subordinates the original debtor's secured party's security interest perfected against the new debtor solely under Section 9-508. The security interest is subordinated to security interests in the same collateral perfected by another method, e.g., by filing against the new debtor. As used in this section, "a filed financing statement that is effective solely under Section 9-508" refers to a financing statement filed against the

original debtor that continues to be is effective under Section 9-508 to perfect a security interest in the collateral in question. It does not encompass a new initial financing statement providing the name of the new debtor, even if the initial financing statement is filed to maintain the effectiveness of a financing statement under the circumstances described in Section 9-508(b). Nor does it encompass a financing statement filed against the original debtor which remains effective against collateral transferred by the original debtor to the new debtor. See Section 9-508(c). Concerning priority contests involving transferred collateral, see Sections 9-325 and 9-507.

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

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

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

\* \* \*

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

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

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

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

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

13. Treatment of Consumer-Goods-Related Intangibles

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

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

§ 9-104 comment 3. \* \* \*

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

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

15. Definition of "Certificate of Title"

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

16. Effect of Anti-assignment Clauses

*[Alternative A]*

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

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

*[Alternative B]*

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

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

*[Alternative C]*

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

\* \* \*

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

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

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

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

§ 9-408(b) ~~**[Applicability of subsection (a) to sales of certain rights to payment intangibles.]**~~ Subsection (a) applies ~~to a security interest in a payment~~

~~intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note. [Reserved.]~~

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

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

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

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

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

#### 18. Classification of "Stripped" Rentals

§ 9-102 comment 5d. \* \* \*

A right to the payment of money is frequently buttressed by ancillary covenants, such as covenants in a purchase agreement, note, or mortgage requiring insurance on the collateral or forbidding removal of the collateral, or covenants to preserve the creditworthiness of the promisor, such as covenants restricting dividends and the like. This Article does not treat these ancillary rights separately from the rights to payment to which they relate. For example, attachment and perfection of an assignment of a right to payment of a monetary obligation, whether it be an account or payment intangible, also carries these ancillary rights. Among these ancillary rights are the lessor's rights with respect to leased goods that arise upon the lessee's default. See Section 2A-523. Accordingly, and

contrary to the opinion in *In re Commercial Money Center, Inc.*, 350 B.R. 465 (B.A.P. 9th Cir. 2006), where the lessor’s rights under a lease would constitute chattel paper, an assignment of the lessor’s right to payment under the lease would be chattel paper, even if the assignment purports to exclude those ancillary rights.

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

19. Ratification of Unauthorized Filing on Priority

§ 9-322 comment 4. \* \* \*

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

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

The Committee discussed at length whether this proposed comment would be sufficient or whether a statutory change was required. It concluded that the comment would suffice. It also concluded that this provision did not create an incentive to make unauthorized filings because there are both statutory and other penalties for bogus filings.

20. Irrelevance of Parties' Intention to Characterization of Transaction

§ 9-109 comment 2. **Basic Scope Provision.** Subsection (a)(1) derives from former Section 9-102(1) and (2). These subsections have been combined and shortened. No change in meaning is intended. Under subsection (a)(1), all consensual security interests in personal property and fixtures are covered by this Article, except for transactions excluded by subsections (c) and (d). As to which transactions give rise to a “security interest,” the definition of that term in Section 1-201 must be consulted. When a security interest is created, this Article applies regardless of the form of the transaction or the name that parties have given to it. Likewise, the subjective intention of the parties with respect to the legal characterization of their transaction is irrelevant to the application of this Article, as it was to the application of former Article 9 under the proper interpretation of former Section 9-102.

The Committee agreed to this comment, although it will continue to evaluate whether it fully makes clear that neither the parties' subjective intent nor the labels they put on a transaction are the issue; what matters is the economic substance of the transaction.

21. Transmitting Utilities – Lapse Period

§ 9-515(f) [**Transmitting utility financing statement.**] If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

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

22. Transmitting Utilities – Choice of Governing Law

§ 9-301 comment 5b. \* \* \*

The filing of a financing statement to perfect a security interest in collateral of a transmitting utility constitutes a fixture filing with respect to goods that are or become

fixtures. See Section 9-501(b). Accordingly, to perfect a security interest in this collateral by a fixture filing, a financing statement should be filed in the office specified by Section 9-501(b) as enacted in the jurisdiction in which the goods are located. Where the fixtures collateral is located in more than one State, filing in more than one State will be necessary to perfect a security interest in all the collateral by a fixture filing. Of course, a security interest in nearly all types of collateral (including fixtures) of a transmitting utility may be perfected by filing in the office specified by Section 9-501(a) as enacted in the jurisdiction in which the transmitting utility is located. However, such a filing will not be effective as a fixture filing except with respect to goods that are located in that jurisdiction.

§ 9-501 comment 5. \* \* \*

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

The Committee agreed to these clarifying comments.

23. Name of Registered Organization; Definition of “Registered Organization”

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

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

\* \* \*

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

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

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

§ 9-102(a)(50) “Jurisdiction of organization”, with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

\* \* \*

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

\* \* \*

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

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

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

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

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

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

24. Application of § 9-503(a) to Debtor That Is Both Trust and Registered Organization

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

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

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

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

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

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

(4) in other cases:

(A) if the debtor has a name, only if it provides the individual or organizational name of the debtor; and

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

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

The Committee agreed to this change.

## 25. § 9-307(c) – Application to Registered Organizations

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

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

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

**Example 2:** Debtor is an English corporation with 7 offices in the United States and its chief executive office in London, England. Debtor creates a security interest in equipment located in London. Under subsection (b)(3) Debtor would be located in England. However, subsection (c) provides that subsection (b) applies only if English law generally conditions perfection on giving public notice in a filing, recording, or registration system for perfection of a security interest in equipment.

