UCC Security Interests in Payment Intangibles: Intercompany Loans, Debt Obligations and “Promissory Notes”
Perfecting Interests In Financial Instruments and Contractual Payment Obligations

TUESDAY, MARCH 3, 2015

1pm Eastern    |    12pm Central   |   11am Mountain    |    10am Pacific

Today’s faculty features:
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Uniform Commercial Code
Article 1 General Provisions
§ 1-201. General Definitions.

* * *

(b) Subject to definitions contained in other articles of [the Uniform Commercial Code] that apply to particular articles or parts thereof:

* * *

(35) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. “Security interest” includes 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 Article 9. . . .

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§ 9-101. Short Title.

This article may be cited as Uniform Commercial Code-Secured Transactions.

OFFICIAL COMMENT

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4. Summary of Revisions. Following is a brief summary of some of the more significant revisions of Article 9 that are included in the 1998 revision of this Article.

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a. Scope of Article 9. This Article expands the scope of Article 9 in several respects.

Deposit accounts. Section 9-109 includes within this Article's scope deposit accounts as original collateral, except in consumer transactions. Former Article 9 dealt with deposit accounts only as proceeds of other collateral.

Sales of payment intangibles and promissory notes. Section 9-109 also includes within the scope of this Article most sales of “payment intangibles” (defined in Section 9-102 as general intangibles under which an account debtor's principal obligation is monetary) and “promissory notes” (also defined in Section 9-102). Former Article 9 included sales of accounts and chattel paper, but not sales of payment intangibles or promissory notes. In its inclusion of sales of payment intangibles and promissory notes, this Article continues the drafting convention found in former Article 9; it provides that the sale of accounts, chattel paper, payment intangibles, or promissory notes creates a “security interest.” The definition of “account” in Section 9-102 also has been expanded to include various rights to payment that were general intangibles under former Article 9.
Nonassignable general intangibles, promissory notes, health-care-insurance receivables, and letter-of-credit rights. This Article enables a security interest to attach to letter-of-credit rights, health-care-insurance receivables, promissory notes, and general intangibles, including contracts, permits, licenses, and franchises, notwithstanding a contractual or statutory prohibition against or limitation on assignment. This Article explicitly protects third parties against any adverse effect of the creation or attempted enforcement of the security interest. See Sections 9-408, 9-409.

Subject to Sections 9-408 and 9-409 and two other exceptions (Sections 9-406, concerning accounts, chattel paper, and payment intangibles, and 9-407, concerning interests in leased goods), Section 9-401 establishes a baseline rule that the inclusion of transactions and collateral within the scope of Article 9 has no effect on non-Article 9 law dealing with the alienability or inalienability of property. For example, if a commercial tort claim is nonassignable under other applicable law, the fact that a security interest in the claim is within the scope of Article 9 does not override the other applicable law’s effective prohibition of assignment.

Sales of payment intangibles and promissory notes. Although former Article 9 covered the outright sale of accounts and chattel paper, sales of most other types of receivables also are financing transactions to which Article 9 should apply. Accordingly, Section 9-102 expands the definition of “account” to include many types of receivables (including “health-care-insurance receivables,” defined in Section 9-102) that former Article 9 classified as “general intangibles.” It thereby subjects to Article 9’s filing system sales of more types of receivables than did former Article 9. Certain sales of payment intangibles—primarily bank loan participation transactions—should not be subject to the Article 9 filing rules. These transactions fall in a residual category of collateral, “payment intangibles” (general intangibles under which the account debtor’s principal obligation is monetary), the sale of which is exempt from the filing requirements of Article 9. See Sections 9-102, 9-109, 9-309 (perfection upon attachment). The perfection rules for sales of promissory notes are the same as those for sales of payment intangibles.

