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1. Introduction

Article 9 of the Uniform Commercial Code (UCC), governing secured credit transactions, is one of the Code's most successful parts. Article 9 has been adopted by all 50 states plus Puerto Rico, Guam, U.S. Virgin Islands and the District of Columbia. In fact, Article 9 is the model on which almost all the provinces of Canada have based their Personal Properties Security Act.

In May 1998, the American Law Institute approved the Revised Article 9 at its annual meeting and in July 1998 the National Conference of Commissioner on Uniform State Laws gave its final approval at its meeting.¹ The Revised Article 9 has been passed in thirty states and introduced in eighteen states and in the U.S. Virgin Islands.² It will take effect in July 1, 2001. Unfortunately, Puerto Rico is not considering implementing Revised Article 9, at least for the time being.

Revised Article 9 brings some important changes that every commercial and corporate attorney should be aware of. The revision increases the scope of Article 9 and changes the rules regarding choice of law, the filing of financing statements, the secured parties' duties regarding the collateral, enforcement and deficiency rules, purchase money security interests, perfection and priority. The revision is not a simple set of amendments. It has been completely reorganized, and renumbered. Revised Article 9 will modernize, clarify, and expand the scope of the current version of Article 9. All changes were made to satisfy the following four areas: reduce cost, increase efficiency, promote uniformity, and simplify filing.

¹ See Rev. UCC § 9-101, Comment 2

² Web site of the National Conference of Commissioners on the States Laws (NCCUSL.org), visited March 19, 2001.

The first part of this Paper will introduce the major changes of Revised Article 9 and suggest briefly why some of these changes were made. An explanation and a comparative analysis will be made with Current Article 9. The purpose here is to help the readers get ready for Revised Article 9 and help Puerto Rico's legislature get familiarized with it. The second part of the Paper will focus on the reasons why Revised Article 9 should be adopted in Puerto Rico.

2. Overview of Revised Article 9

A. Scope and Coverage of Revised Article 9

Revised Article 9 has increased the types of transactions that are subject to Article 9. The revision brings new kinds of collateral in which a security interest may be taken. For example, it is possible to take a security interest in deposit accounts as original collateral³ and commercial torts claims.⁴ The current law that governs the rights of a creditor with a security interest in (i) deposits accounts as original collateral, and (ii) commercial tort claims is not uniform from state to state and is unclear in many states. Revised Article 9 will eliminate these uncertainties in these types of new collateral. Also, the revision broadens the definition of accounts, chattel paper, and consignments in order to expand the scope of Article 9.

b. New Collateral and Transactions

1. Health-care-insurance receivables- Current Article 9 excludes insurance claims from the scope of Article 9(except to the extent they constitute proceeds under Current UCC § 9-306). Revised Article 9 brings health care receivables into Article 9 in Rev. UCC § 9-102(a)(2), (46). Health-care-insurance receivable is a new subcategory of

³ See § Rev. UCC 9-109; Rev. UCC § 9-109, Comment 16.

⁴ See § Rev. UCC 9-109; Rev. UCC § 9-109, Comment 15

“accounts,” defined as “an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.”⁵ Other insurance claims remain outside of Article 9 (except to the extent they constitute proceeds under Rev. UCC § 9-109(d)(8)). The originators of insurance receivables arising from health care goods and services usually sell these receivables; by bringing them under Article 9, the uncertainties of these transactions are eliminated. The revision extends automatic perfection to assignments of health-care-insurance receivables if the assignment is made to the person that provided the health-care goods or services.⁶ Filing in the debtor’s location perfects the other assignments of health-care-receivables.⁷

2. Commercial tort claims- Under the revision there are rules that apply differently depending on whether the transaction, the collateral, or the debtor is consumer or commercial. For example, unlike Current Article 9 where all tort claims are excluded, claims from organizations and business-related tort claims of individuals, other than claims for bodily injury or death, may be taken as original collateral under Revised Article 9.⁸ However, Revised Article 9 continues to exclude all the other types of torts.⁹ According to comment 15 of Rev. UCC §9-109, “once a claim arising in tort has been settled and reduced to a contractual obligation to pay (as in, but not limited to, a structured settlement) the right to payment becomes a payment intangible and ceases to be claim arising in tort.” As a result, the secured party may lose its security interest in the commercial tort claim if the debtor settles the tort action. It is very important for the

⁵ Rev. UCC § 9-102(a)(46)

⁶ Rev. UCC § 9-309(5).

⁷ See Rev. UCC § 9-309, Comment 5.

⁸ See Rev. UCC § 9-109 (d)(12). See also Rev. UCC § 9-102(13) stating the definition of commercial tort claims.

⁹ See *id.*

secured party to include a special covenant in the security agreement restricting the debtor from settling the commercial tort claim with the tortfeasor without consent of the secured party. A good alternative is for the secured party to add as additional collateral “all payment intangibles” in the security agreement.

Commercial tort claims must be specifically described in the security agreement; description such as “all commercial tort claims” is insufficient. Description only by type defined in the UCC is an insufficient description for commercial tort claim.¹⁰ Also, contrary to the general rule in Revised Article 9 regarding after acquired clauses, Rev. UCC § 9-204(b) provides that a security interest does not attach under an after-acquired property clause to a commercial tort claim.¹¹ Thus, the commercial tort claim must exist at the time the security interest is executed.

Finally, filing in the state where the debtor is located perfects commercial tort claims.

3. Nonconsumer deposit accounts- Except in a few states (California, Illinois, Hawaii, Louisiana, and Idaho), Current Article 9 covers security interest in deposits accounts only as proceeds of other collateral.¹² The revision covers deposit accounts (defined in Rev. UCC § 9-102(a)(29) as a “demand, time, saving, passbook, or similar account maintained with bank; [t] he term does not include investment property or accounts evidenced by an instrument”) as original collateral. Rev. UCC § 9-109(d)(13)

¹⁰See Rev. UCC § 9-108(e)(1). See also Rev. UCC § 9-109, Comment 15.

¹¹ See Rev. UCC § 9-204, Comment 4.

¹² Current UCC § 9-104(l) expressly excludes from Article 9 “a transfer of an interest in any deposit account,” except to the extent that the funds in the account represent identifiable proceeds of other collateral. It would, however, permit a security interest in a certificate of deposit as original collateral. The exclusion of deposit account from Current Article 9 was not designed to prohibit a security interest in deposit accounts. It merely left the transaction subject to non- UCC state common law, where they are not treated kindly.

contains a specific exclusion for certain types of deposits accounts held by consumers. It states that Revised Article 9 does not extend to “an assignment of a deposit account in a consumer transaction.”¹³ The definition of “consumer transaction” requires both that the obligation be incurred primarily for personal, family or household purposes and that the collateral be held primarily for personal, family, or household purposes.¹⁴ The purpose of excluding consumer deposit accounts from Revised Article 9, is to protect consumer debtors against inadvertently encumbering deposit accounts. Banks will probably place language granting a security interest in deposit accounts in all their deposit account agreements. This language can be as simple as placing the following in the deposit account agreements: “Depositor hereby grants a security interest in the deposit account to secure all present and future obligations owed to the Bank.” The consumer exclusion is made to reduce the likelihood that a secured party will realize a windfall from a debtor’s deposit accounts.

Perfection of a deposit account security interest must be by control.¹⁵ Filing is an ineffective way to perfect a security interest in deposit account, except as provided in Rev. UCC § 9-315 with respect to proceeds.¹⁶ There are three ways to perfect a security interest by control: automatic control by maintaining deposit account, control by agreement, or control by becoming the bank’s customer.¹⁷

First, if the secured party is the depository bank, the bank will automatically have control. This is the easiest way to perfect a security interest in a deposit account. Many

¹³ Although Revised Article 9 excludes certain consumer deposit accounts, a lender may obtain a security interest under non-UCC state law. See Rev. UCC § 9-109, Comment 16.

¹⁴ See Rev. UCC § 9-102(a)(26).

¹⁵ Rev. UCC § 9-312(b)(1).

¹⁶ See Rev. UCC § 9-312, Comment 5.

¹⁷ Rev. UCC § 9-104.

banks will likely insert security agreement language into their standard account agreements, creating a security agreement in all of their deposit accounts.

Second, a secured party may obtain control by agreeing in an authenticated record that the depository bank will comply with the instructions originated by the secured party in directing disposition of funds in the account without further consent by the debtor.¹⁸ The depository bank must agree to comply with the secured party's instructions. Part of the requirement must be the lack of consent by the debtor. If further consent by the debtor is needed, the statute explicitly provides that the agreement would not confer control.¹⁹

The final method for obtaining control in is for the secured party to become the depository bank's customer with respect to the deposit account.²⁰ The benefits of this method are that it does not require the secured party to enter into a control agreement, and it avoids the risk of some other later creditor to obtain a competing control agreement. Unless the debtor is added as an additional signatory to the account, with probable limitations on the amount to withdraw, the debtor won't be able to use any of the funds in the depository account. This method of control will likely not be used for operating accounts or checking accounts.

Special priority rules apply to deposit account security interests. First, a security interest in a deposit account as proceeds of other collateral, which is perfected by filing, is junior to a security interest in the deposit account that is perfected by control.²¹ For example, if proceeds of a security interest in inventory or accounts (which is perfected by

¹⁸ Rev. UCC § 9-104(a)(2).

¹⁹ Rev. UCC § 9-104, Comment 3.

²⁰ Rev. UCC § 9-104(a)(3).

