Introducing Revised Article 9 of The Uniform Commercial Code

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On July 1, 2001, a comprehensive revision ("Revision") of Article 9 of the Uniform Commercial Code ("UCC") became effective in Colorado and all but a handful of other jurisdictions. By January 2, 2002, it will be effective in all jurisdictions. A great deal already has been written about revised Article 9, much of it more detailed than this article, and a great deal more will be written as practitioners gain experience with revised Article 9 in operation. This article is intended to be a brief introduction for Colorado lawyers to the issues that are created by revised Article 9. However, this article should not be considered a substitute for more detailed treatments.

INTRODUCTION

Article 9 was the great success story of the original UCC. It replaced the complex and confusing regime of independent security devices with a single device, the security interest in personal property, and it established a single filing system within each enacting state as the primary mechanism for giving notice to adverse claimants of that security interest. The Revision builds on that success. It preserves the core of the original Article 9, but it pushes out the boundaries to include transactions such as genuine consignments and genuine sales of promissory notes that were not covered by original Article 9, as well as secured transactions in collateral, such as deposit accounts and commercial tort claims, that had been excluded from Article 9. Indeed, the Revision includes as potential collateral some forms of property that are not as yet in widespread use.

The broadening of the scope of Article 9 has necessitated the inclusion of a great many new provisions and the revision of many others. The overall effect is that some of the elegance of the original Article 9 has been lost. The Revision is substantially bulkier than its predecessor, with approximately 50,000 words of statutory text, compared to slightly more than 20,000 for its predecessor. It also appears that the drafters believed that the Revision is less user friendly than the original; they included 120,000 words of Official Comments, compared to 50,000 words for the original.

However, not every feature of original Article 9 was a success. The rules prescribing the jurisdiction in which to file a financing statement often required multiple filings or created such uncertainty about the jurisdiction in which to file that multiple filings were the prudent course. Original Article 9 also offered states the option of requiring local filing instead of or in addition to central filing of financing statements. The Revision effects a major change in the rules specifying the jurisdiction in which to file and requires all filing within a particular jurisdiction to be made centrally (unless the collateral is related closely to real estate). When all adjustments to these changes have been made, the Revision should substantially reduce filing and searching costs and, thus, the cost of credit to debtors. In the short term, the changes have required the inclusion of transition rules that are a bit tricky to learn.

Apart from these major changes, the Revision incorporates a number of specific changes and clarifications. Finally, the Colorado legislature included a number of non-uniform provisions. This article at least touches on all of these topics.
FINANCING STATEMENT FILING RULES

From the inception of Article 9, the location of the collateral has been the primary determinant of the place to file a financing statement to perfect a security interest in tangible personal property. The exceptions to this principle were limited, for all practical purposes, to cases in which the location was difficult to determine or the collateral had no fixed physical location (accounts, chattel, paper, general intangibles and mobile goods). In these cases, the location of the debtor was key. As a consequence of this approach, a secured party seeking to perfect its interest in tangible collateral disbursed across state lines was compelled to file financing statements in multiple jurisdictions. The not inconsiderable inefficiencies of learning and monitoring the filing requirements of various states, administering the continuation of multiple financing statements, and, in some instances, the retention of local counsel, became part of the cost of business passed on to the debtor. In addition, the location of the collateral could change, often without the knowledge or consent of the secured party.

Revised Article 9 takes the dramatic step of eliminating this long-standing "location of collateral" (or "situs") test. As of July 1, 2001, the state whose filing rules govern perfection in collateral other than real property-related collateral is the state in which the debtor, rather than the collateral, is located. Because the debtor can be located in only one jurisdiction, the new approach eliminates the need for a multiplicity of UCC filings. To determine the location of the debtor, UCC § 9-307 categorizes various types of debtors and designates the deemed location of each, as follows:

1. A registered organization (for example, a corporation, limited partnership, or limited liability company) is located in the state of its organization. Thus, a Colorado corporation is located in Colorado, and a limited liability company formed under Kansas law is located in Kansas. The use of the state of organization establishes an easily understood and verifiable test that should simplify the filing process.
2. An unregistered organization, such as a general partnership, is located at its place of business or, if more than one such place exists, at its chief executive office. This is the same location test found in old Article 9, but it is now limited to unregistered organizations.
3. A foreign debtor otherwise deemed to be located in a jurisdiction without a filing system for the perfection and priority of security interests is located in the District of Columbia.
4. An entity organized under the laws of the United States is located in the District of Columbia, unless the law of the United States under which such an entity is organized designates a state of location or authorizes the entity to designate its state of location, in which event such designated state is the entity's location. In the authors' view, this rule is surprisingly vague, and the official comments to new Article 9 are not particularly helpful. Consequently, it is difficult to determine the location of a national bank for purposes of applying Article 9 filing rules. At least one state has changed the Uniform Act formulation in an attempt to bring some clarity to this process.
5. The United States is located in the District of Columbia.
6. A branch or agency of a foreign bank is located in the state in which it is licensed or, if licensed in more than one state, in the state or jurisdiction determined under the rules applicable to registered organizations formed under the laws of the United States.
7. An individual is located at his or her principal residence.
8. A foreign air carrier is located at the office designated for service of process under applicable law.

The application of the new filing rules in most cases will lead to fewer required filings and more certainty as to the proper filing location. Assume that the secured party faces the following facts: The debtor, a Delaware corporation, has tangible collateral located in California, Kansas, Mississippi and Texas and perhaps other states, maintains its only operating facility in Texas, and
keeps a small corporate office for certain executive officers in Colorado. The obligation is secured by all of the personal property of the debtor excluding, for purposes of the example, real property-related collateral, and collateral not primarily governed by the UCC filing system, such as airplanes. Where would the secured party file to perfect a security interest in all of this collateral? The answer under new Article 9 is the Secretary of State of Delaware. The debtor is unmistakably located in Delaware, and the location of the debtor determines the place of filing.

Contrast that simple solution with prior law under which at least six separate filings would have been prudent—one in each of the states in which collateral is known to exist, one in Colorado on the chance that the corporate office there is the debtor's chief executive office, and an additional local filing in Mississippi because it is a dual filing jurisdiction. Even after six filings, the secured party would be at some risk under old Article 9 in the event the tangible collateral was actually found in more than the states identified or, as is often the case, the collateral was later moved by the debtor to one or more additional jurisdictions. As this example shows, the simplified, predictable approach to filing adopted in the Revision is preferable to prior law, even taking into account the possible occasional need for an out-of-state filing where none might have been necessary under prior law.