Automatic perfection. Section 9-309 lists various types of security interests as to which no public-notice step is required for perfection (e.g., purchase-money security interests in consumer goods other than automobiles). This automatic perfection also extends to a transfer of a health-care-insurance receivable to a health-care provider. Those transfers normally will be made by natural persons who receive health-care services; there is little value in requiring filing for
perfection in that context. Automatic perfection also applies to security interests created by sales of payment intangibles and promissory notes. Section 9-308 provides that a perfected security interest in collateral supported by a “supporting obligation” (such as an account supported by a guaranty) also is a perfected security interest in the supporting obligation, and that a perfected security interest in an obligation secured by a security interest or lien on property (e.g., a real-property mortgage) also is a perfected security interest in the security interest or lien.

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§ 9-102. Definitions and Index of Definitions.

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

* * *

(2) “Account”, except as used in “account for”, means 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 includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights 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.

(3) “Account debtor” means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

* * *

(12) “Collateral” means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches;
(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

* * *

(28) “Debtor” means:
(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;
(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

* * *

(42) “General intangible” means 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 and software.

* * *

(61) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.

* * *

(73) “Secured party” means:
(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

* * *

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

* * *

(74) “Security agreement” means an agreement that creates or provides for a security interest.

* * *

(78) “Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

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OFFICIAL COMMENT

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5. Receivables-related Definitions.

a. “Account”; “Health-Care-Insurance Receivable”; “As-Extracted Collateral.” The definition of “account” has been expanded and reformulated. It is no longer limited to rights to payment relating to goods or services. Many categories of rights to payment that were classified as general
intangibles under former Article 9 are accounts under this Article. Thus, if they are sold, a financing statement must be filed to perfect the buyer's interest in them. As used in the definition of “account,” 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” is the right of a card issuer to payment from its cardholder. A credit-card or charge-card transaction may give rise to other rights to payments; however, those other rights do not “arise out of the use” of the card or information contained on or for use with the card. Among the types of property that are expressly excluded from the definition of account is “a right to payment for money or funds advanced or sold.” As defined in Section 1-201, “money” is limited essentially to currency. As used in the exclusion from the definition of “account,” however, “funds” is a broader concept (although the term is not defined). For example, when a bank-lender credits a borrower's deposit account for the amount of a loan, the bank's advance of funds is not a transaction giving rise to an account.

* * *

d. “General Intangible”; “Payment Intangible.” “General intangible” is the residual category of personal property, including things in action, that is not included in the other defined types of collateral. Examples are various categories of intellectual property and the right to payment of a loan of funds that is not evidenced by chattel paper or an instrument. As used in the definition of “general intangible,” “things in action” includes rights that arise under a license of intellectual property, including the right to exploit the intellectual property without liability for infringement. The definition has been revised to exclude commercial tort claims, deposit accounts, and letter-of-credit rights. Each of the three is a separate type of collateral. One important consequence of this exclusion is that tortfeasors (commercial tort claims), banks (deposit accounts), and persons obligated on letters of credit (letter-of-credit rights) are not “account debtors” having the rights and obligations set forth in Sections 9-404, 9-405, and 9-406. In particular, tortfeasors, banks, and persons obligated on letters of credit are not obligated to pay an assignee (secured party) upon receipt of the notification described in Section 9-404(a). See Comment 5.h. Another important consequence relates to the adequacy of the description in the security agreement. See Section 9-108.

“Payment intangible” is a subset of the definition of “general intangible.” The sale of a payment intangible is subject to this Article. See Section 9-109(a)(3). Virtually any intangible right could give rise to a right to payment of money once one hypothesizes, for example, that the account debtor is in breach of its obligation. The term “payment intangible,” however, embraces only those general intangibles “under which the account debtor’s principal obligation is a monetary obligation.” (Emphasis added.) A debtor’s right to payment from another person of amounts received by the other person on the debtor’s behalf, including the right of a merchant in a credit-card, debit-card, prepaid-card, or other payment-card transaction to payment of amounts received by its bank from the card system in settlement of the transaction, is a “payment intangible.” (In contrast, the right of a credit-card issuer to payment arising out of the use of a credit card is an “account.”)

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

* * *

Every “payment intangible” is also a “general intangible.” Likewise, “software” is a “general
intangible” for purposes of this Article. See Comment 25. Accordingly, except as otherwise
provided, statutory provisions applicable to general intangibles apply to payment intangibles and
software.