²¹ See Rev. UCC § 9-327(1).

filing) are placed in a deposit account, it will be subordinated to any security interest in the deposit account that is perfected by control. Second, a security interest in a deposit account held by the depository bank has priority over a conflicting security interest held by any other secured party, unless a secured party either effectuated its “control” by becoming the bank’s customer with respect to the deposit account or obtaining a subordination agreement from the depository bank.²² Third, if competing security interests are perfected by control, but neither secured party is the depository bank and neither obtains control by becoming the depository bank’s customer, then the security interest is rank “according to priority in time of obtaining control.”²³

However, in addition to a security interest, a depository bank may have set-off or recoupment rights against the deposit account.²⁴ The depository bank’s right of set-off and recoupment have priority over all security interests in a deposit account.²⁵ The only exception to this priority is when the secured party takes control over the deposit account by becoming the bank’s customer, under Rev. 9-104(a)(3).²⁶

4. Letter of credit rights- These are defined in Rev. UCC § 9-102(a)(51) as “a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand or payment or performance. The term does not include the right of a beneficiary to demand payment or performance under the letter of credit.” Perfection is accomplished only by control.²⁷ Perfection by filing would be ineffective. A lender will have control over a letter-of-credit right by obtaining

²² See Rev. UCC § 9-327(3) and (4).

²³ Rev. UCC § 9-327(2).

²⁴ Rev. UCC § 9-340(a).

²⁵ Rev. UCC § 9-340(b).

²⁶ Rev. UCC § 9-340(c).

²⁷ Rev. UCC § 9-107.

an assignment thereof together with the consent of the issuing bank or any nominated party under UCC § 5-114 or other applicable law.²⁸ Under Current Article 9, a secured interest in the proceeds of a letter of credit is perfected only if the secured party or its bailee takes physical possession of the letter of credit.²⁹

As mentioned in Rev. UCC § 9-102(a)(51), perfection of a security interest in letter of credit rights does not make the secured party the beneficiary of the credit. Moreover, the rights of the transferee beneficiaries and nominated persons will have priority over a secured creditor with respect to the credit.³⁰ Under a transfer, the transferee itself becomes the beneficiary and acquires the right to the proceeds.

5. Payment intangibles- To facilitate securitizations, Revised Article 9 will govern outright sales of payment intangibles.³¹ This new collateral is defined in Rev. UCC § 9-102(a)(61) as “a general intangible under which the account debtor’s principal obligation is a monetary obligation.” Perfection of outright sales in payment intangibles is automatic.³² Perfection of a security interest in payment intangibles is made by filing in the state of debtor’s location.

6. Software- Software is also a new subcategory of general intangibles. It is defined as a “computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.”³³ The definition of “goods” may be found in Rev. UCC § 9-102(a)(44). When software maintains its independent status it will

²⁸ Id.

²⁹ Current UCC § 9-304 and § 9-305.

³⁰ Rev. UCC § 9-109(c)(4); Rev. UCC § 9-322(f)(3).

³¹ Rev. UCC § 9-109(a)(3).

³² Rev. UCC § 9-309(3).

³³ Rev. UCC § 9-102(a)(75).

constitute a subcategory of general intangible.³⁴ Where software is “embedded” in goods so that the software becomes part of the goods, Revised Article 9 treats the software as goods for all purposes.³⁵ Filing does perfection where the debtor resides, if the collateral is general intangibles; if is embedded in goods, perfection in the goods carries the software with it.³⁶

7. Supporting obligation- Revised Article 9 defines this new collateral as “ 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.”³⁷ Under Revised Article 9, the creation of a security interest in a payment obligation automatically attaches to the supporting obligation.³⁸ Perfection of a security interest in the payment obligation automatically perfects the security interest in the supporting obligation.³⁹ For example, a corporation buys goods on credit and the president of the corporation guarantees the obligation. Debtor (the seller in this case) creates a security interest in the right to payment (account) in favor of the lender. Under Rev. UCC § 9-203(f), the security interest in the account attaches to the debtor’s right under the guarantee (supporting obligation). Perfection of the security interest in the account constitutes perfection of the security interest in the debtor’s rights under the guarantee.⁴⁰

³⁴ Id.

³⁵ Rev. UCC § 9-102(a)(44).

³⁶ See Clark, Barkley, Secured Transaction Under Revised Article 9 of the UCC Special Report, § 2.23 (1999).

³⁷ Rev. UCC § 9-102(a)(77).

³⁸ Rev. UCC § 9-203(f).

³⁹ Rev. UCC § 9-308(d).

⁴⁰ See Rev. UCC § 9-308, Comment 5.

8. Security interest granted by a government or governmental subdivision,

commission or agency- Current Article 9 excludes all governmental borrowings from its scope.⁴¹ Revised Article 9 includes within its scope any security interest created by a State, foreign country or a “governmental unit”⁴² except to the extent that another statute preempts Revised Article 9 or governs the security interest.⁴³ For example, a Puerto Rican governmental unit borrows 3 million dollars from Westernbank Puerto Rico and grants a security interest in its equipment to the bank. To the extent that Puerto Rico law does not provide peculiar rules to the creation of a security interest by the governmental unit, then Puerto Rico’s Revised Article 9 will govern. Note, however, that this new rule has raised some questions and led to non-uniform amendments.

9. Agricultural liens- Revised Article 9 expands its scope to cover agricultural

liens, as defined in Rev. UCC § 9-102(a)(5).⁴⁴ Current Article 9 only covers consensual security interests, but not statutory agricultural liens. The revision brings perfection, priority, and enforcement of nonpossessory agricultural liens within its scope. The filing of a financing statement is necessary for perfection of an agricultural lien.⁴⁵ The general rules of priority in agricultural liens are found in Rev. UCC § 9-322. However, if another statute, other than Revised Article 9, grants priority to an agricultural lien, it will have priority over a conflicting security interest or other agricultural lien on the same

⁴¹ Current UCC § 9-104(e).

⁴² See definition on Rev. UCC § 9-102(a)(45).

⁴³ Rev. UCC § 9-109(a), (c) and Comment 9.

⁴⁴ Rev. UCC § 9-109(a)(2).

⁴⁵ Rev. UCC § 9-310(a).

collateral. Note, however, that an agricultural lien is not a security interest; as a result the revision applies only to the extent it is expressly refers to agricultural liens.⁴⁶

10. Sales of promissory notes- The revision treats the outright sale of promissory notes as a transaction under Article 9.⁴⁷ The definition includes “an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgement by bank that the bank has received for deposit a sum of money or funds.”⁴⁸ As with the buyer of a payment intangible, the buyer of a promissory note enjoys automatic perfection.⁴⁹ However, a buyer that relies on automatic perfection without taking possession of the promissory note will be subordinated to a subsequent buyer that does take possession of the note.⁵⁰ To have priority, however, the subsequent buyer must give value and take possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

b. Changes in Collateral Categories

1. Accounts- Revised Article 9 broadens the definition of accounts to include payment obligations arising out of sale, lease, assignment or license of all tangible and intangible property, including health-care insurance, credit card receivables, and lottery winnings.⁵¹ It is no longer limited to rights to payment relating to goods or services. Current Article 9 defines “accounts” to include payment obligations

⁴⁶ See Clark, Barkley, Secure Transactions Under Revised Article 9 of the UCC Special Report, §3.04 (1999).

⁴⁷ Rev. UCC § 9-109(a)(3).

⁴⁸ Rev. UCC § 9-102(a)(65).

⁴⁹ Rev. UCC § 9-309(4).

⁵⁰ Rev. UCC § 9-330(d).

⁵¹ Rev. UCC § 9-102(a)(2).

arising out of only the sale or lease of goods or the provision of services.⁵² Revised Article 9 will continue covering outright sales and security interests in accounts. Many of the receivables included under the revised definition are, under Current Article 9, treated as general intangibles. The revision expands the scope of Article 9 by bringing more transactions through the sale of accounts, as newly defined. Finally, Revised Article 9 clarifies that the seller of accounts (and other property where the sale is an Article 9 transaction, such as chattel paper, or promissory note) retains no interest in the property sold.⁵³

2.Chattel Paper- The definition of chattel paper is expanded to include electronic chattel paper, which refers to chattel paper in the form of a record or records consisting of information stored in an electronic medium.⁵⁴ Also the definition has expanded to include software used in goods or a lease of specific goods.⁵⁵ The definition makes clear that the rights to payment arising out of credit-card transactions are not chattel paper.⁵⁶ The other category of chattel paper, “tangible chattel paper,” is defined in Rev. UCC § 9-102(a)(78) as “chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.”

Perfection of tangible chattel paper is done by filing or possession.⁵⁷ Perfection in electronic chattel paper is done by filing or control.⁵⁸ Because electronic chattel paper

⁵² Current UCC § 9-106.

⁵³ Rev. UCC § 9-318(a). See also Rev. UCC § 9-318, Comment 2 stating that the seller of an account or chattel paper that takes a security interest on them from the buyer does not mean that the seller retains an interest in the property sold. This rejects the holding in *Octagon Gas System v. Rimmer*, 995 F.2d 948 (10th Cir.1993) cert. denied 510 US 993 (1993).

⁵⁴ Rev. UCC § 9-102(a)(31).

⁵⁵ Rev. UCC § 9-102(a)(11).

⁵⁶ Rev. UCC § 9-102, Comment 5(b); Rev. UCC § 9-102(a)(11).

⁵⁷ Rev. UCC § 9-312(a); Rev. UCC § 9-313(a).