Over the last several years, Colorado has moved to a predominantly central filing system. Beginning January 1, 2000, all UCC filings in Colorado were required to be made with the Secretary of State, except for certain real property-related filings. This system continues unchanged under the Revision. As was the case under old Article 9, security interests in fixtures of a transmitting utility may be perfected by a filing with the Secretary of State.10

TRANSITION

When new Article 9 became effective on July 1, 2001, it became the governing law for existing as well as post-effective-date security interests.11 Generally, if what was done to create and perfect a security interest under prior law complies with the new law, nothing special is required after the effective date. If that is not the case, the secured party risks losing its lien or at least the priority of that lien if appropriate steps are not taken.

Pre-effective-Date Security Interests Perfected by Filing

As noted above, the proper place to file financing statements under the Revision may be different from the proper place under old Article 9. However, the Revision does not immediately invalidate the prior filing. Instead, UCC § 9-705(c) of the Revision provides that a financing statement properly filed under old Article 9 will remain effective until the earlier of the normal lapse date (determined under the old law) and June 30, 2006.12 An example of the application of this rule may be instructive. Assume that a financing statement was properly filed in the state of Colorado—the location of the debtor's chief executive office—on January 1, 2000, to perfect the secured party's security interest in the debtor's accounts, and that the debtor is a "registered organization" incorporated in the state of Delaware. Under the grace period afforded by UCC § 9-705(c), this filing will remain effective, without further action by the secured party, until January 1, 2005—the normal lapse date for this filing—even though under new Article 9 it is filed in the wrong jurisdiction (that is, Colorado rather than Delaware).

Pre-effective-Date Security Interests Perfected by Means Other Than Filing

As a general proposition, in cases in which the security interest was perfected by some means other than filing (for example, the secured party's possession) and the security interest would not be perfected under the Revision, secured parties will have one year (until June 30, 2002) to comply with the new Article 9 rules.13 Again, a few examples may be useful:
1. Under old Article 9, notice by a secured party to a bailee of the existence of the secured party's security interest in the collateral would be sufficient to perfect a possessory security interest.\textsuperscript{14} No acknowledgment from the bailee that it was holding the collateral for the secured party was required. Under new Article 9, however, perfection does not occur unless and until the bailee gives such acknowledgment.\textsuperscript{15} Assuming the secured party had not obtained such acknowledgment prior to July 1, 2001, its lien would become unperfected on July 1, 2002, unless it obtained the required acknowledgment or perfected its security interest in some other way (for example, filing a financing statement or direct possession) prior to that date.

2. Deposit accounts were excluded from old Article 9. A creditor could, however, obtain a common law lien to perfect its security interest in the deposit account. Such deposit accounts are now within the purview of Article 9 and may be perfected by (and only by) the secured party's taking control of the deposit account, usually through a control agreement.\textsuperscript{16} A secured party with a common law lien on the deposit account prior to July 1, 2001, will have until June 30, 2002, to obtain control of the deposit account under Article 9. Failure to establish control will result in loss of perfection on July 1, 2002.

3. Under new Article 9, a security interest in investment property securing a consumer transaction will not attach unless the collateral is described in the security agreement with specificity.\textsuperscript{17} A description by type was adequate under the prior law. A secured party in a consumer transaction relying on the now inadequate description would have its security interest invalidated on July 1, 2001, except for the one-year grace period. (This is true even though the financing statement initially filed to perfect the security interest would remain effective under provisions described above. Under the Revision, the security agreement is no longer effective to create an enforceable security interest.) In this instance, new Article 9 gives the secured party until June 30, 2002, to persuade the debtor to enter into a new or amended security agreement that provides a description of the investment property that satisfies the Revision's requirements.

The transition provisions of new Article 9 enable a smoother transition into the new law, but not without cost. Because pre-effective-date financing statements will remain valid for up to five years, a secured party contemplating a credit extension must conduct a UCC search under the filing protocols of both former and new Article 9 for the foreseeable future. The extra effort will not be limited to the search for the existence (or not) of financing statements in multiple filing offices. A lien searcher also will need to be cognizant that collateral descriptions in pre-effective-date financing statements using terms that have different meanings under old and new Article 9 may perfect the earlier filing secured party's lien under both definitions.

**Amendment of Financing Statements**

A pre-effective-date financing statement that is filed in the office that is the right office under both old and new Article 9 may be amended,\textsuperscript{18} continued, assigned, and terminated under rules that are essentially the same as have been in place for years.\textsuperscript{19} As is currently the case, a continuation statement must be filed within six months prior to the lapse of the affected financing statement. Such filing will extend the effectiveness of the financing statement for an additional five years from the date the continued financing statement would have become ineffective in the absence of the continuation statement.\textsuperscript{20} Neither prior nor new Article 9 requires the signature of the debtor or secured party on the continuation statement. Prior Colorado law required the secured party's signature on an amendment deleting collateral. New Article 9 requires the signature of neither party, but does require that any amendment (or termination, release, or assignment) be appropriately authorized.\textsuperscript{21}

It is important to note that the continuation statement must comply with the content requirements of new Article 9\textsuperscript{22} and to add whatever additional information UCC §§ 9-502 and 9-516 require in initial financing statements (such as an indication of whether the debtor is an
individual or organization) so that the old financing statement and the continuation statement, taken together, comply with the content requirements of new Article 9. Further, as discussed below, if the Revision's changes in the meaning of certain terms (such as accounts) render the original collateral description inaccurate, the collateral description in the financing statement should be appropriately amended to conform to the parties' intentions prior to continuation of the financing statement.

A financing statement filed in the proper location under old Article 9 but in an improper location under new Article 9 remains effective, but may not be amended, continued, or assigned by a filing in the improper jurisdiction. This financing statement may be continued only by the filing of a new financing statement in the proper filing office under the new Article 9 rules (a so-called "in lieu" initial financing statement). The "in lieu" financing statement may be filed at any time during the period that the pre-effective-date financing statement is effective, without regard to the six-month window applicable to regular continuation statements and, once filed, will be effective for five years from the date it is filed.

The "in lieu" financing statement must (1) meet all of the requirements of the Revision; (2) identify the pre-effective-date financing statement that it is replacing by filing office, the date of filing, and file numbers for both the pre-effective-date financing statement and the most recent continuation statement; and (3) state that the existing financing statement remains effective. The "in lieu" financing statement may cover more than one pre-effective-date financing statement and may be filed without the further authorization of the debtor. As is the case with respect to the continuation of financing statements filed in the proper new Article 9 location, if changes in the definition of collateral categories in new Article 9 make the old description inaccurate, the new financing statement should describe the collateral under the new Article 9 definitions.