* * *

h. “Account Debtor.” An “account debtor” is a person obligated on an account, chattel paper, or
general intangible. The account debtor's obligation often is a monetary obligation; however, this
is not always the case. For example, if a franchisee uses its rights under a franchise agreement (a
general intangible) as collateral, then the franchisor is an “account debtor.” As a general matter,
Article 3, and not Article 9, governs obligations on negotiable instruments. Accordingly, the
definition of “account debtor” excludes obligors on negotiable instruments constituting part of
chattel paper. The principal effect of this change from the definition in former Article 9 is that
the rules in Sections 9-403, 9-404, 9-405, and 9-406, dealing with the rights of an assignee and
duties of an account debtor, do not apply to an assignment of chattel paper in which the
obligation to pay is evidenced by a negotiable instrument. (Section 9-406(d), however, does
apply to promissory notes, including negotiable promissory notes.) Rather, the assignee's rights
are governed by Article 3. Similarly, the duties of an obligor on a nonnegotiable instrument are
governed by non-Article 9 law unless the nonnegotiable instrument is a part of chattel paper, in
which case the obligor is an account debtor.

* * *


(a) [General scope of article.] Except as otherwise provided in subsections (c) and (d), this article
applies to:
(1) a transaction, regardless of its form, that creates a security interest in personal property or
fixtures by contract;
* * *
(3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;
* * *

(d) [Inapplicability of article.] This article does not apply to:
* * *
(4) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
(5) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
(6) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
(7) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
required under that section. This Article rejects decisions reaching a contrary result, e.g., *Dennis Joslin Co. v. Robinson Broadcasting*, 977 F.Supp. 491 (D.D.C.1997).

Nothing in this section or any other provision of Article 9 prevents the transfer of full and complete ownership of an account, chattel paper, an instrument, or a payment intangible in a transaction of sale. However, as mentioned in Comment 4, neither this Article nor the definition of “security interest” in Section 1-201 provides rules for distinguishing sales transactions from those that create a security interest securing an obligation. This Article applies to both types of transactions. The principal effect of this coverage is to apply this Article's perfection and priority rules to these sales transactions. Use of terminology such as “security interest,” “debtor,” and “collateral” is merely a drafting convention adopted to reach this end, and its use has no relevance to distinguishing sales from other transactions. See PEB Commentary No. 14.

Following a debtor's outright sale and transfer of ownership of a receivable, the debtor-seller retains no legal or equitable rights in the receivable that has been sold. See Section 9-318(a). This is so whether or not the buyer's security interest is perfected. (A security interest arising from the sale of a promissory note or payment intangible is perfected upon attachment without further action. See Section 9-309.) However, if the buyer's interest in accounts or chattel paper is unperfected, a subsequent lien creditor, perfected secured party, or qualified buyer can reach the sold receivable and achieve priority over (or take free of) the buyer's unperfected security interest under Section 9-317. This is so not because the seller of a receivable retains rights in the property sold; it does not. Nor is this so because the seller of a receivable is a “debtor” and the buyer of a receivable is a “secured party” under this Article (they are). It is so for the simple reason that Sections 9-318(b), 9-317, and 9-322 make it so, as did former Sections 9-301 and 9-312. Because the buyer's security interest is unperfected, for purposes of determining the rights of creditors of and purchasers for value from the debtor-seller, under Section 9-318(b) the debtor-seller is deemed to have the rights and title it sold. Section 9-317 subjects the buyer's unperfected interest in accounts and chattel paper to that of the debtor-seller's lien creditor and other persons who qualify under that section.

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12. Certain Sales and Assignments of Receivables; Judgments. In general this Article covers security interests in (including sales of) accounts, chattel paper, payment intangibles, and promissory notes. Paragraphs (4), (5), (6), and (7) of subsection (d) exclude from the Article certain sales and assignments of receivables that, by their nature, do not concern commercial financing transactions. These paragraphs add to the exclusions in former Section 9-104(f) analogous sales and assignments of payment intangibles and promissory notes. For similar reasons, subsection (d)(9) retains the exclusion of assignments of judgments under former Section 9-104(h) (other than judgments taken on a right to payment that itself was collateral under this Article).