Otherwise, Debtor is located in the District of Columbia. Under Section 9-301(1), perfection is governed by the law of the jurisdiction of the debtor's location, whereas, under Section 9-301(3), the law of the jurisdiction in which the collateral is located—here, England—governs priority.

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

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

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

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

## 26. Location of Registered Organization Organized under Federal Law

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

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

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

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

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

**Comment 5. Registered Organizations Organized Under Law of United States; Branches and Agencies of Banks Not Organized Under Law of United States.**

Subsection (f) specifies the location of a debtor that is a registered organization organized under the law of the United States. It defers to the law of the United States, to the extent that that law determines, or authorizes the debtor to determine, the debtor's location. Thus, if the law of the United States designates a particular State as the debtor's location, that State is the debtor's location for purposes of this Article's choice-of-law rules. Similarly, if the law of the United States authorizes the registered organization to designate its State of location, the State that the registered organization designates is the State in which it is located for purposes of this Article's choice-of-law rules. The law of the United States authorizes certain registered organizations to designate a main office, home office, or other comparable office. See, e.g., 12 U.S.C. Sections 22 and 1464(a); 12 C.F.R. Section 552.3. Where the registered organization designates an office pursuant to such an authorization, the State in which the designated office is located is the location of the debtor for purposes of Section 9-307(f). In other cases, the debtor is located in the District of Columbia.

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

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

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

The Committee agreed to this.

27. Correction Statements

At its last meeting, the Committee decided to make no change (*i.e.*, not authorize secured parties or others to file correction statements). IACA expressed a strong desire to allow secured parties to file correction statements, particularly if an interloper filed a termination statement. After discussion, the

Committee decided not to address this problem. The secured party already has the ability to clear up the public record by filing an amendment or a new financing statement. Moreover, we don't want to confuse secured parties into thinking this is a way to deal with their own erroneous filings or to imply that a secured party who fails to correct the public record should be estopped from relying on its filing.

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

## 28. Safe Harbor Forms

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

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

## 29. Secured Party's Authorization to File Amendments

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

The Committee agreed to this comment.

30. Application of § 9-506 to § 9-706(c) Information

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

The Committee agreed to this comment.

31. Name of Individual Debtor

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

\* \* \*

(4) in other cases:

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

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

\* \* \*

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

(1) it provides the name of the individual which is indicated on a [driver's license] or [identification card] that, at the time the financing statement is filed, has been issued to the individual by this State and has not yet expired or [been cancelled]; and

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

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

§ 9-506(b) **[Financing statement seriously misleading.]** Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a) or (g) is seriously misleading.

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

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

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

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

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

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

Initially, the Committee was largely divided among the three approaches. It was then noted that the third approach could create a circularity in certain PMSI situations. For example, SP-1 files against the debtor's ID name, SP-2 has a PMSI and files against the debtor's correct (but not ID) name, and then SP-3 files against the debtor's ID name. If SP-2's PMSI loses to SP-1's, then there will be no circularity problem, but PMSI priority is not as strong as it was (unless the PMSI lender files under the ID name).

If SP-2's PMSI has priority over SP-1's interest, then we end up with an anomaly. Either SP-3 beats SP-2 and there's a circularity or SP-2 beats and SP-3 and the priority that SP-3 expected by filing under the ID name is not achieved, in which case the goal of giving both filers and searchers one name to use and rely upon is undermined.<sup>1</sup> As a result, there was little support left for the third approach.

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

### ***POTENTIAL NEW ISSUES***

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

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

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

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

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

#### 34. Comment on Hybrid Chattel Paper.

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

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<sup>1</sup> Although not discussed at the meeting, a circularity could arise in other ways as well. For example, if SP-1 filed against the debtor's correct (non-ID) name, SP-2 then perfected by possession or acquired a judicial lien, and then SP-3 perfected by filing against the debtor's ID name, then SP-1 would have priority over SP-2, SP-2 would have priority over SP-3, and SP-3 would have priority over SP-1.

priority. However, the priority rule of § 9-330(a)(1) gives priority to a purchaser that “takes possession of the chattel paper *or* obtains control of the chattel paper.” In that provision, is “or” exclusive? The same issue can arise in reverse, if the chattel paper is tangible and the amendment is agreed to in electronic form.

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

35. *Highland Capital*

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

36. Definition of “Good Faith”

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

The Committee decided not to address this issue.

37. Definition of “Proceeds”

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

The Committee decided not to address this issue.

38. Fix Comment 2 to Section 9-621

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

The reporter will draft a correction.

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

Hypothetical:

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

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

The Committee decided not to address this issue.

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

Under current law, the financing of debtors who acquire or generate copyrightable works (publishers and software developers) is problematic because even though a security interest will attach to after-acquired copyrights, perfection will be lost immediately upon federal registration and even if a federal

filing is promptly made, the security interest remains vulnerable to preference attach for 90 days. A suggestion was made to add a temporary perfection period. Such an effort might be pre-empted, but might not given the Copyright Act's lack of a reference to lien creditors.

The Committee decided not to address this issue.

41. Revise § 9-331 comment 5

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

The Committee decided not to address this issue.

42. Consider revising § 9-607(c).

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

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

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

The Committee returned to the priority part of issue #17.

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

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

44. Revision of § 9-322(c)

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

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

45. Minimum Standards for Electronic Filing

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

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

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

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

FOOSL and IACA will produce more information on the scope of the issue/problem and report back.

47. Garnishee as a “Transferee” for the Purposes of § 9-332

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

The Committee decided not to address this issue.

48. Location of Governmental Units

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

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

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

50. Harmonization with the U.N. Receivables Convention

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

51. Updating Comments to Reflect Changes to Bankruptcy Code

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