Because it may become necessary at a later date to prove that the new financing statement continued the lien originally perfected by a financing statement in an old Article 9 jurisdiction, it will be useful for a secured party to obtain and preserve in a permanent record a certified copy of the old Article 9 financing statement. Although the old Article 9 filing jurisdiction will retain the old financing statement for some period of time, most jurisdictions purge their files of lapsed financing statements at some point (often one year after the lapse of the original financing statement). If that were to occur, it might otherwise be difficult to prove that the secured party had a continuously perfected financing statement on file from the original financing statement filing date.

A financing statement filed in the right place under old Article 9 but the wrong place under new Article 9 may not be amended by a filing in the new Article 9 jurisdiction. The secured party must file an "in lieu" financing statement in the proper new Article 9 jurisdiction before the end of the grace period if it desires to amend the existing financing statement. On the other hand, a pre-effective-date financing statement may be terminated by a filing in the old Article 9 jurisdiction until an "in lieu" financing statement is filed in the new Article 9 jurisdiction. Thereafter, the financing statement may be terminated only by a filing in the new Article 9 jurisdiction.

**New Types of Collateral**

New Article 9 introduces several new categories of collateral, including deposit accounts, commercial tort claims, software, letter of credit rights, health-care-insurance receivables, and payment intangibles. In addition, the definition of "account" is modified to include certain rights to payment under old Article 9 that were classified as general intangibles. The term "account" under prior law, was for the most part limited to a right to payment for goods sold or leased or for services rendered, which excluded, among other things, rights to payment under licenses, lottery winnings, and credit card receivables. The expanded definition embraces these and other items and, in the process, reduces the scope of the general intangible category. As stated above, this
definitional shift may require a secured party to amend its security agreement and/or financing statement to identify properly the collateral in which it claims an interest. Failure to do so could result in a loss of perfection as to the collateral subject to the changed definitions.

The treatment of deposit accounts in new Article 9, and particularly in Colorado’s version, is complex. Deposit accounts include demand accounts, such as checking accounts, savings, passbook, and similar accounts maintained with a bank. Except in a few jurisdictions—Illinois and California come to mind—these accounts were excluded from coverage by former Article 9. Any lien in them was derived from common law or a unique non-UCC state statutory scheme. New Article 9 brings this potentially significant collateral category within the more familiar and predictable confines of the UCC, but with some restrictions. Under the Official Text, Article 9 continues to exclude security interests in deposit accounts in consumer transactions. The assumed rationale for this exclusion is that consumers should neither be allowed nor forced to make use of this collateral source under the relatively efficient lien processes of the UCC. "Assumed rationale" is the term used because nothing in Article 9 prohibits a consumer from using funds from such deposits to acquire types of property that may be used as collateral under the Revision.

The Colorado version of Article 9 extends this exclusion of deposit accounts as collateral in two non-uniform ways. First, Colorado establishes "consumer deposit account" as a new collateral category and excludes from Article 9 an assignment of an interest in such deposit accounts in all transactions, not just consumer transactions. Second, Colorado’s version of revised Article 9 excludes from its scope the assignment of all deposit accounts—consumer and non-consumer—as collateral in any transaction in which the "principal or maximum line of credit on a revolving loan account" is less than $100,000, as well as in consumer transactions.

The original version of new Article 9 included municipal financing transactions within its scope. Historically, liens against governmental entities were created and perfected, if at all, through a patchwork of common law liens and specific statutory provisions enacted for the benefit of one governmental agency or another. The drafters of new Article 9 believed that municipalities and their counsel would find it efficient and safer (from a creditor’s rights perspective) to rely on the well-understood UCC lien creation, perfection, and priority rules, rather than the occasionally byzantine and certainly diverse rules under which municipalities operated. Such belief was mistaken. Municipalities and their counsel were adamant, both in Colorado and elsewhere, that the prior law was preferable. The result, in Colorado at least, is that municipal finance remains outside the scope of Article 9.

New Article 9 also makes it clear that a seller of accounts retains no interest in the property sold. This clarification implicitly overrules Octagon Gas Systems, Inc. v. Rimmer, a case that had cast doubt on the feasibility in Colorado and other Tenth Circuit states of certain sophisticated asset securitization programs.

**COLLATERAL DESCRIPTIONS**

As under prior law, the description of collateral in a security agreement and in a financing statement is generally sufficient if it reasonably identifies the collateral. However, several major exceptions to this proposition should be noted. First, a description of collateral solely by reference to type is an insufficient description of a commercial tort claim; a deposit account; and, in a consumer transaction, consumer goods, a security entitlement, a securities account, and a commodity account. The requirement that a deposit account be identified with specificity is a Colorado non-uniform provision, and is a companion to other changes made in Colorado to new Article 9 that appear to be designed to restrict the availability of deposit accounts as collateral.

With respect to commercial tort claims, the security interest will not extend to after-acquired claims, which effectively means that commercial tort claims subject to Article 9 will be in existence at the time the security agreement is created. A description of a commercial tort claim by
reference to a pending lawsuit would be sufficient, but something less specific also would be satisfactory. The Official Comment to UCC § 9-108 says that "a description such as 'all tort claims arising out of the explosion of debtor's factory' would suffice. . . ."

Second, a description of collateral as "all the debtor's assets" or "all the debtor's personal property" or similar "supergeneric" description is insufficient when used in the security agreement. Such invalidation is consistent with interpretations of former Article 9 from many jurisdictions. On the other hand, UCC § 9-504(2) of the Revision expressly validates collateral descriptions in the financing statement that indicate the financing statement covers "all assets or all personal property." Notwithstanding this statutory approval, a secured party's security interest is limited to the collateral in which the debtor granted a security interest.

A person is entitled to file a financing statement only to the extent that it is authorized by the debtor, and if the secured party is relying on the debtor's authenticating a security agreement for its authorization, it would not be authorized to file a financing statement that included as collateral property in which no security interest was granted. The filing would be ineffective as to such property. Moreover, if the filing caused loss to the debtor, the secured party would be liable for actual damages and, if the collateral were consumer goods, would be liable for statutory damages. A secured party desiring to take advantage of the greater flexibility allowed in financing statement descriptions had better obtain the debtor's express authorization to file a financing statement containing such a description.