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15. Tort Claims. Subsection (d)(12) narrows somewhat the broad exclusion of transfers of tort
claims under former Section 9-104(k). This Article now applies to assignments of “commercial
tort claims” (defined in Section 9-102) as well as to security interests in tort claims that
constitute proceeds of other collateral (e.g., a right to payment for negligent destruction of the
debtor’s inventory). Note that once a claim arising in tort has been settled and reduced to a
contractual obligation to pay, the right to payment becomes a payment intangible and ceases to
be a claim arising in tort.

* * *

§ 9-202. Title to Collateral Immaterial.

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper,
payment intangibles, or promissory notes, the provisions of this article with regard to rights and
obligations apply whether title to collateral is in the secured party or the debtor.

* * *

§ 9-201. General Effectiveness of Security Agreement.

(a) [General effectiveness.] Except as otherwise provided in [the Uniform Commercial Code], a
security agreement is effective according to its terms between the parties, against purchasers of
the collateral, and against creditors.

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§ 9-202. Title to Collateral Immaterial.
Except as otherwise provided with respect to consignments or sales of accounts, chattel paper,
payment intangibles, or promissory notes, the provisions of this article with regard to rights and
obligations apply whether title to collateral is in the secured party or the debtor.

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

(a) [Attachment.] A security interest attaches to collateral when it becomes enforceable against
the debtor with respect to the collateral, unless an agreement expressly postpones the time of
attachment.

(b) [Enforceability.] Except as otherwise provided in subsections (e) through (i), a security
interest is enforceable against the debtor and third parties with respect to the collateral only if:
(1) value has been given;
(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a
secured party; and
(3) one of the following conditions is met:
(A) 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;
§ 9-204. After-Acquired Property; Future Advances.

(a) [After-acquired collateral.] Except as otherwise provided in subsection (b) [certain consumer goods or a commercial tort claim], a security agreement may create or provide for a security interest in after-acquired collateral.

(c) [Future advances and other value.] A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

§ 9-209. Duties of Secured Party if Account Debtor has been Notified of Assignment.

(a) [Applicability of section.] Except as otherwise provided in subsection (c), this section applies if:

1. there is no outstanding secured obligation; and
2. the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) [Duties of secured party after receiving demand from debtor.] Within 10 days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under Section 9-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) [Inapplicability to sales.] This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

§ 9-308. When Security Interest or Agricultural Lien is Perfected; Continuity of Perfection.

(a) [Perfection of security interest.] Except as otherwise provided in this section and Section 9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in Sections 9-310 through 9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.
§ 9-309. Security Interest Perfected Upon Attachment.

The following security interests are perfected when they attach:

* * *

(2) an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) a sale of a payment intangible;

(4) a sale of a promissory note;

* * *

§ 9-310. When Filing Required to Perfect Security Interest or Agricultural Lien; Security Interests and Agricultural Liens to Which Filing Provisions Do Not Apply.

(a) [General rule: perfection by filing.] Except as otherwise provided in subsection (b) and Section 9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) [Exceptions: filing not necessary.] The filing of a financing statement is not necessary to perfect a security interest:

* * *

(2) that is perfected under Section 9-309 when it attaches;

* * *

§ 9-318. No Interest Retained in Right to Payment that is Sold; Rights and Title of Seller of Account or Chattel Paper with Respect to Creditors and Purchasers.

(a) [Seller retains no interest.] A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

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OFFICIAL COMMENT

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2. Sellers of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes. Section 1-201(37) 1-201(b)(35) defines “security interest” to include the interest of a buyer of accounts, chattel paper, payment intangibles, or promissory notes. See also Section 9-109(a) and Comment 5. Subsection (a) makes explicit what was implicit, but perfectly obvious, under former Article 9: The fact that a sale of an account or chattel paper gives rise to a “security interest” does not imply that the seller retains an interest in the property that has been sold. To the contrary, a seller of an account or chattel paper retains no interest whatsoever in the property to the extent that it
has been sold. Subsection (a) also applies to sales of payment intangibles and promissory notes, transactions that were not covered by former Article 9. Neither this Article nor the definition of “security interest” in Section 1-201 provides rules for distinguishing sales transactions from those that create a security interest securing an obligation.