⁵⁸ Rev. UCC § 9-312(a); Rev. UCC § 9-105.

cannot be transferred, assigned, or possessed in the same manner as tangible chattel paper, a special definition of control is included in Rev. UCC § 9-105. For electronic chattel paper, control will require: (i) the existence of a single authoritative copy of the record which is unique, identifiable and, unalterable,⁵⁹ (ii) the authoritative copy must identify the secured party as the assignee of the record, (iii) the authoritative copy is communicated to and maintained by the secured party or its custodian, and (iv) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party.⁶⁰

3. Consignments- This term is defined in Rev. UCC § 9-102(a)(20). The revision brings all consignment transactions within the scope of Article 9.⁶¹ However, there are two exceptions to this rule: (i) consignments in consumer transactions, and (ii) transactions where the merchant/consignee is generally known by creditors to be substantially engaged in selling the goods for others.⁶²

B. Perfection-

The way to perfect a security interest is the most significant change we will all notice in Revised Article 9. Revised Article 9 makes some important changes regarding the filing of financing statements and the choice-of-law rules governing perfection (i.e., where to file). Also the revision will include new means for perfecting security interests in collateral that under Current Article 9 were limited to a few types of collateral. Most

⁵⁹ An “authoritative copy” is one distinguishable from other copies. Distinguishability can be accomplished through methods of authentication that are used in business practices involving the marking of additional copies.

⁶⁰ Rev. UCC § 9-105; Rev. UCC § 9-105, Comment 3.

⁶¹ Rev. UCC § 9-109(a)(4).

⁶² See Rev. UCC § 9-102(a)(20); Rev. UCC § 9-109, Comment 6.

importantly, Revised Article 9 will provide for perfection by control and automatic perfection in certain situations.

a. Financing Statement Filing

A debtor's signature will no longer be required in the financing statement, as long as the debtor has authorized the filing.⁶³ This will facilitate electronic filing. The elimination of the signature requirement also makes the exceptions provided in Current UCC § 9-402(2) unnecessary. Not requiring the signature in the financing statement does not mean all filings are authorized. Rather, it entitles a person to file a financing statement only if the debtor authorizes the filing in an authenticated record, such as the security agreement.⁶⁴ A person who files an unauthorized record without the debtor's authorization is liable for actual and statutory damages.⁶⁵ Of course, a filed financing statement is ineffective to perfect a security interest if the filing is not authorized.⁶⁶

Another change the revision makes regarding the content of the financing statement is that it permits "supergeneric" collateral descriptions in the financing statement.⁶⁷ For example, it will be permitted to describe the collateral in the financing statement as "all assets or all personal property now owned or after acquired by debtor" or "all assets except automobiles." However, such supergeneric descriptions are not

⁶³ Rev. UCC § 9-502, Comment 3; Rev. UCC § 9-509, Comment 3.

⁶⁴ Rev. UCC § 9-509(a).

⁶⁵ Rev. UCC § 9-625(e)(3).

⁶⁶ Rev. UCC § 9-510(a).

⁶⁷ Rev. UCC § 9-504(2).

allowed in a security agreement.⁶⁸ Note that the collateral described in a security agreement is the only collateral available to the secured lender to foreclose. The description of the collateral in a financing statement is only to put third parties on notice.

Requirements in the financing statement are stated in Rev UCC § 9-502. They include names and addresses of the debtor and secured party and a statement indicating the collateral covered by the financing statement. It avoids any requirement that the financing statement be in writing. In addition, the filing office must reject a financing statement lacking certain other information required under Rev. UCC § 9-516(b). However, if the filing office accepts the record, it is effective nevertheless.⁶⁹ But to avoid any risk, all financing statements should comply with the requirements in Rev. UCC § 9-502 and Rev. UCC § 9-516(b). If a filing officer refuses to accept the financing statement by other reasons not stated in Rev. UCC § 9-516(b) or Rev. UCC § 9-502, the financing statement would nevertheless be effective.⁷⁰

Under the revision a financing statement sufficiently provides the name of the debtor, assuming it is a registered organization, if the name indicated on the public record of the debtor's jurisdiction of organization is provided.⁷¹ The secured party should consult the certificate of incorporation to determine the exact legal name of the debtor and file under that name. A financing statement that provides the trade name of the debtor does not sufficiently provide the name of the debtor.⁷² The revision carries over

⁶⁸ Rev. UCC § 9-504, Comment 2; Rev. UCC § 9-108(c).

⁶⁹ Rev. UCC § 9-520(c).

⁷⁰ Rev. UCC § 9-516(d).

⁷¹ Rev. UCC § 9-503(a)(1).

⁷² Rev. UCC § 9-503(c).

the “minor error” rule established in Current UCC § 9-402(8).⁷³ This rule provides that a financing statement that fails sufficiently to provide the name of the debtor in accordance with Rev. UCC § 9-503(a) is seriously misleading.⁷⁴ However, if a search of the records of the filing office, using the filing office’s standard search logic under the debtor’s correct name, would disclose the financing statement that does not comply with Rev. UCC § 9-503(a), the name will not make the financing statement seriously misleading.⁷⁵

b. Choice of law governing perfection-

Revised Article 9 makes major changes concerning choice of law. Under Current Article 9, the law governing perfection of security interests depends on the type of collateral securing the debt. For example, secured parties wishing to perfect their security interest by filing a financing statement generally file where the debtor is located for intangible properties and where the property is located for tangible property.⁷⁶ Thus, secured parties usually required from the debtor covenants restricting debtor from transferring tangible property to other states or requiring timely notice of any changes in location during the life of the secured transaction. Under the revision, the jurisdiction that governs perfection and the jurisdiction in which a financing statement must be filed to perfect a security interest will, in most cases, be the jurisdiction in which the debtor is located.⁷⁷ Revised Article 9 provides for only one place to file for all kinds of collateral: the place of the debtor’s location. Therefore, secured parties lending against inventory or

⁷³ Rev. UCC § 9-506(a).

⁷⁴ Rev. UCC § 9-506(b).

⁷⁵ Rev. UCC § 9-506(c).

⁷⁶ Current UCC § 9-103.

⁷⁷ Rev. UCC § 9-301(1).

equipment will no longer need to make multi-jurisdiction filings or monitor of such inventory or equipment to ensure that a security interest therein remains perfected.

Important changes have also been made to the definition of “location of the debtor”. Revised Article 9 maintains the same basic structure of Current Article 9, providing: “(1) [a] debtor who is an individual is located at the individual’s principal residence, (2) [a] debtor that is an organization and has only one place of business is located at its place of business, (3) [a] debtor that is an organization and has more than one place of business is located at its chief executive office.”⁷⁸ However, the revision makes changes concerning registered organizations. It provides that a registered entity is considered to be located in its state of organization.⁷⁹ A registered organization means, “an organization organized solely under the law of a single State or the United State and as to which the State or the United State must maintain a public record showing the organization to have been organized.”⁸⁰ “Jurisdiction of the organization” with respect to a registered organization is defined as “the jurisdiction under whose law the organization is organized.”⁸¹ Revised Article 9 will provide that a corporate debtor is located in its state of incorporation regardless of where its chief executive office is located. The term “registered organization” includes corporations, limited partnerships, and limited liability companies.⁸² General partnerships will be included as registered entities only if the State

⁷⁸ Rev. UCC § 9-307(b); See Current UCC § 9-103(3)(d) to compare.

⁷⁹ Rev. UCC § 9-307(e).

⁸⁰ Rev UCC § 9-102(a)(70).

⁸¹ Rev. UCC § 9-102(a)(50).

⁸² Rev. UCC § 9-102, Comment 11.

under whose law the partnership is organized is required to maintain a public record showing that the partnership has been organized.⁸³

These changes will reduce the cost of secured credit transactions by eliminating the burden on secured creditors of determining the location of the debtor’s “chief executive office,” which sometimes become difficult to determine when the debtor is a large corporation operating in many jurisdictions. Also, changes in collateral location such as inventory or equipment, which occur frequently, will be unimportant to a secured party under Revised Article 9 because a new filing won’t be required to continue perfection on the security interest. Only changes in a debtor’s location, which are much rare will require a new filing. Note, that when a corporate debtor merges with or is acquired by a corporation organized under the law of another state, the debtor’s location is changed. The secured party has four months after the change of the debtor’s location to perfect its security interest.⁸⁴ If the merger results in a “new debtor” as defined in Rev. UCC § 9-102(56), then the secured party has one year after the merger to perfect its security interest.⁸⁵

To avoid any risk of losing a perfected security interest during the transition period, secured creditors must file in all applicable locations under both the Current and Revised Article 9.⁸⁶

Revised Article 9 also changes the choice-of-law rule for debtors that are foreign organizations. Under Current Article 9, when a debtor is located in a jurisdiction outside the United States, a secured creditor must file in the debtor’s “major executive office” in

⁸³ Id.

⁸⁴ Rev. UCC § 9-316(a)(2).

⁸⁵ Rev. UCC § 9-316(a)(3).

⁸⁶ This issue is discussed in the transitional rules section of this Essay.

the United States.⁸⁷ Revised Article 9 establishes as a general rule that a non-U.S. debtor normally would be located in a foreign jurisdiction and, as a consequence, foreign law would govern.⁸⁸ When foreign law generally does not require notice in a filing or recording system as a condition of perfecting nonpossessory security interests, the debtor is deemed located in the District of Columbia.⁸⁹ The problem with this new law is that secured parties must research and determine if a foreign law requires notice in a filing or recording system as a condition of perfection. Also, a foreign bankruptcy court may ignore the new Revised Article 9 rule. It is my personal view that the drafters of Revised Article 9 approved this new rule because they expect more foreign jurisdictions to adopt Revised or Current Article 9.⁹⁰

The general rule that the debtor's location jurisdiction governs perfection, the effect of perfection or nonperfection, and priority of the security interest, is subject to several exceptions. It does not apply to goods covered by a certificate of title,⁹¹ deposit accounts,⁹² investment property,⁹³ or letter-of-credit rights.⁹⁴ Nor does it apply to possessory security interests (i.e., for security interest that the secured party has perfected by taking possession of the collateral, the local law of the jurisdiction where the collateral is located is the governing law).⁹⁵ Other exceptions include security interests perfected

⁸⁷ Current UCC § 9-103(3)(c).