**CONTENT OF FINANCING STATEMENTS**

New Article 9 provides that a financing statement is sufficient if it (1) contains the name of the debtor and the name of the secured party or its representative and (2) properly describes the collateral. It is no longer necessary to include the debtor's social security number or federal identification number in the financing statement.

However, the simplicity of the requirements of UCC § 9-502 is misleading. Even if the financing statement contains the above noted items, UCC § 9-520(a) requires the filing officer to reject an initial financing statement that:

1) is not communicated by a method or medium of communication authorized by the filing office;
2) is not accompanied by the requisite filing fee;
3) fails to provide the mailing address of the secured party;
4) fails to provide the mailing address of the debtor;
5) fails to indicate whether the debtor is an individual or an organization;
6) if the debtor is an organization, fails to identify the debtor's type of organization, jurisdiction of organization, and organizational identification number assigned to the debtor by its state of incorporation (or an indication that the debtor has no such number);
7) if the debtor is an individual, fails to identify the debtor's last name as such;
8) is illegible; or
9) if a real-estate-related filing, such as a fixture filing, fails to provide a sufficient description of the real property to which it relates.

These reasons form the exclusive basis for rejection. The filing office may not legitimately refuse a filing for any other reason (assuming the filing office is the one specified in revised Article 9). If the filing officer refuses to accept a financing statement for reasons other than the ones identified above, the financing statement is nevertheless effective, except as against a purchaser (which includes a secured party) of the collateral who gives value in reasonable reliance on the absence of a record of the financing statement in the filing officer's files.
On the other hand, it is obvious that the filing office will not be in a position to know if some of this required information is inaccurate and will accept for filing many financing statements in which this is the case. Should that occur (or should the rare case occur in which some of this information is altogether omitted), the financing statement will nevertheless be effective because only the information required by UCC § 9-502 is a precondition to effectiveness.

New Article 9 attempts to tighten the requirements for accuracy in the description of the debtor's name in the financing statement. The basic rule is that the name of the debtor as stated in the financing statement must match exactly the legal name of the debtor. This approach puts a high premium on knowing the name of the debtor. However, a debtor's name will not be deemed seriously misleading and thus will be adequate for financing statement purposes if the search logic used by the filing office would in fact identify the name used in the financing statement in a search under the debtor's actual legal name.

Accordingly, if ACME Tools, Inc., for example, is inaccurately identified in the financing statement as "ACME Tool Corporation," but a search of the records using the search logic of the state in question under the name "ACME Tools, Inc." would reveal the financing statement showing the name "ACME Tool Corporation," the name of the debtor will not be deemed seriously misleading. Although many states use software that is designed to capture variations of a name, a secured party takes unnecessary risks by relying on search logic to save it from its failure to use the precise legal name of the debtor.

As under prior Colorado law, no signature or other authentication is required on a financing statement or a continuation statement. In a departure from Colorado prior law, the Revision also eliminates the requirement of a signature or other authentication on any amendment, including an assignment, termination or partial release. In all cases, a financing statement and an amendment to a financing statement must be authorized by the debtor. This authorization is automatically provided by the debtor through execution of the related security agreement.

METHODS OF PERFECTION

Perfection under new Article 9 may be achieved by filing, possession, or control, depending on the type of collateral. In addition, perfection is automatic (that is, the secured party's position is perfected on attachment without the taking of further action) with respect to certain collateral. Perfection is automatic, for example, for a purchase money security interest in consumer goods (other than automobiles), the outright sale of a payment intangible or a promissory note, the assignment of a health care insurance receivable to the provider of health care goods or services, and an assignment of accounts or payment intangibles that does not by itself or in conjunction with other assignments to the same transferee assign a significant part of the assignor's outstanding accounts or payment intangibles.

In a major change from prior law, new Article 9 allows a security interest in an instrument to be perfected by either possession or filing. An instrument includes any right to payment of a monetary obligation evidenced by a writing that is not a security agreement or lease and is of a type that in the ordinary course of business is transferred by delivery, such as a promissory note. Investment property (defined to include stock certificates, uncertificated securities, and securities accounts, such as accounts maintained with a stock broker) also may be perfected by filing. In each of these cases, however, a security interest perfected by possession or control will give the secured party greater protection against the claims of competing interests than may be achieved by filing alone. For example, filing against an instrument or security would not constitute notice precluding a later purchaser of the instrument or security from becoming a holder in due course who would take free of most claims and defenses, nor would such filing have priority over a purchaser, including a creditor, who gives value and takes possession of the instrument in good faith without knowledge that the purchase violates the rights of the filing secured party.
In some cases, perfection may be accomplished only by control over the collateral. For example, control is the only means of perfection of security interests in deposit accounts, and, unless they fit the definition of a "supporting obligation," letter of credit rights. With respect to deposit accounts, control occurs when the account is with a depository institution that also is the secured party. Moreover, it occurs at such time as the depository institution has agreed that it will follow the directions of the secured party without further consent of the debtor, as well as when the secured party becomes the customer of the depository institution by putting the account in its own name. A secured party will have control over the deposit account even though the debtor retains a right of access to the account.

As under prior law, a secured party obtains control over a securities account when the securities intermediary agrees to follow directions from the secured party without further consent of the debtor. A provision allowing the debtor to continue directing investments in a securities account will not preclude a finding that the secured party has control of that account. This was unclear under former Article 9.

**FORECLOSURE AND REPOSSESSION**

After a debtor's default, the secured party may sell, lease, license, or otherwise dispose of the collateral. The basic standard by which the repossession is to be tested remains commercial reasonableness: "[E]very aspect of a disposition of collateral including the method, manner, time, place and other terms, must be commercially reasonable." Subject to limited exceptions relating to perishable goods and goods for which there is a recognized market, the secured party must send an authenticated notification of its intended disposition to specified persons. The "authenticated notification" requirement overrules those cases (in states other than Colorado) that allowed oral notice of disposition. Old Article 9 did not specify the contents of a disposition notice, and courts applied differing standards to measure the adequacy of such notices. Article 9 specifies the contents of a notice of disposition. Except in a consumer-goods transaction, the notification must describe the debtor and the secured party, the collateral to be disposed of, and the method of intended disposition; state that the debtor is entitled to an accounting (and the charge therefor); and state the time and place of a public sale and the time after which any other disposition is to be made.