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§ 9-322. Priorities Among Conflicting Security Interests in and Agricultural Liens on Same Collateral.

(a) [General priority rules.] Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

* * *


(a) [Discharge of account debtor; effect of notification.] Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

* * *

(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 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, 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, chattel paper,
payment intangible, or promissory note.

(e) [Inapplicability of subsection (d) to certain sales.] Subsection (d) does not apply to the sale of
a payment intangible or promissory note, other than a sale pursuant to a disposition under
Section 9-610 or an acceptance of collateral under Section 9-620.

(f) [Legal restrictions on assignment generally ineffective.] Except as otherwise provided in
Sections 2A-303 and 9-407 and subject to subsections (h) and (i), a rule of law, statute, or
regulation that prohibits, restricts, or requires the consent of a government, governmental body or
official, or account debtor to the assignment or transfer of, or creation of a security interest in, an
account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:
(1) prohibits, restricts, or requires the consent of the government, governmental body or
official, or account debtor to the assignment or transfer of, or the creation, attachment,
perfection, or enforcement of a security interest in the account or chattel paper; 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.

(g) [Subsection (b)(3) not waivable.] Subject to subsection (h), an account debtor may not waive
or vary its option under subsection (b)(3).

(h) [Rule for individual under other law.] This section is subject to law other than this article
which establishes a different rule for an account debtor who is an individual and who incurred
the obligation primarily for personal, family, or household purposes.

(i) [Inapplicability to health-care-insurance receivable.] This section does not apply to an
assignment of a health-care-insurance receivable.

(j) [Section prevails over specified inconsistent law.] This section prevails over any inconsistent
provisions of the following statutes, rules, and regulations:

[List here any statutes, rules, and regulations containing provisions inconsistent with this
section.]

* * *

§ 9-408. Restrictions on Assignment of Promissory Notes, Health-Care-Insurance Receivables,
and Certain General Intangibles Ineffective.

(a) [Term restricting assignment generally ineffective.] Except as otherwise provided in
subsection (b), a term in a promissory note or in an agreement between an account debtor and a
debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment, or perfection of a security interest; or
(2) provides that the assignment or transfer of the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(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 of the payment intangible or promissory note, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

(c) [Legal restrictions on assignment generally ineffective.] A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) would impair the creation, attachment, or perfection of a security interest; or
(2) provides that the assignment or transfer of the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) [Limitation on ineffectiveness under subsections (a) and (c).] To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) is not enforceable against the person obligated on the promissory note or the account debtor;
(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;
(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;
(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;
(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets.
or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) [Section prevails over specified inconsistent law.] This section prevails over any inconsistent provisions of the following statutes, rules, and regulations:

[List here any statutes, rules, and regulations containing provisions inconsistent with this section.]

* * *

§ 9-505. Filing and Compliance with Other Statutes and Treaties for Consignments, Leases, Other Bailments, and Other Transactions.

(a) [Use of terms other than “debtor” and “secured party.”] A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in Section 9-311(a), using the terms “consignor”, “consignee”, “lessor”, “lessee”, “bailor”, “bailee”, “licensor”, “licensee”, “owner”, “registered owner”, “buyer”, “seller”, or words of similar import, instead of the terms “secured party” and “debtor”.

(b) [Effect of financing statement under subsection (a).] This part applies to the filing of a financing statement under subsection (a) and, as appropriate, to compliance that is equivalent to filing a financing statement under Section 9-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

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OFFICIAL COMMENT

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2. Precautionary Filing. Occasionally, doubts arise concerning whether a transaction creates a relationship to which this Article or its filing provisions apply. For example, questions may arise over whether a “lease” of equipment in fact creates a security interest or whether the “sale” of payment intangibles in fact secures an obligation, thereby requiring action to perfect the security interest. This section, which derives from former Section 9-408, affords the option of filing of a financing statement with appropriate changes of terminology but without affecting the substantive question of classification of the transaction.
§ 9-601. Rights After Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes.