⁸⁸ Rev. UCC § 9-307(c).

⁸⁹ Id; See also Rev. UCC 9-307, Comment 3 for excellent examples.

⁹⁰ As mentioned earlier, Article 9 of the UCC is the model for the Personal Property Security Acts of almost all the provinces of Canada. Also, Mexico has adopted a variation of Article 9 of the UCC.

⁹¹ See Rev. UCC § 9-303 which states that the local law of the jurisdiction under whose certificate of title the goods are covered is the governing law.

⁹² See Rev. UCC § 9-304 which states that the local law of the depository bank that maintained a security interest in a deposit account is the governing law.

⁹³ See Rev. UCC § 9-305.

⁹⁴ See Rev. UCC § 9-306 which states that the local law of the issuer's jurisdiction or nominated person's jurisdiction is the governing law. See also UCC § 5-116.

⁹⁵ Rev. UCC 9-301(2).

by filing a fixture filing,⁹⁶ security interests in timber to be cut,⁹⁷ or security interest in as-extracted collateral.⁹⁸

c. Automatic perfection

The revision expands the list of transactions that are automatically perfected upon attachment of the security interest. Automatic perfection will occur in several important contexts. First, as in Current UCC § 9-302(1)(d), no filing or other step is required to perfect a purchase money security interest in consumer goods, other than goods such as automobiles that are subject to a statute or treaty described in Rev. UCC § 9-311(a).⁹⁹ Second, as mentioned earlier, perfection is automatic for outright sales of payment intangibles,¹⁰⁰ and promissory notes,¹⁰¹ and security interests in a supporting obligation for the collateral such as a standby letter of credit or guaranty.¹⁰² Third, perfection of a security interest in a right to payment or performance also perfects a security interest, mortgage, or other lien on personal or real property securing the right.¹⁰³ For example, if a promissory note, which evidenced the debtor's guarantee mortgage obligation, is transferred, the transferee of the note acquires the mortgage as well.¹⁰⁴ This adopts the traditional view that the mortgage follows the note. Fourth, Revised Article 9 also extends automatic perfection to security interests created by the assignment of health-care insurance receivables if the provider of the health care goods or services creates the

⁹⁶ Rev. UCC § 9-301(3)(A).

⁹⁷ Rev. UCC § 9-301(3)(B).

⁹⁸ Rev. UCC § 9-301(4).

⁹⁹ Rev. UCC § 9-309(1).

¹⁰⁰ Rev. UCC § 9-309(3).

¹⁰¹ Rev. UCC § 9-309(4).

¹⁰² Rev. UCC § 9-308(d).

¹⁰³ Rev. UCC § 9-308(e).

¹⁰⁴ Rev. UCC § 9-308, Comment 6.

assignment.¹⁰⁵ As a result, when an individual assigns a right to payment under the insurance policy to the person who provided health-care goods or services, the provider has no need to file a financing statement against the individual. For more examples on security interests that are perfected when they attach, see Rev. UCC § 9-308 and Rev. UCC § 9-309.

d. Perfection by control-

As a result of amendments to Article 8 of the UCC in 1994, Current Article 9 permits “control” to serve as a method of perfecting a security interest in investment property.¹⁰⁶ Revised Article 9 has expanded this method of perfection to deposit accounts, electronic chattel paper, and letter of credit rights. Control will be: a nonexclusive method for perfection in electronic paper and investment property,¹⁰⁷ and an exclusive method for deposit accounts and letters of credit.¹⁰⁸

Rev. UCC § 9-208 imposes certain duties on a secured party who has control of a deposit account, electronic chattel paper, investment property, or a letter-of-credit right. However, the requirements of such sections can be varied by agreement under UCC § 1-102(3).¹⁰⁹

e. Perfection by possession-

A secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral.¹¹⁰

Also, a secured party may perfect a security interest in goods covered by a certificate of

¹⁰⁵ Rev. UCC § 9-309(5).

¹⁰⁶ See Current UCC § 9-115(4).

¹⁰⁷ See Rev. UCC § 9-105; Rev. UCC § 9-106; Rev. UCC § 9-312(a) which clarifies that a security interest in chattel paper and instrument may also be perfected by filing.

¹⁰⁸ Rev. UCC § 9-312(b)(1) and (2); See also Rev. UCC § 9-104 and Rev. UCC § 9-107.

¹⁰⁹ See Rev. UCC § 9-208, Comment 2.

¹¹⁰ Rev. UCC § 9-313(a).

title issued by a State if it takes possession of the goods only in the circumstances described in Rev. UCC § 9-316(d).¹¹¹ Accounts, commercial tort claims, deposit accounts, investment property (except certificated securities),¹¹² letters-of-credit rights and letters of credit are excluded.¹¹³

Security interests in instruments can be only perfected by possession under Current Article 9. The revision also permits perfection by filing.¹¹⁴ However, a security interest perfected by filing is subordinated to (i) the interest of another secured party who perfects by possession or, (ii) a purchaser who takes possession for value, in good faith, and without knowledge that the purchase violates the rights grants to the filed.¹¹⁵ In addition, Rev. UCC § 9-331(c) provides that filing a financing statement does not constitute notice that would preclude a subsequent purchaser from becoming a holder in due course and taking free of all claims under UCC § 3-306.

Another major change by the revision concerns the elimination of the “bailee with notice” concept. Although Revised Article 9 will provide for more flexible perfection mechanisms, the statute will restrict the way to perfect a security interest when collateral is in possession of a person other than the debtor. Under Current Article 9 a security interest in goods, (other than goods covered by a negotiable document), money, chattel paper or instruments, is considered to be perfected when a bailee in possession of the collateral receives notification of the secured party’s interest.¹¹⁶ Under the corresponding provision of Revised Article 9, however, it is required for perfection that the bailee:

¹¹¹ Rev. UCC § 9-313(b). See also Rev. UCC § 9-316, Comment 5

¹¹² Rev. UCC § 9-313(a). See also Rev. UCC § 9-313, Comment 6.

¹¹³ Rev. UCC § 9-313, Comment 2.

¹¹⁴ Rev. UCC § 9-312(a).

¹¹⁵ Rev. UCC § 9-330(d).

¹¹⁶ Current UCC § 9-305.

receives notice, and acknowledges in an authenticated record that it is holding the collateral for the secured party's benefit.¹¹⁷ The problem in this case is that the person in possession of the collateral (the bailee) is not required to acknowledge that it holds possession for the secured party's benefit.¹¹⁸ However, the revision offers an alternative by providing perfection of a security interest in an instrument or certificate security by filing a financing statement.¹¹⁹ But still, the filing won't protect the secured party from delivery of collateral from the bailee to a third person.

f. Perfection in goods covered by a certificate of title-

“The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.”¹²⁰ Normally, under the law of relevant jurisdiction, the perfection step would consist of compliance with that jurisdiction's certificate-of-title statute and resulting notation of the security interest on the certificate of title.¹²¹ By examining the certificate of title a lender can ascertain whether the good is subject to any security interests.

Note that compliance with a certificate-of-title statute generally is both unnecessary and ineffective to perfect a security interest in inventory. The revision

¹¹⁷ Rev. UCC § 9-313(c).

¹¹⁸ Rev. UCC § 9-313(f).

¹¹⁹ Rev. UCC § 9-312(a).

¹²⁰ Rev. UCC § 9-303(c).

¹²¹ See Rev. UCC § 9-311(a)(2), and (b).

provides that a security interest created in inventory held by a person in the business of selling goods of that kind is subject to the normal filing rules, and not to the certificate-of-title statute.¹²² Thus, a secured party who finances an automobile dealer that is in the business of selling and leasing its inventory of automobiles can perfect a security interest in all the automobiles by filing a financing statement.¹²³

As under Current Article 9, the revision imposes on a secured party the duty to use reasonable care in the custody and preservation of collateral when it has possession.¹²⁴ Such duty may not be disclaimed by agreement under UCC §1-102. However, the parties remain free to determine by agreement standards that are not unreasonable as to what constitutes reasonable care.¹²⁵

C. Priority -

Generally, Revised Article 9 continues with most of the priority rules found in Current Article 9. For example, Revised Article 9 gives priority to the first to file or perfect,¹²⁶ and to purchasers of chattel paper and instruments who take possession without notice of competing interests therein.¹²⁷ However, Revised Article 9 contains a number of new priority rules and exceptions based on the method of perfection.

a. Perfection by filing, control, or possession. Who has priority?

A fundamental priority rule under Revised Article 9 is that a security interest perfected by control has priority over a security interest perfected by filing a financing statement. As discussed earlier, a security interest in investment property or electronic

¹²² Rev. UCC § 9-311(d)

¹²³ See Rev. UCC § 9-303, Comment 5 for an excellent example.

¹²⁴ Rev. UCC § 9-207.

¹²⁵ Rev. UCC § 9-207, Comment 2.

¹²⁶ Current UCC § 9-312(5) and Rev. UCC § 9-322(a)(1).