In another example of the new statute's attempt to distinguish consumer from non-consumer transactions, the Revision requires a notice of disposition in a consumer-goods transaction to contain (in addition to the information required in a non-consumer-goods transaction) a description of any liability for a deficiency and the telephone number and mailing address from which the amount required to pay off the debt can be obtained. It also must contain a telephone number and mailing address from which additional information concerning the disposition and the obligation secured is available. In a helpful addition, new Article 9 includes statutorily prescribed notice of disposition forms—one for consumer-goods transactions and one for all other transactions—which, if properly completed and sent, will be deemed to satisfy the notice of disposition requirements of Article 9.

The mailing address requirement in each of the forms is not part of the uniform law but is a Colorado amendment. Colorado also has modified the consumer-goods transaction safe harbor form to reflect certain other changes made in Colorado regarding charges that may be made by a secured party to a debtor providing explanations of amounts owed.

The notice of disposition must be sent to the debtor and each secondary obligor, such as a guarantor. In addition, in a throwback to Article 9 as it existed prior to 1972, the notice of disposition of collateral other than consumer goods also must be sent to any person who has notified the foreclosing creditor of a claim against the collateral, any person who has filed a financing statement covering such collateral, and any other secured party that holds a security
interest in the collateral perfected by compliance with a certificate of title act or other non-UCC filing statute identified in UCC § 9-311(a). In another laudable attempt to inject more certainty into the foreclosure process, new Article 9 provides expressly that a notice of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is deemed an adequate period of notice. This ten-day notice is intended as a safe harbor, not a minimum. Thus, depending on the facts, a shorter notice period would be permissible. In consumer transactions, no safe harbor is provided, and the timeliness of notification is a factual matter for determination by a judge or a jury.

Under prior law, a secured party could, with the consent of the debtor and in compliance with certain notice requirements, retain collateral in its possession in full satisfaction of the debtor's obligations. It was generally thought that these strict foreclosure provisions of old Article 9 did not authorize a secured party to retain the collateral in partial satisfaction of the debt. New Article 9 expressly authorizes such partial strict foreclosure in non-consumer transactions, provided certain procedural and substantive safeguards are implemented, and eliminates the requirement that the collateral be in the secured party's possession, thus effectively extending the possibility of a strict foreclosure to intangible collateral. The Revision also provides, for the first time, that such foreclosure terminates any subordinate security interest and that such subordinate security interest is discharged or terminated even if the secured party fails to comply fully with the strict foreclosure provisions of new Article 9. Failure to so comply would subject the secured party to damages for noncompliance with the UCC.

Courts in a few jurisdictions, Colorado not among them, have held that a secured party's delay in disposition of collateral constitutes constructive strict foreclosure, relieving a debtor of any further obligation to satisfy the debt. The drafters of the Revision concluded that delay in disposition was merely one of the items to be measured to determine whether a secured party had acted in a commercially reasonable manner. If through unreasonable delay or otherwise a creditor had failed to meet this burden, the proper sanction would, in their view, be the imposition of damages rather than discharge of the debt.

Accordingly, the Official Text provides that strict foreclosure cannot occur unless, among other things, the secured party consents in writing to acceptance of collateral in full satisfaction of the debt. Further, new Article 9 requires a secured party to dispose of collateral within ninety days after it takes possession of the collateral or such longer period as may be agreed on by the parties after default. In an apparent effort to preserve the possibility that a Colorado court would adopt the constructive strict foreclosure theory, the Colorado legislature deleted subsection (b) of UCC § 9-620 requiring the secured party's consent to any strict foreclosure. Whether the Colorado courts will embrace this opportunity to adopt the constructive strict foreclosure doctrine is uncertain.

Old Article 9 did not specify the remedy to be applied if a secured party failed to comply with Article 9’s collection, enforcement, and disposition requirements. In some jurisdictions, courts denied the secured party the right to any deficiency in such cases. Most jurisdictions, however, including the state of Colorado, adopted the so-called "rebuttable presumption" rule, under which a secured party that failed to comply with the disposition requirements of the UCC had to prove that the fair market value of the collateral disposed of was equal to or less than the consideration received at the foreclosure sale. Failure to meet that burden of proof resulted in the loss of the deficiency. New Article 9 codifies this rebuttable presumption rule in all transactions other than consumer transactions. In the consumer context, the courts are to decide on a case-by-case basis whether, to what extent, and under what circumstances the secured party may obtain a deficiency from the debtor.
In both consumer and non-consumer transactions, the debtor also may recover damages for the loss of any surplus occasioned by the secured party's noncompliance. In a consumer-goods transaction, Article 9 now requires a secured party to send to the debtor and any consumer obligor a writing stating, among other things, the amount of any surplus or deficiency resulting from the transaction, how the secured party calculated such surplus or deficiency, and the source from which additional information is available. In the alternative, the secured party must send a record waiving the right to a deficiency. This explanation or waiver must be sent after the disposition of the collateral and, in any event, within fourteen days after the receipt of a request for an explanation from the debtor or consumer obligor.

No special safe harbor form is provided in the new statute. Perhaps in recognition of the newness of this requirement, new Article 9 exempts secured parties who fail to comply with this notice requirement from the penalty provisions of UCC § 9-625(c)(2), but in a non-uniform amendment, the Revision repeals this exemption on July 1, 2003.

Foreclosing secured parties will need to pay more attention to warranty provisions in their foreclosure sale documents. UCC § 9-610(d) and (e) provide that a foreclosing secured creditor gives implied warranties of title unless expressly disclaimed. Colorado, in another non-uniform amendment, specifies that such disclaimer must be given before the sale is completed. Secured parties also should consider express disclaimers of all implied warranties, particularly if they are also merchants with respect to the collateral or are otherwise in a position to be deemed to have given a warranty that the collateral is fit for a particular purpose.

If collateral is sold to the foreclosing secured party, a related entity or a secondary obligor, certain "low price" rules apply. Specifically, if the proceeds are significantly below what would have been obtained in a disposition to an unrelated third party, any deficiency will be calculated on the basis of what would have been received in such an independent transaction.

ADDITIONAL COLORADO VARIATIONS

In the legislative process, several changes were made to the Revision to continue in effect several non-uniform approaches adopted in prior law, and to enact provisions that were thought to give Colorado consumers additional protections not found in the Official Text. As noted previously, Colorado's version of Article 9 prohibits a security interest in a consumer deposit account in any transaction, as well as a security interest in any other deposit account in a consumer transaction or in any transaction in which the amount of the loan is $100,000 or less.