(a) [Rights of secured party after default.] After default, a secured party has the rights provided in this part and, except as otherwise provided in Section 9-602, those provided by agreement of the parties.

(g) [Consignor or buyer of certain rights to payment.] Except as otherwise provided in Section 9-607(c), this part [Part 6, Default] imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

OFFICIAL COMMENT


(a) [Collection and enforcement generally.] If so agreed, and in any event after default, a secured party:
(1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
(2) may take any proceeds to which the secured party is entitled under Section 9-315;
(3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;
(c) [Commercially reasonable collection and enforcement.] A secured party shall proceed in a commercially reasonable manner if the secured party:
   (1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and
   (2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

**OFFICIAL COMMENT**

1. Source. Former Section 9-502; subsections (b), (d), and (e) are new.

2. Collections: In General. Collateral consisting of rights to payment is not only the most liquid asset of a typical debtor's business but also is property that may be collected without any interruption of the debtor's business. This situation is far different from that in which collateral is inventory or equipment, whose removal may bring the business to a halt. Furthermore, problems of valuation and identification, present with collateral that is tangible personal property, frequently are not as serious in the case of rights to payment and other intangible collateral. Consequently, this section, like former Section 9-502, recognizes that financing through assignments of intangibles lacks many of the complexities that arise after default in other types of financing. This section allows the assignee to liquidate collateral by collecting whatever may become due on the collateral, whether or not the method of collection contemplated by the security arrangement before default was direct (i.e., payment by the account debtor to the assignee, “notification” financing) or indirect (i.e., payment by the account debtor to the assignor, “nonnotification” financing).

9. Commercial Reasonableness. Subsection (c) provides that the secured party's collection and enforcement rights under subsection (a) must be exercised in a commercially reasonable manner. These rights include the right to settle and compromise claims against the account debtor. The secured party's failure to observe the standard of commercial reasonableness could render it liable to an aggrieved person under Section 9-625, and the secured party's recovery of a deficiency would be subject to Section 9-626. Subsection (c) does not apply if, as is characteristic of most sales of accounts, chattel paper, payment intangibles, and promissory notes, the secured party (buyer) has no right of recourse against the debtor (seller) or a secondary obligor. However, if the secured party does have a right of recourse, the commercial-reasonableness standard applies to collection and enforcement even though the assignment to the secured party was a “true” sale. The obligation to proceed in a commercially reasonable manner arises because the collection process affects the extent of the seller's recourse liability, not because the seller retains an interest in the sold collateral (the seller does not). Concerning
classification of a transaction, see Section 9-109, Comment 4.

* * *

§ 9-608. Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus.

(a) [Application of proceeds, surplus, and deficiency if obligation secured.] If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 9-607 in the following order to:

(A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 9-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) [No surplus or deficiency in sales of certain rights to payment.] If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

* * *

§ 9-610. Disposition of Collateral After Default.

(a) [Disposition after default.] After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

* * *

§ 9-615. Application of Proceeds of Disposition; Liability for Deficiency and Right to Surplus.
(a) [Application of proceeds.] A secured party shall apply or pay over for application the cash proceeds of disposition under Section 9-610 in the following order to:

1. the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
2. the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;
3. the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:
   A. the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and
   B. in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and
4. a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) [Proof of subordinate interest.] If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) [Application of noncash proceeds.] A secured party need not apply or pay over for application noncash proceeds of disposition under Section 9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) [Surplus or deficiency if obligation secured.] If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):
1. unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and
2. the obligor is liable for any deficiency.

(e) [No surplus or deficiency in sales of certain rights to payment.] If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:
1. the debtor is not entitled to any surplus; and
2. the obligor is not liable for any deficiency.