¹²⁷ Current UCC § 9-308 and 9-309; Rev. UCC § 9-330.

chattel paper may be perfected by either filing or by control. A security interest held by a secured party having control of the investment property or electronic chattel paper will defeat a competing security interest perfected by filing, even if perfection by control was done later.¹²⁸ Also, in deposit accounts perfection by control will defeat other forms of perfection (e.g., proceeds of other collateral deposited in the deposit account.)¹²⁹ Under Current Article 9, security interests perfected by control generally rank equally.¹³⁰ Revised Article 9 changes the rule by ranking according to the time of obtaining control.¹³¹

With regard to instruments, perfection may be obtained by filing, automatically upon attachment if the security arises out of a sale of the instrument, or taking possession of the instrument.¹³² Revised Article 9 establishes that a purchaser of an instrument has priority over a security interest perfected by a method other than possession if it gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.¹³³ This is standard negotiable instruments law.¹³⁴

b. Lien Creditors-

¹²⁸ Rev. UCC § 9-328(1); Rev. UCC § 9-330(a)(1).

¹²⁹ Rev. UCC § 9-327(1). Note, however, that control is the only method to perfect a security interest in deposit account as original collateral. See Rev. UCC § 9-312(b)(1).

¹³⁰ Current UCC § 9-115(5)(b). As mentioned earlier investment property is the only collateral under Current law that may be perfected by control.

¹³¹ Rev. UCC § 9-327(2) (deposit account); Rev. UCC § 9-328(2) (investment property); Rev. UCC § 9-329(2) (letter-of-credit-rights).

¹³² See Rev. UCC § 9-312(a); Rev. UCC § 9-309(4); Rev. UCC § 9-313(a).

¹³³ Rev. UCC § 9-330(d). Note that under UCC § 1-201(32) and (33), purchaser also includes a secured party.

¹³⁴ See UCC § 3-302, UCC § 3-305, and UCC § 3-306.

Under Current Article 9 a lien creditor's right has priority over an unperfected security interest.¹³⁵ Perfection requires attachment, which requires the giving of value.¹³⁶ If a secured party has filed a financing statement, but the debtor has not entered into a security agreement (and as a result value has not been given), an intervening lien creditor whose lien arose after filing but before attachment of the security interest defeats the secured party who later executed the security agreement. Revised Article 9 changes this result, by providing that a lien that arises after the financing statement is filed, but before the security interest attaches (e.g., execution of the security agreement) and becomes perfected, is still subordinate to all advances secured by the security interest.¹³⁷ Of course, if a financing statement is filed but a security agreement is never executed, then no priority contest arises because the lien creditor has the only enforceable claim to the property.

The purpose of this change comes as a result of Revised Article 9 permitting supergeneric descriptions of the collateral in the financing statement. When negotiations with the debtor begin, a secured creditor may immediately file a financing statement indicating that the collateral covers all assets or all personal property owned by debtor. Under Revised Article 9, the secured creditor can secure its priority while still negotiating the terms of the secured credit transaction.

c. Transferees of collateral-

As under Current Article 9, a security interest under the revision “continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof

¹³⁵ Current UCC § 9-301(1)(b).

¹³⁶ Current UCC § 9-303; Current UCC § 9-203.

¹³⁷ See Rev. UCC § 9-317(a)(2), Comment 4.

unless the secured party authorized the disposition free of the security interest.”¹³⁸ The secured party may claim both proceeds and the original collateral, but may have just one satisfaction.¹³⁹

Revised Article 9 provides that a “buyer in ordinary course of business”¹⁴⁰ takes free of a security interest, even though perfected, and even though the buyer knows the security interest exists.¹⁴¹ Reading the definition together with Rev. UCC § 9-320(a), the buyer takes free if the buyer merely knows that a security interest exists on the goods but subject to the security interest if it knows, in addition, that the sale violates a term in an agreement with the secured party.¹⁴²

Another important rule governing the rights of transferees of collateral under Revised Article 9 is that the “holder in due course”¹⁴³ of a negotiable instrument takes priority over an earlier security interest.¹⁴⁴ Under this rule of law, a secured party with a junior security interest in receivables (accounts, chattel paper, promissory notes, or payment intangibles) may collect and retain the checks as proceeds of those receivables free of claim of a senior secured creditor to the same receivables, if the junior secured party is a holder in due course of those checks.¹⁴⁵

Also “[a] transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the

¹³⁸ Rev. UCC § 9-315(a)(1); See Current UCC § 9-306(2).

¹³⁹ But in many cases, a purchaser or other transferee of the collateral will take free of a security interest, and the secured party’s only option will be the proceeds. See for example Rev. UCC § 9-320 (buyers of goods) and Rev. UCC § 9-331 (holder in due course of a negotiable instrument).

¹⁴⁰ See definition in UCC § 1-201(9).

¹⁴¹ Rev. UCC § 9-320(a).

¹⁴² See Rev. UCC § 9-320, Comment 3.

¹⁴³ See definition in UCC § 3-302.

¹⁴⁴ Rev. UCC § 9-331(a).

¹⁴⁵ Rev. UCC § 9-331, Comment 5.

debtor in violating the rights of the secured party.”¹⁴⁶ The knowledge that a security existed is irrelevant. This rule also applies to transferee of money.¹⁴⁷ This rule of law is design to avoid impeding the free flow of funds through the payment system.

d. Assigning of Priority-

Revised Article 9 allows a secured creditor of record to authorized a change in the information provided in a financing statement by filing an amendment.¹⁴⁸ The secured party’s name is one of the pieces of information that must be included in the financing statement.¹⁴⁹ Revised Article 9 allows a “secured party of record”¹⁵⁰ to amend an existing filing to change the name of the secured party. As a result, the secured party can transfer its priority by amendment. The assignability of priority has a very significant implication in allowing a later secured creditor to jump over the priority of intervening secured parties by purchasing the priority of the first-filer. In addition, Revised Article 9 carries over the rule on Current UCC § 9-302(2) permitting the assignment of security interests and establishing that no assignment form would be necessary.¹⁵¹

Finally, another very important priority rule is found in Rev. UCC § 9-339, which states “[t] his article does not preclude subordination by agreement by a person entitled to priority.” This section makes it entirely clear that a person entitled to priority may effectively agree to subordinate its claim.

D. Enforcement-

¹⁴⁶ Rev. UCC § 9-332(b).

¹⁴⁷ Rev. UCC § 9-332(a).

¹⁴⁸ See Rev. UCC § 9-509; Rev. UCC § 9-512.

¹⁴⁹ See Rev. UCC § 9-502(a)(2).

¹⁵⁰ See definition in Rev. UCC § 9-511(a).

¹⁵¹ Rev. UCC § 9-310(c).

Much of the litigation under Current Article 9 arises in connection with the enforcement of a security interest. Part Six of Revised Article 9 does not make too many changes to Part Five of Current Article 9. Revised Article 9 Part Six is more of a clarification on Current Article 9. For example, Revised Article 9 clarifies that a secondary “obligor”¹⁵² (guarantor) of an obligation subject to Article 9 is entitled to the same rights as the debtor and may not waive those rights before default.¹⁵³

Under Rev. UCC § 9-601(a), the secured party’s rights of enforcement arise “after default.” As under Current Article 9, the revision leaves to the agreement of the parties the circumstances giving rise to a default.¹⁵⁴ Every aspect of a disposition of collateral including the method, manner, time, place, and other terms, must be commercially reasonable.¹⁵⁵ As under Current Article 9, low price alone is not enough to make a foreclosure sale commercially unreasonable. If a secured party uses a foreclosure sale, proceeds of the collection or enforcement must be distributed in the following order: first, to the reasonable expenses of the collection and enforcement; second, to the satisfaction of the obligations secured by the security interest that is being enforced; third, to the satisfaction of the obligations secured by any subordinate security interest or lien on the collateral; and fourth, to the debtor if there is any surplus.¹⁵⁶ Note, however, that to satisfy the obligations secured by any subordinate security interest or lien on the collateral subject to the collection or enforcement of a senior security interest, the senior

¹⁵² Rev. UCC § 9-102(a)(59).

¹⁵³ Rev. UCC § 9-602. This section establishes the specific rights of the debtor and duties of the creditor that may not be waived or varied. Provisions that are not specified in this section are subject to the general rule that UCC provisions may be varied by agreement, with the exceptions relating to good faith, diligence, reasonableness, and care. See UCC § 1-102(3).

¹⁵⁴ Current UCC § 9-501.

¹⁵⁵ Rev. UCC § 9-610(a). See Rev. UCC § 9-627(b), where it establishes when a disposition of collateral is performed in a commercially reasonable manner.

¹⁵⁶ Rev. UCC § 9-608(a).

secured party must receive an authenticated demand for proceeds before distribution of the proceeds is completed.¹⁵⁷

Unlike Current Article 9, the revision specifies that a secured party be under no duty to apply the noncash proceeds of the collection and enforcement to the outstanding obligation unless its failure to do so would be commercially unreasonable.¹⁵⁸ The parties may provide for a method of application of noncash proceeds by agreement, if the method is not manifestly unreasonable.¹⁵⁹

a. Deficiency judgment-

The general rule is that the debtor continues to be liable for the difference between the secured obligation and the net proceeds of the foreclosure.¹⁶⁰ If the creditor violates the rules of enforcement of its security interest, it may be subject to damages.¹⁶¹ Damages for violation of the requirements of Revised Article 9 are those reasonably calculated to put an eligible claimant in the position that it would have occupied had no violation occurred.¹⁶²

¹⁵⁷ Rev. UCC § 9-608(a)(C).

¹⁵⁸ Rev. UCC § 9-608(a)(3). See Rev. UCC §9-608, Comment 4 and Rev. UCC § 9-615, Comment 3 for good examples.

¹⁵⁹ See Rev. UCC § 9-603.

¹⁶⁰ Rev. UCC § 9-615(d).