In a carryover from prior law, in other than purchase money transactions a security agreement of a married person must be signed by both husband and wife if the collateral is consumer goods other than automobiles and the spouses are living together at the time.

Neither prior Article 9 nor the Revision attempts a comprehensive definition of breach of the peace, but both statutes recognize that self-help repossession is not authorized if it is accompanied by a breach of the peace. Colorado's version of new Article 9 states that breach of the peace includes:

1) entering a locked or unlocked residence or residential garage;
2) breaking, opening or moving any lock, gate or other barrier to enter enclosed real property; or
3) using or threatening to use violent means in connection with self-help repossession.

A secured party engaging in any one of the three prescribed activities is subject to a penalty of $1,000. The same $1,000 penalty is imposed on a secured party using a uniformed law enforcement officer to assist in self-help repossession. Other conduct may be held to constitute a breach of the peace, but will not be subject to this penalty.

Unlike the uniform version of revised Article 9, Colorado provides in UCC § 9-625(i) that, in a non-class action, the prevailing party in an action challenging the secured party's conduct is
entitled to attorney fees. Those attorney fees are limited to 15 percent of the unpaid balance of the debt in certain transactions.

As noted previously, Colorado also has changed the safe-harbor notice of disposition to expand the information given to the consumer in connection with a foreclosure sale. In addition, the time period within which a secured party must respond to certain demands of the debtor and the means of relinquishing control over a deposit account are changed in the Revision. Moreover, Colorado debtors are entitled to make requests for accountings and similar items from a secured party on a more frequent basis without charge, and the maximum fee that may be charged for such requests when the debtor has exceeded his or her limit has been reduced from $25 to $15. 81

UCC § 9-333 of the Official Text gives the holder of certain statutory liens, such as the motor vehicle repairman's lien, priority over an Article 9 security interest, unless the statute creating such lien expressly provides otherwise. Colorado reversed this priority scheme in former Article 9 82 to give priority to the Article 9 security interest unless the lien created by statute expressly granted the statutory lien priority over the security interest. The UCC § 9-333, as adopted in Colorado, preserves Colorado's historical non-uniform grant of priority to the Article 9 security interest.

As part of a foreclosure process, if a secured party elects to disable or render unusable any collateral consisting of equipment, it may not do so with respect to a computer program or other similar device embedded in the equipment if immediate injury to person or property is a reasonable, foreseeable consequence of such action. 83 This non-uniform amendment is presumably designed to prevent the secured party from disabling the software that operates certain critical care equipment in hospitals and the like without the consent of the debtor.

Colorado's version of new Article 9 also continues provisions regulating the disposition of manufactured homes and the supervision and bonding of third party repossessors. The sole change in these nonuniform sections is the increase in the required bond of a third-party repossessor from $25,000 to $50,000. 84

A list of the significant (and many of the less significant) changes made by Colorado to the Revision can be found in the Principal Colorado Variations to Revised Article 9 ("Variations" chart) on pages 20-22. This list is not exhaustive, but does provide a preliminary look at those areas the Colorado legislature thought deserved special treatment in this state.

CONCLUSION

As noted at the outset, this brief article can provide only an introduction to the Revision. As is true of a person to whom one is introduced, many facets of new Article 9 are not apparent on a first meeting. In any revision as complex as this one, problems are bound to emerge only in the context of specific transactions. Almost certainly, amendments will be necessary to clarify confusions and resolve ambiguities. Readers who discover problems as they work with this statute are encouraged to contact the authors.
NOTES

1. The revision will become effective in Connecticut on October 1, 2001, and in Alabama, Florida, and Mississippi on January 1, 2002.
2. CRS § 4-9-109(a). In this article, citations to Article 9 as it existed in Colorado on June 30, 2001, will be prefaced by "previous."
3. Compare previous CRS § 4-9-104(k) and (1) with CRS § 4-9-109.
4. E.g., the revision recognizes "electronic chattel paper" as a specific category of collateral. CRS § 4-9-102(a)(31).
5. Previous CRS § 4-9-103(l).
6. As used in this article, the phrase "real property-related collateral" means collateral for which a fixture filing is made; timber to be cut; and as-extracted collateral, such as minerals.
7. CRS § 4-9-301.
8. This term is defined in CRS § 4-9-102 (a)(73).
10. CRS § 4-9-501(b). New Article 9 expands the definition of transmitting utility to include persons primarily engaged in the transmission of "communications electronically, electromagnetically, or by light," a change that would seem to bring the activities of cable television and fiber-optic network operators squarely within the scope of the transmitting utility central filing regime. CRS § 4-9-102(a)(83)(B).
11. CRS § 4-9-702(a).
12. Because any financing statement filed before July 1, 2001, that has not been continued will lapse before June 30, 2006, practitioners may question when that date would ever be the earlier date. In Sigman and Smith's comprehensive study of the transition rule, they discuss the case of a financing statement filed on August 1, 1996, and continued before July 1, 2001. In such a case, the lapse date for the continued statement would be July 31, 2006. However, under UCC 9-705(c), its effectiveness would end on June 30, 2006. See Sigman and Smith, "Revised U.C.C. Article 9's Transition Rules: Insuring a Soft Landing," 55 Bus. Law. 1065, 1087-88 (2000). In addition, some states have extended the effectiveness of financing statements for periods in excess of five years.
13. CRS § 4-9-705(a).
14. Previous CRS § 4-9-304(3).
15. CRS § 4-9-313(c).
16. CRS § 4-9-312(b)(I).
17. CRS § 4-9-108(e).
18. Revised Article 9 defines "amendment" to include any change to the financing statement, including assignments, continuations, terminations, partial releases, and amendments. CRS § 4-9-512(a).
19. Between July 1, 1996, and December 31, 1999, Colorado authorized financing statements covering non-real estate collateral to be filed in any Colorado county, as well as with the Secretary of State. Because the proper place in Colorado to file a post-effective-date financing statement covering such collateral is the office of the Secretary of State (and only such office), there exists the argument that "central" filings made at the county level during this three-and-one-half year period were not filed in the same office as that prescribed by the revision. Although the authors believe that this argument should be rejected, until this issue is resolved, it may be prudent for a secured party desiring to continue or otherwise amend such a locally filed financing statement to do so through both an "in lieu" initial financing statement (discussed in the text accompanying note 24, infra) and by means of a traditional Form UCC-3. CRS § 4-9-707(b) and (c).
20. CRS § 4-9-515(e).
21. CRS § 4-9-509(a).
22. See CRS § 4-9-512.
23. CRS § 4-9-705(f).
24. CRS § 4-9-706(a).
25. CRS § 4-9-706(b).
26. CRS § 4-9-706(c).
27. The National Conference of Commissioners on Uniform State Laws Enactment Guide suggested adding a CRS § 4-9-710 that would prescribe an extended period for retention of such records. Some states have included this provision. Colorado did not.