¹⁶¹ Rev. UCC § 9-625 (b).

¹⁶² See Rev. UCC § 9-625, Comment 3. Note that in consumer-goods transactions a minimum statutory damages formula is provided. See Rev. UCC § 9-625(c)(2).

Revised Article 9 provides a special method for calculating a deficiency or surplus when the secured party, “person related”¹⁶³ to the secured party, or secondary obligor acquires the collateral at a foreclosure disposition. Revised Article 9 recognizes the lack of incentive from the secured party to maximize the proceeds of the disposition in these cases. As a result, the revision, instead of calculating a deficiency or surplus based on the actual net proceeds, it calculates it based upon the amount that would have been received in a commercially reasonable disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor.¹⁶⁴ This rejects the view that the secured party’s receipt of such a price necessarily constitutes noncompliance with Part six of the revision.¹⁶⁵ A secured party should be able to protect itself from this issue by bidding an amount that is competitive.

b. Rebuttable presumption rule-

The most significant clarification to the foreclosure rules is the rejection of the “absolute bar” rule.¹⁶⁶ Revised Article 9 adopts the “rebuttable presumption” rule except in consumer transactions.¹⁶⁷ Under this rule, the secured creditor’s failure to comply with the enforcement rules does not bar a claim to a deficiency. There is a presumption that the amount that a complying collection, enforcement, or disposition would have yielded is equal to the amount of the secured obligation, together with expenses and attorney’s

¹⁶³ Define in Rev. UCC § 9-102(63).

¹⁶⁴ Rev. UCC § 9-615(f).

¹⁶⁵ See Rev. UCC § 9-615, Comment 6.

¹⁶⁶ This punitive rule establishes that when a secured creditor does not comply with the relevant provisions of enforcement it loses its claim to a deficiency regardless of the harm, if any, caused by the noncompliance.

¹⁶⁷ Rev. UCC § 9-626(a); Rev. UCC § 9-626(b). See also Rev. UCC § 9-626, Comment 3.

fees. The debtor or obligor is to be credited with the proceeds that would have been realized had the secured party complied with relevant enforcement provisions. Thus, the secured party may not recover any deficiency unless it rebuts the presumption, by proving that compliance with the relevant provisions would have yielded a smaller amount than the secured obligation, together with expenses and attorney's fees.

c. Notice of foreclosure sale-

Revised Article 9 requires a secured party who wishes to dispose of the collateral under Rev. UCC § 9-610 to send a reasonable authenticated notification of disposition to specified interest person.¹⁶⁸ The notification must be reasonable as to the manner, content, and time it is sent.¹⁶⁹ The revision provides for guidelines on the time, contents and form of the notification.¹⁷⁰

The secured party must send an authenticated notification to the debtor, and any secondary obligor.¹⁷¹ This resolves the uncertainty under Current Article 9, by establishing that secondary obligors, such as sureties, are entitled to receive notification of an intended disposition of collateral, regardless of who created the security interest in the collateral.¹⁷² Unlike Current Article 9, the revision also requires the secured party to notify the following persons if the collateral is other than consumer goods: (i) other secured parties who have perfected a security interest in the same collateral by filing a financing statement, (ii) any other person from which the secured party received an authenticated notification of a claim of an interest in the collateral, and (iii) any other

¹⁶⁸ Rev. UCC § 9-611.

¹⁶⁹ See Rev. UCC § 9-611, Comment 2.

¹⁷⁰ See Rev. UCC § 9-612 (timeliness of notification); Rev. UCC § 9-613 (contents and forms of notification); Rev. UCC § 9-614 (contents and forms of notification in consumer-goods transactions).

¹⁷¹ Rev. UCC § 9-611(c).

¹⁷² Rev. UCC § 9-611, Comment 3.

secured party that held a security interest in collateral perfected by compliance with a statute, regulation, or treaty described in Rev. UCC § 9-311(a).¹⁷³

d. Strict foreclosure-

Strict foreclosure is a procedure in which a secured party accepts the collateral in satisfaction of the obligation it secures.¹⁷⁴ The advantage of strict foreclosure is that secured parties do not have to comply with the commercially reasonable test of Rev. 9-610(b). In addition, foreclosure expenses are avoided. Revised Article 9 has expanded the use of strict foreclosure by giving the secured party more flexibility. A secured party may use strict foreclosure if the debtor consents to the acceptance and the secured party does not receive within twenty (20) days a notification of objection to the proposal.¹⁷⁵ Unlike Current Article 9, the revision eliminates the requirement that the secured party present a “proposal” for retention of collateral.¹⁷⁶ Revised Article 9 allows the debtor to accept the strict foreclosure procedure without a formal proposal by the secured party. Also, the revision eliminates the requirement under Current UCC § 9-505 that the secured party must be in possession of the collateral to use strict foreclosure.¹⁷⁷ As a result, intangible collateral may be subject to a strict foreclosure.¹⁷⁸ However, if collateral is consumer goods, strict foreclosure may not be used unless the collateral is not in the debtor’s possession when the debtor consents to the strict foreclosure.¹⁷⁹

¹⁷³ Rev. UCC § 9-611(c)(3).

¹⁷⁴ Rev. UCC § 9-620(a).

¹⁷⁵ Rev. UCC § 9-620(a).

¹⁷⁶ Rev. UCC § 9-620, Comment 2.

¹⁷⁷ Rev. UCC § 9-620(a); Rev. UCC § 9-620, Comment 7.

¹⁷⁸ Id.

¹⁷⁹ Rev. UCC § 9-620(a)(3).

The revision also encourages strict foreclosure by permitting a secured party to accept collateral in partial satisfaction of the debt.¹⁸⁰ However, in consumer transactions, a secured party may not accept collateral in partial satisfaction of the obligation it secures.¹⁸¹ Finally, unlike Current Article 9, the revision establishes that any subordinate security interest or other subordinate lien is discharged after the secured party's acceptance of the collateral in full or partial satisfaction of the obligation.¹⁸² In addition, a subordinate interest is discharged or terminated even if the secured party fails to comply with Revised Article 9.¹⁸³ However, if a secured party fails to comply with Article 9, it may be subject to damages under Rev. UCC § 9-625.¹⁸⁴

E. Purchase money security interests-

Revised Article 9 defines a purchase-money obligation as “an obligation of an obligor [purchaser] incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.”¹⁸⁵ The concept of “purchase-money security interest” requires a close connection between the acquisition of collateral and the secured credit transaction. A security interest does not qualify as a purchase-money security interest if the debtor acquires the collateral with its own money and subsequently creates the security interest on the purchased collateral.¹⁸⁶ Revised Article 9 limits the purchase-money security interest to

¹⁸⁰ Rev. UCC § 9-620(a).

¹⁸¹ Rev. UCC § 9-620(g).

¹⁸² Rev. UCC § 9-622(a).

¹⁸³ Rev. UCC § 9-622(b).

¹⁸⁴ Rev. UCC § 9-622, Comment 2.

¹⁸⁵ Rev. UCC § 9-103(a)(2).

¹⁸⁶ Rev. UCC § 9-103. Comment 3.

goods, including fixtures, and software.¹⁸⁷ As a result, no purchase money security interest is permitted in intangible collateral.

Revised Article 9 continues the priority for purchase money security interests. As in Current Article 9, the revision establishes an exception to the first to file or perfect rule of priority with a purchase-money security interest.¹⁸⁸ There are three rules of priority in purchase-money security interests according to the type of collateral.

First, the revision provides that a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and identifiable proceeds.¹⁸⁹ However, the purchase-money security interest must be perfected when the debtor receives possession of collateral or within 20 days thereafter.¹⁹⁰ A purchase-money security interest qualifies for priority even if the secured party holding the purchase-money security interest knows of a conflicting security interest.¹⁹¹

Second, a purchase-money security interest in inventory has priority over an earlier filed security interest in the same collateral if (i) the purchase-money security interest is perfected on or before the debtor receives possession of the inventory, and (ii) the purchase-money secured party gives notification to the holder of a conflicting security interest who filed earlier against the same item or type of inventory.¹⁹² The notification must specify that the purchase-money secured party “has or expects to acquire a purchase-money security interest in the inventory of the debtor and describes the

¹⁸⁷ See Rev. UCC § 9-103(b) and (c).

¹⁸⁸ See Rev. UCC § 9-324.

¹⁸⁹ Rev. UCC § 9-324(a).

¹⁹⁰ Id.

¹⁹¹ See UCC § 9-324, Comment 3.

¹⁹² Rev. UCC § 9-324(b). Note that the 20-day grace period of Rev. UCC § 9-324(a) does not apply. See also Rev. UCC § 9-324, Comment 3 for a discussion of when “debtor receives possession.”

inventory.”¹⁹³ Unlike Current Article 9, the priority on purchase-money security interests on inventory extends not only to cash proceeds but also to chattel paper and instrument constituting the proceeds of the inventory.¹⁹⁴

Third, unlike the Current Article 9, the revision also gives priority to a perfected purchase-money security interest in livestock, much similar to the one provided to inventory.¹⁹⁵ The major difference is that a purchase-money secured party in livestock enjoys priority in *all* proceeds of the collateral, including priority in accounts over an earlier-filed account financier.¹⁹⁶

Revised Article 9 also provides a new section concerning priority among multiple purchase-money security interests. The revision grants priority to the purchase-money security interest that secured the price of the collateral (i.e., created in favor of the seller) over a purchase-money security interest that enabled the debtor to acquire rights in or the use of collateral.¹⁹⁷ Concerning multiple purchase-money security interests securing enabling loans the first-to-file-or-perfect rule of Rev. UCC § 9-322 applies.¹⁹⁸

A major change under Revised Article 9 is that it permits the cross-collateralization in a purchase-money security interest. Under this rule a security interest may be a purchase-money security interest to some extent and a non-purchase-money security interest to some extent.¹⁹⁹ This rule is better known as the “dual-status” rule.²⁰⁰ The revision rejects the “transformation rule,” under which any cross-collateralization or

¹⁹³ Rev. UCC §9-324(b)(2).