28. CRS § 4-9-707(c)(2).
29. CRS § 4-9-707(e).
30. CRS § 4-9-102(a)(29),(13),(78),(51),(46), and (61).
31. Previous CRS § 4-9-106.
32. CRS § 4-9-102(a)(2).
33. CRS § 4-9-102(a)(29).
34. Previous CRS § 4-9-104(l).
35. A consumer transaction is a transaction in which an individual incurs an obligation primarily for personal, family, or household purposes. A security interest secures the obligation, and the collateral is held or acquired primarily for personal, family, or household purposes. CRS § 4-9-102(a)(26). This includes the category of "consumer goods transaction" but goes beyond that category to include collateral other than consumer goods.

36. "Consumer deposit account" is a deposit account held in the name of a natural person and used primarily for personal, family, or household purposes. CRS § 4-9-102(a)(22.5).

37. CRS § 4-9-109(d)(13).
38. CRS § 4-9-109(d)(13.5).
39. CRS §§ 4-9-109(e) and -703(c).
40. CRS § 4-9-318(a).
41. 995 F.2d 948 (10th Cir. 1993).
42. CRS § 4-9-108(a).
43. CRS § 4-9-108(e).
44. CRS § 4-9-108(e).
45. See CRS § 4-9-108 (Official Comment 2).
46. CRS § 4-9-509(a).
47. CRS § 4-9-509(b).
48. CRS § 4-9-510(a).
49. See CRS § 4-9-625(b) and Id. at (Official Comment 2).
50. No sanction is prescribed for the failure of the filing officer to reject such a submission, and if CRS § 4-9-502 is satisfied, the filing is effective. Hence, there is a sense in which rejection is "optional" with the filing officer.

51. CRS § 4-9-516(d).
52. CRS § 4-9-503.
53. CRS § 4-9-506(c).
54. Prior law left much to be desired in this area. Minor errors that were not seriously misleading were acceptable, but the decision as to what was minor or seriously misleading was made by the courts on an ad hoc basis. The uncertainty of result encouraged litigation such as Scott Truck & Tractor Co. Inc. v. Alma Tractor & Equip. Inc., 35 S.W.3d 815 (Ark. 2000), where the Court questioned whether the omission of the suffix "Inc." from the debtor's name on the financing statement was seriously misleading, before ultimately concluding it was not.

55. CRS § 4-9-509.
56. CRS § 4-9-309.
57. CRS § 4-9-312(a).
58. CRS § 4-9-102(a)(47).
59. CRS § 4-9-102(a)(49).
60. CRS § 4-9-328.
61. "Supporting obligation" is defined in CRS § 4-9-102(a)(80).
62. CRS § 4-9-104(b).
63. CRS § 4-9-106; CRS § 4-8-106(f).
64. CRS § 4-9-610(b).
65. CRS § 4-9-611.
66. CRS § 4-9-613.
67. CRS § 4-9-614.
68. The safe harbor forms are set forth in CRS §§ 4-9-613 and -614.
69. CRS § 4-9-611(c)(3)(C).
70. CRS § 4-9-612.
71. CRS § 4-9-620.
72. See CRS § 4-9-620(b) (Official Text).
73. CRS § 4-9-620(f).
74. CRS § 4-9-626.
75. CRS § 4-9-616(b).
76. CRS § 4-9-628(d)(2).
77. CRS § 4-9-615(f).
78. The references to "loan" and "revolving loan account" in CRS § 4-9-109(d)(13.5) suggest that the restriction on use of a deposit account as collateral in business transactions does not apply to a credit extension that is not a loan, such as a credit sale transaction.
79. CRS § 4-9-203(j).
80. CRS § 4-9-625(h).
81. CRS § 4-9-210(f).
82. Previous CRS § 4-9-310.
83. CRS § 4-9-609(e).
84. CRS § 4-9-629.

See Variations chart on pages 20-22.
1. § 9-102(6) Revised definition of As-extracted Collateral.
2. § 9-102(8.5) Definition of Business Day (New).
3. § 9-102(22.5) Definition of Consumer Deposit Account (New).
5. § 9-108(b) The Secretary of State is authorized to establish collateral codes to identify categories of collateral.
6. § 9-108(e)(3) Description of deposit account cannot be solely by type.
7. § 9-108(f) Consumer goods description must specifically identify and itemize such consumer goods.
8. § 9-109(d)(13) Consumer deposit accounts excluded as Article 9 collateral in all transactions.
9. § 9-109(d)(13.5) Deposit accounts excluded as Article 9 collateral in consumer transactions and in $100,000 or less business purpose loans.
10. § 9-109(d)(14) and (15) No Article 9 security interest may be taken in IRA or 401(k) plans.
11. § 9-109(e) Government debt excluded from Article 9.
12. § 9-201(b) and (c) Reference to "applicable rule of law" omitted.
13. § 9-203(j) Security interest in consumer goods owned by married person other than autos and other than PMSI not valid unless security agreement signed by husband and wife.
14. § 9-208(b)(1) Time for secured party with control over a deposit account to respond to demand to release control changed from 10 calendar days to 5 business days.
15. § 9-208(b)(2) Once debt satisfied secured party must transfer balance in controlled deposit account to account in debtor's name if debtor so requests and provide sufficient information to debtor to allow access to the account.
16. § 9-208(b)(2.5) Amount payable to debtor upon release of control of deposit account must include all interest earned in account to extent not already credited or paid to debtor.
17. § 9-210(f) Each six months debtor or a person designated by debtor is entitled to make one free request for accounting, one for list of collateral and one for statement of account. Secured party may charge up to $15 (down from $25) for each additional request per category.
18. § 9-313(j) Subsection clarifies that references in subsections (g) and (i) to possible violations of debtor's rights are not to be construed as limiting debtor's rights if such violation actually occurs.
19. § 9-317(a)(2) Colorado did not adopt provision that would give secured party priority over lien creditor based on date of filing of financing statement if perfection occurs after date person becomes lien creditor.
20. § 9-333(b) Subsection changed to give priority to security interest over statutory lien unless lien statute provides otherwise.
21. § 9-334(j) Subsection deleted because Colorado is believed to have no crop mortgage law that is inconsistent with § 9-334.
22. § 9-401(c) New subsection added to state that Article 9's override of contractual restraints on alienation do not supersede any criminal sanctions applicable to a prohibited transfer or justify a transfer otherwise in violation of law.