¹⁹⁴ Id.

¹⁹⁵ See UCC § 9-324(d) and (e).

¹⁹⁶ See UCC § 9-324, Comment 10.

¹⁹⁷ Rev. UCC § 9-324(g)(1).

¹⁹⁸ Rev. UCC § 9-324(g)(2).

¹⁹⁹ Rev. UCC § 9-103(f).

²⁰⁰ See *In re Billings*, 838 F.2d 405 (10th Cir. 1988), applying the dual status rule by holding that a refinancing of a loan did not extinguish a purchase-money security interest.

refinancing destroys the purchase-money status.²⁰¹ Note that the revision leaves to the courts the determination of the proper rules to apply in consumer-goods transactions and instructs the court not to draw any inference from this limitation.²⁰²

F. Proceeds-

One of the major changes Revised Article 9 makes is the expansion of the definition of proceeds beyond that contained in Current UCC § 9-306. Under Revised Article 9, proceeds include “whatever is acquired upon sale, lease, license, exchange, or other disposition of collateral [or] whatever is collected on or distribute on account of, collateral [or] rights arising out of collateral.”²⁰³ This broad definition covers cash or stock dividends distributed on account of securities or other investment property as proceeds.²⁰⁴ Also the definition in the revision includes partnership distributions, rentals for leases of goods, licensing royalties, and claims for loss of or interference with the collateral.

The expansion of the definition of proceeds is a major impact to secured creditors in bankruptcy. Under the Bankruptcy Code, property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement.²⁰⁵ Without bankruptcy, the creditor has a security interest in after-acquired property; in bankruptcy, it does not.

²⁰¹ See *Southtrust Bank of Ala., NA v. Borg-Warner Acceptance Corp.*, 760 F.2d 1240 (11th Cir. 1985), applying the transformation rule by holding that unless a lender provides a method for determining the extent to which each item of collateral secures its purchase-money, it effectively gives up its purchase-money status.

²⁰² Rev. UCC § 9-103(h).

²⁰³ Rev. UCC § 9-102(a)(64)(A), (B), and (C).

²⁰⁴ See Rev. UCC § 9-102, Comment 13(a).

²⁰⁵ Bankruptcy Code § 552(a). Property acquired by the debtor after filing for bankruptcy that would otherwise have been covered by the security agreement’s after-acquired property clause becomes available for the debtor-in-possession who is operating a business under Chapter 11 of the Bankruptcy Code to use as collateral to obtain postpetition credit.

But under section § 552(b) of the Bankruptcy Code, an exception is made. If the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property acquired before the commencement of the case and to proceeds of such property, then such security interest extends to such proceeds acquired by the estate after commencement of the case.²⁰⁶ For example, if a debtor sells its inventory (which is subject to a security interest) after the commencement of the case and subsequently used the cash proceeds to buy new inventory, the security interest of the secured party will extend to the new inventory, which is both after-acquired property and proceeds.²⁰⁷ The fact that Section §552(a) denies the validity of after-acquired property clauses in bankruptcy does not affect this reasoning.²⁰⁸ The new definition of proceeds provides secured creditors much more protection under bankruptcy because the exception of section § 552(b) is, as a result, expanded.

Revised Article 9 establishes common law principles for the proper method of tracing proceeds.²⁰⁹ The revision provides: “[p] roceeds that are commingle with other property are identifiable proceeds * * * if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.”²¹⁰ Among the equitable principles the

²⁰⁶ Bankruptcy Code § 552(b).

²⁰⁷ See *In re Bumper Sales, Inc.*, 907 F.2d 1430 (4th Cir. 1990), for an explanation on the effect of bankruptcy on after-acquired property clause and proceeds.

²⁰⁸ *Id.*

²⁰⁹ Rev. UCC § 9-315(b).

²¹⁰ *Id.*

revision suggests the “lowest intermediate balance rule” to enable a secured party to trace the proceeds of its collateral.²¹¹

Perfection of a security interest in proceeds is achieved when the security interest in the original collateral is perfected.²¹² However, a perfected security interest in proceeds becomes unperfected on the 21st day after the security attaches to the proceeds unless the proceeds are identifiable cash proceeds or the filing of the financing statement on the original collateral also covers the proceeds.²¹³ For example, a secured party perfects a security interest in inventory by filing a financing statement covering “all debtor’s personal property here owned and after acquired.” The debtor sells its inventory for cash and immediately buys new equipment with the money earned on the sale. Note that the financing statement is sufficient to perfect a security interest in the debtor’s equipment; the security interest in the equipment, which is an identifiable proceed of the original collateral, remains perfected beyond the 20-day period.²¹⁴

Under Revised Article 9, lenders can feel more comfortable that the proceeds of their collateral have expanded, giving them greater protection if the debtor files for bankruptcy.

G. Good Faith-

Another important change in Revised Article 9 concerns the definition of good faith, which contains an objective standard. The new definition requires “honesty in fact

²¹¹ Rev. UCC § 9-315, Comment 3; See *Chrysler Credit Corporation v. Superior Court*, 17 Cal. App. 4th 1303, 22 Cal.Rptr.2d 37, for a perfect explanation of the “lowest intermediate balance rule.”

²¹² Rev. UCC § 9-315(c).

²¹³ Rev. UCC § 9-315(d).

²¹⁴ See Rev. UCC § 9-315, Comment 5.

and the observance of reasonable commercial standards of fair dealing.”²¹⁵ This definition is similar to one that has been adopted in Article 3 of the UCC, negotiable instruments.²¹⁶

H.Consumer Transactions-

The revision’s most significant failure is its treatment of consumer transactions. Although adding around 70 more sections to the law, the revision does not solve important consumer issues. Those issues are left to the courts to decide. For example, the revision leaves to the court the determination of proper rules in calculating deficiencies on foreclosure²¹⁷ and in determining purchase-money security interests in consumer transactions.²¹⁸

The revision defines “consumer transaction” as a transaction in which both the obligation secured and the collateral must have a *primarily* personal, family, or household purpose.²¹⁹ Mixed business and personal transactions may be characterized as a consumer transaction if the primary purpose test is satisfied.²²⁰

Revised Article 9 establishes a variety of special notices that a secured party must provide the consumer debtor in connection with the foreclosure of a security interest. First, Revised Article 9 requires a special form of notification to the consumer debtor before disposition of collateral. Additional information such as a description of any liability for a deficiency and the amount to be paid to the secured transaction to redeem

²¹⁵ Rev. UCC § 9-102(a)(43).

²¹⁶ See UCC § 3-103(a)(4).

²¹⁷ Rev. UCC § 9-626(b).

²¹⁸ Rev. UCC § 9-103(h).

²¹⁹ See Rev. UCC § 9-102(22), (23), and (24).

²²⁰ See Rev. UCC § 9-102, Comment 7.

the collateral is required.²²¹ Note, however, that the 10-day period to notify the debtor before disposition does not apply to consumer transactions.²²² The reasonable time of the notification before disposition is again left to the courts to decide.

Second, the revision requires the secured party to notify a consumer debtor if a surplus or deficiency is calculated and the basis for its calculation.²²³ The secured party must provide this information to the consumer debtor no later than the time that it pays a surplus or the time of its first written attempt to collect a deficiency.

Another important change Revised Article makes in consumer transactions is that it requires a greater specificity of description of collateral in consumer goods, “security entitlements”²²⁴, securities accounts, or commodity accounts.²²⁵ A description only by type of collateral in the security agreement is insufficient.²²⁶ For example, “all existing and after acquired securities accounts” would be insufficient in a consumer transaction to describe the security account.

I. Securitization under Revised Article 9-

A major objective of Revised Article 9 is to simplify the law applicable to securitization. Three major changes have reduced the difficulty of securitization.

First, the sales of promissory notes are brought within the scope of Article 9.²²⁷ Revised Article 9 also provides that sales of promissory notes are automatically perfected upon attachments.²²⁸ A purchaser of promissory notes will obtain the protection of

²²¹ See Rev. UCC § 9-614(1).

²²² Rev. UCC § 9-612(b).

²²³ Rev. UCC § 9-616(b).

²²⁴ See definition in UCC § 8-102(7) and (17).

²²⁵ Rev. UCC § 9-108(e)(2).

²²⁶ Id.

²²⁷ Rev. UCC § 9-109(a)(3).

²²⁸ Rev. UCC § 9-309(4).

Article 9 immediately after the sale. However, the buyer of promissory notes that relies on automatic perfection will be subordinate to a subsequent buyer that perfects by taking possession of the notes if the it gives value, takes possession in good faith and without knowledge that the purchase violates the rights of the secured party.²²⁹

Second, Revised Article 9 broadens the definition of “accounts”²³⁰ and since the sale of accounts remains subject to Revised Article 9, more collateral is now available for securitization. For example, property that has been licensed, and health care insurance receivables are subject to securitization under Revised Article 9. The revision provides purchasers of “accounts” priority over later lien creditors or secured parties if they comply with the rules of perfection of Revised Article 9.

Third, Revised Article 9 creates a new subset within the category of general intangibles denominated “payment intangibles”²³¹, and makes the sale of them subject to Revised Article 9.²³² Sales of general intangibles other than payment intangibles still remain outside Article 9. Sales of payment intangibles are automatically perfected upon attachment,²³³ the purchaser automatically obtains protection of Revised Article 9 perfection.