23. § 9-406 Workers' and Unemployment Compensation claims, tort judgments, and certain special needs trust benefits not assignable notwithstanding § 9-406.

24. § 9-408 Workers' and Unemployment Compensation claims and certain special needs trust benefits not assignable notwithstanding § 9-406.

25. PART 5 Alternative B, with modifications adopted.

26. § 9-501 Secretary of State designated as central filing officer for purposes of Articles 9, 9.3 and 9.5.

27. § 9-510(c) Exception noted to six month window to file continuation statement based on previous nonuniform Colorado amendments. Historical interest only.

28. § 9-510(d) and (e) Reference made to prior Colorado nonuniform amendments. Historical interest only.

29. § 9-512(a) An amendment must identify all original financing statements (central and local) by file number and date of filing. The amendment need not provide the information specified in 9-502(b).

30. § 9-515 Reference to public-finance transactions deleted.

31. § 9-519 Check digit system must be in place by July 1, 2001. County clerks exempted from this requirement.

32. § 9-521 The Secretary of State is authorized to adopt forms rather than making the forms a part of the statute.

33. § 9-522 All filing officers (central and local) are required to be able to retrieve a record using the name of the debtor, the file number assigned to the original financing statement, and the date of filing.

34. § 9-523 The filing officer is required to maintain searchable records of federal tax lien notices as well as financing statements. Also, the time period within which the filing officer must provide acknowledgments of filing, search certifications and the like is extended from 2 business days to 5 business days. The written certifications option was selected in subsection (d) and subsection (f) was revised to require sale of data only in electronic or digital medium.

35. § 9-525 Filing and certification fees of the Secretary of State are to be determined from time to time by the Secretary of State. County filing officers determine their fees, but such fees may not exceed $10 for written filings, $15 for documents of more than 2 pages, and $5 if the filing is electronic.

36. §§ 9-528, 9-529, 9-530 These are nonuniform provisions carried over from current Colorado law. Historical interest only.

37. § 9-601 Breach of the peace is defined to include:
- entering a residence or residential garage
- breaking, opening or moving any lock, gate, or other barrier to enter enclosed real property
- using or threatening to use violent means

38. § 9-603(b) Words "empower the parties to set standards affecting" substituted for "apply to."
39. § 9-604(d) Words "other than the debtor" stricken.
40. § 9-607 and 9-608 Word "reasonable" added before "attorney fees."
41. § 9-609(d) The current Colorado limitations on the repossession of manufactured housing are carried over in this subsection.
42. § 9-609(e) Electronic repossession of embedded software is prohibited if immediate injury to person or property is a reasonable foreseeable consequence.
43. § 9-610(e)(2) A foreclosure seller may disclaim or modify warranties only if done so before completion of the transaction.
44. § 9-611(a)(2) For clarification, a reference to § 9-624(a) has been added.
45. § 9-611(d) The words "the creditor in good faith believes that the collateral" added before the words "threatens to decline." In addition, a sentence added to state that each reference to good faith does not abrogate secured party's general obligation to proceed in a commercially reasonable manner.
46. § 9-613(a)(3)(B) Minor errors are excused if they do not cause damages to person who relies on the erroneous information.
47. § 9-613(a)(5) The notice must state that the debtor may request an accounting by writing to a specific address (as well as calling a specified telephone number).
48. § 9-614(a)(1)(C) and (D) The notice in a consumer-goods transaction must identify, among other things, a mailing address of the secured party.
49. § 9-614(a)(3) An address for the secured party must be given. The bracketed language regarding charges for explanations from the secured party has been changed to reflect the charges in § 9-210(f).
50. § 9-615(a)(1) The word "reasonable" added before "legal expenses."
51. § 9-616 The word "reasonable" added before "expenses" and "attorney fees."
52. § 9-616(d) Minor errors are excused only if they do not cause damage to person relying on them.
53. § 9-616(e) The debtor is allowed three responses without charge to a request for explanation of surplus/deficiency amount in any six-month period. The maximum charge for excess requests is reduced to $15 from $25.
54. § 9-620(b) This subsection is deleted preserving the argument that retention of collateral by secured party may constitute acceptance of the collateral in satisfaction of the debt.
55. § 9-623(b) The word "reasonable" added before "attorney fees."
56. § 9-624(c) Subsection clarified to state that the waiver of the right to redeem is not allowed in a consumer-goods transaction.
57. § 9-624(c)(2) The person designated by the debtor in accordance with § 9-210 may recover damages for a secured party's noncompliance.
58. § 9-624(h) The penalty for committing any of the acts specified in § 9-601(h)(1), (2) and (3) or for using a uniformed law enforcement officer in a self help repossession is $1,000.

59. § 9-624(i) The prevailing party in an action (other than class action) under § 9-624 is entitled to recover legal fees, but such fees are capped at 15% in a consumer transaction.

60. § 9-624(j) The $500 penalty provided for in subsections (e) and (f) is indexed for inflation.

61. § 9-626(a) The word "reasonable" is added before "attorney fees."

62. § 9-626(b) A cross reference to § 5-5-103 of the UCCC is added.

63. § 9-628(c) The secured party may rely on a representation by the debtor in an authenticated record indicating that a deposit account is not a consumer deposit account. The obligor's representation concerning the purpose for which an obligation was incurred must be in an authenticated record.

64. § 9-628(d) This subsection is repealed effective July 1, 2003.

65. § 9-629 This nonuniform section carried over from existing Colorado Article 9 regulates repossession of collateral. The bond required of re possessors has been increased from $25,000 to $50,000.

66. § 9-703(c) A subsection has been added to exclude governmental liens from Article 9.

67. § 9.3-103 Central Information System Board retains central filing officer oversight authority.

68. § 9.3-108 Provisions added to transfer certain filing office functions from Central Information System to Secretary of State.

69. § 9.5-103(7) Secretary of State is empowered to determine filing fees for Effective Financing Statements.

70. § 9.5-107 Sanctions for noncompliance increased to match more closely the new damage provisions of Revised Article 9.

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