These three changes produce certainty and uniformity to the law of securitization by bringing them under the umbrella of Revised Article 9.

J. Transitional Rules-

²²⁹ Rev. UCC § 9-330(d).

²³⁰ See Rev. UCC § 9-102(a)(2).

²³¹ See Rev. UCC § 9-102(a)(42) and (61).

²³² Rev. 9-109(a)(3).

²³³ Rev. UCC § 9-309(3).

Primarily because of the change in the place of filing provisions, it is proposed that all adopting states place the effective date of Revised Article 9 at July 1, 2001. Any one State's failure to adopt the uniform effective date will greatly increase the cost and uncertainty in a secured credit transaction under Article 9. The problem arises because Revised Article 9 expands the scope of Current Article 9 to cover additional types of transactions and because it provides new methods of perfection, different priority and enforcement rules, and different choice of law rules governing perfection and priorities. For example, under Current Article 9 in order to perfect a security interest in inventory the secured party must file a financing statement in the state the inventory is located.²³⁴ Under the revision, if the debtor is a corporation, the proper place to file would be in the state where the corporation was incorporated.²³⁵ If the states have different versions of Article 9, to determine whether the security interest is perfected or not would depend on the state where the issue is litigated.

The general rule is that Revised Article 9 applies to transactions, security interests, and liens within its scope, even if the transaction or lien was entered or created before the revision takes effect.²³⁶ Thus, transactions entered under Current Article 9 must be terminated, completed, consummated, and enforced under the revision. There are two exceptions to this rule. First, a security interest validly perfected under Current Article 9 or under common law is not affected by the adoption of Revised Article 9 for a period of one year following the effective date.²³⁷ Secured parties must take any steps necessary within that year to perfect under the revision, or the security interest will become

²³⁴ See Current UCC § 9-103.

²³⁵ See Rev. UCC § 9-301(1); Rev. UCC § 9-307(e).

²³⁶ Rev. UCC § 9-702(a).

²³⁷ Rev. UCC § 9-703(b).

unperfected.²³⁸ For example, a lender that perfects a security interest in a promissory note by using the bailee notice device under Current Article 9 must obtain an acknowledgement by bailee within one year of the effective date or the security interest will become unperfected. Note, however, that if a security interest validly perfected under Current Article 9 satisfies the requirements of attachment and perfection of Revised Article 9, no further action is needed for the security interest to be a perfected under the revision.²³⁹ Second, if the transactions or liens were not governed by Current Article 9, and were validly entered into or created before the revision takes effect, and would be subject to the broader scope of the revision, it may be terminated, completed, consummated, and enforce by either the revision or by the law that otherwise would apply.²⁴⁰ For example, a security interest in commercial torts or health-care-insurance receivables created under common law before the revision takes effect, may be terminated, completed, consummated, and enforce by either the revision or by prior common law.²⁴¹

Another important transitional rule under the revision is that if a security interest is enforceable but unperfected under Current Article 9 or other applicable law before the revision takes effect, the security interest remains enforceable for one year after the effective date of Revised Article 9.²⁴² An enforceable but unperfected security interest

²³⁸ See Rev. UCC § 9-703, Comment 2, for excellent examples.

²³⁹ Rev. UCC § 9-703(a).

²⁴⁰ Rev. UCC § 9-702(b).

²⁴¹ Rev. UCC § 9-702, Comment 1.

²⁴² Rev. UCC § 9-704.

under Current Article 9 may become a perfected security interest on the effective date if it satisfies the requirements for perfection under the revision.²⁴³

Revised Article 9 provides for two important rules concerning the effects of actions taken before the effective date of the revision. First, if action, other than the filing of financing statement, is taken before the revision takes effect and those actions result in the perfection of a security interest under Current Article 9 but not under the revision, the security interest will be perfected for one year after the Revised Article 9 takes effect. However, the security interest becomes unperfected one year after the effective date, unless the secured party takes action to perfect under the revision. For example, a security interest in goods was perfected under Current Article 9 solely by notice to a bailee. Such security interest will be perfected until July 1, 2002. The perfection status will continue if the bailee acknowledges the security interest before that date. Second, if a financing statement is filed in the proper jurisdiction under Current UCC § 9-103 it will remain effective for all purposes under the revision until the earlier of (i) the time the financing statement would cease to be effective under the law of the jurisdiction it was filed; or (ii) June 30, 2006.²⁴⁴ This means that, during the early years of Revised Article 9 it will be necessary to search not only in the filing office of the jurisdiction whose law governs perfection under the revision, but also in the filing office designated by Current Article 9.

While the transition period poses certain additional risks and costs to existing secured parties, Revised Article 9 promises much greater certainty to them.

3. Why should Puerto Rico approve Revised Article 9-

²⁴³Id; See also UCC § 9-704, Comment , for an excellent example.

²⁴⁴ Rev. § UCC 9-705(c).

Article 9 of the UCC was adopted in Puerto Rico as Chapter 9 of the Commercial Transaction Act, Number 241 of September 19, 1996 (Law 241). Such Act follows the uniform version approved by the American Law Institute and National Conference of Commissioners on Uniform State Laws in virtually all aspects. However, non-uniform provisions still exist because of Puerto Rico's civil law tradition.

According to the statement of motives of Law 241, the reasons for adopting Article 9 of the UCC were: to provide uniformity among the United States and Puerto Rico with regards to secured transactions on personal property, and to modernize the law governing secured transactions of personal property, making it more efficient and less expensive. For these same two reasons, Puerto Rico should approve Revised Article 9. After July 1, 2001 Puerto Rico will lose its uniformity with the 50 states of the U.S. with regard to secured transactions on personal property. Also, to continue modernizing the law on secured transactions of personal property, Revised Article 9 must be adopted in Puerto Rico. Revised Article 9 allows electronic transactions, which will become an important type of transaction as paper-based transactions fade away. If we went as far as adopting Current Article 9 in our civil law jurisdiction, we should continue adopting revised versions of it. As technology changes and secured transactions on personal property evolve, new revisions to Article 9 will be adopted. It is our obligation to continue adopting these revisions so that our commercial laws remains relevant to business practices.

Revised Article 9 contains a uniform effective date of July 1, 2001, applicable to all states that enact the revisions. The Official Comments state that this uniform effective date was intended to give all states an opportunity to enact the statute so that it would

become effective on the same date throughout the country. The Official Comments caution: if former Article 9 is in effect in some jurisdictions, and this Article is in effect in others, *horrendous complications* may arise.²⁴⁵ (May be referred to as the choice of law problem discussed earlier in the Essay).

Lenders extending credit to debtors located outside of Puerto Rico may put restrictive covenants in their loan documents limiting a debtor's ability to open offices in Puerto Rico. A lender having complied with the rules under Revised Article 9 would not want to incur the initial or ongoing costs of compliance with Current Article 9, when the debtor opens an office in Puerto Rico and brings inventory, equipment or goods here. Puerto Rico may lose some inward investment opportunities if Revised Article 9 is not adopted.

New kinds of property and transactions have been developed since Article 9 was last amended. As mentioned earlier, the scope of Article 9 expands to keep up with these changes. Revised Article 9 will bring certainty to the outright sales of promissory notes, health care receivables, and payment intangibles, and offer secured lenders new kinds of personal property to collateralize their debts. The banking industry in Puerto Rico and its clients will benefit from these new types of collateral and transactions because Revised Article 9 provides for more lending alternatives and opportunities.

Finally, another reason Revised Article 9 should be adopted in Puerto Rico is that it provides more precise provisions relating to default and enforcement of security interests. Historically, courts have interpreted provisions of enforcement in conflicting ways. This has resulted in an ambiguous application of some rules. Revised Article 9 addresses and

²⁴⁵ Rev. UCC § 9-701.

rectifies the accrued ambiguities. By adopting Revised Article 9, courts in Puerto Rico would avoid having to decide which conflicting interpretation of Current Article 9 should apply in a specific case. For example, should a court in Puerto Rico adopt the “absolute bar” rule or the “rebuttable presumption” rule when a secured lender fails to comply with the enforcement rules of Article 9? As mentioned earlier, Revised Article 9 answers this question.²⁴⁶

Revised Article 9 improves secured transactions on personal property by allowing additional kinds of property to serve as collateral, by including new type of transactions within the scope of Article 9, by allowing electronic transactions, and by providing for more clear and efficient enforcement when debtor is in default. These benefits require prompt and uniform enactment in Puerto Rico.

4. Conclusion-

The changes made in Revised Article 9 are long and extensive but represent a major improvement from Current Article 9. Revised Article 9 promises much greater certainty for the future. It applies to more types of transactions and collateral than current law, removes the risks inherent in making certain factual determinations, and facilitates the creation and perfection of security interests without use of paper documents and original signatures.

Changes in Revised Article 9 should reduce the cost of secured transactions. For example, filing in the jurisdiction where the corporation is organized as opposed to the many jurisdictions where its inventory or equipment is located will definitely reduce the cost of the transactions.

²⁴⁶ See *supra* text-accompanying note 160.

Puerto Rico should adopt Revised Article 9 to continue with the uniformity with all the states of the U.S and to adapt to modern financing techniques. Puerto Rico must understand that as technology changes, business practices evolve, and as a result there is always a need to update the law so that it remains relevant to commerce. Revised Article 9 changes, clarifies, and updates the law of secured transactions on personal property. To continue modernizing Puerto Rico's commercial law, Chapter 9 of the Commercial Transactions Act, Number 241 of September 19, 1996 must be amended to adopt the revised version of Article 9.